

1. Internet and jurisdiction

It is often said that the "Internet has no borders". It would be more correct to say that the Internet is an inherently "cross-border" technology: national (or European) borders and jurisdictions do not disappear simply because of the appearance of a new enabling technology, much like they have not disappeared when other cross-border activities (international trade, the telephone system, radio and television) became widespread. However, like other cross-border activities, the Internet poses a series of challenges for the application of laws. While such challenges are not always specific to the Internet, the sheer quantity of cross-border transactions of various types which take place online, call for a more thorough reflection on how existing rules apply on the Internet.

2. What is the current situation?

Extraterritorial application of national law, sometimes based on various interpretations of the "geographies" of the physical or logical structure of the Internet (e.g. location of the servers where the information is stored or of the cables where it transits) has led to a number of contradictory legal decisions. Many activities on the Internet are increasingly governed by contractual arrangements between private companies and users on the Internet. Non-contractual obligations of ecommerce traders and intermediaries are also relevant in this context. The complexity and, in some cases, the opaqueness of these arrangements, including for what concerns provisions on applicable jurisdiction and law, may give rise to legal uncertainty.

3. European Commission's perspective

- We need an inclusive and forward-looking reflection on the evolution of jurisdictional principles in the age of the Internet.
- We cannot turn the Internet into a series of separate "national Intranets" to "protect" national jurisdictions. This would by the way be completely contrary to the basic principles of European integration.
- We also cannot fall prey of the "Internet has no borders" myth. National jurisdictions still exist and citizens have the right to make sure their rights are protected by the responsible authorities.
- Unless we find a way to adapt the existing rules and principles to the Internet age, we run a risk of creating a patchwork of incoherent decisions, which would be bad for legal certainty, economic growth and the protection of rights.
- From the point of view of private law, uniform European rules on jurisdiction and the recognition and enforcement of judgments and conflict rules exist in some areas, in particular in respect of contractual and extra-contractual obligations.
- But these rules regulate such problems within the European Union: at the international level, conflict rules are insufficiently developed, leading to unsolved conflicts of laws beyond the Union.
- In particular for Internet related services that are inherently cross-border in nature, such as cloud-computing services, this complexity at international level can be harmful for growth.
- Addressing the tension between an international Internet and national jurisdictions should also take into account the diversity of cases that can be subject to these conflicts, which are not apt to be addressed by one single mechanism
- The Commission is considering the best way to launch this reflection in an inclusive manner. The end result should be a series of options for action at the Union or international level (including possible legislative initiatives). Clearly, this assessment will build on existing policies.