

On The Problems of Regulating Online Services in Hungary

LAW AND REALITY OF ONLINE GAMBLING

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Abstract

The transition of services that were conducted mostly between persons in physical contact with each other to the Internet is happening continuously. Actions between parties are becoming extraterritorial, and the legislative power of states - and especially their ability to enforce the law – is decreasing in these territories.

At the time of this writing there are no adequate responses for this change. One tendency has been the growing control over the Internet traffic most radically implemented in the People's Republic of China with the project named Golden Shield.

To present an example of the problem of diminishing state governance of the services provided through the Internet we will establish the current legal conditions of online gambling in Hungary and the differing reality, an area affecting more EU Member States. We will argue that the Member States are not able to adopt the Chinese way of control.

As more areas are transformed by the Internet from a domestic affair to international ones the states must face the problem that as the Internet is taking away or severely weakening one of the chief methods of regulating and shaping society there is nothing to replace law.

Keywords

Online gambling, Hungary, internet governance, internet traffic filtering, regulation, Golden Shield, freedom of providing services

Introduction

The usual limits of legal regulation for a state are basically twofold: its geographical area and the citizens of the state concerned. The strictness of these rules varies from legal area to legal area, for example the citizens are bound by the criminal rules at all times while the civil law may be exchanged for a law of another state based on the residence of the parties or the place the contractual obligations are carried out at by the rules of the international private law.

The biggest challenge is emerging at those areas when not the individual but rather a sphere, a system is addressed by the law. The very basics of society are influenced and shaped by such norms like the protection of consumers, or – more broadly speaking – regulating available services.

For the latter areas the Internet and especially some affairs and behaviours that are continuously transferring to the Internet pose a serious challenge for the regulatory and enforcement powers of the states. More and more of their regulations are rapidly becoming unenforceable – almost like *lex imperfecta*.¹ The challenge lies in the fact that more and more activities are moving to the online sphere thus eluding the control of the state, often becoming – sometimes only *de facto*, often *de jure* as well –extraterritorial. Although the affected areas are innumerable, it is likely that no service or product that can be at least in part conducted online or presented in binary form would be untouched.

The only possible way to resist these changes is to try and establish the limits of the Internet at the physical borders, by regulating those parts of the physical network – routers, computers, DNS servers, etc. – that are inside the concerned country and limit and filter the traffic through established gateways at the border. Theoretically, it might be possible to regulate the behaviour of the individual, but practically it is hardly enforceable as the current state of copyright has shown.

We will examine the empirical possibilities of enforcing the law over the Internet, also an example will be presented – the Chinese Golden Shield. Then through a very actual example – online gambling – we will point out that these methods – should they be accepted by a democratic society – are to carry extreme consequences. It will be necessary to present the Hungarian regulation on gambling – *de jure* a state monopoly – and the situation that makes it unenforceable in cases of online gambling operations.

The sources used in this article are basically twofold. On questions of law the used sources are the legal norms of Hungary and the EU and judicial decision of the ECJ. In cases of the Golden Shield of the People's Republic of China and Internet governance, studies conducted by researchers and available online are the only possible source as the Golden Shield is changing constantly.

¹ *Lex imperfecta* is the type of law, which if broken brings neither detriments nor the consequence of invalidity with it – so it has no sanctions.

Regulation Through Code

Attempts at regulating the traffic of the Internet have to happen through regulating computer code. As Lawrence Lessig puts it (Lessig, 2006: 62):

“The trick is obvious once it is seen. It may well be difficult for the government to regulate behavior directly, given the architecture of the Internet as it is. But that doesn’t mean it is difficult for the government to regulate the architecture of the Internet as it is. The trick, then, is for the government to take steps that induce the development of an architecture that makes behaviour more regulable.”

About the possibility to regulate the Internet through code Lessig states the following (Lessig, 2006: 67):

“The question that began this chapter was whether there were similar ways that the government might regulate code on the Internet to make behavior on the Net more regulable. The answer is obviously yes. There are many steps the government might take to make behavior on the network more regulable, and there are obvious reasons for taking those steps.”

Basically the power of a state to enact an effective regulation comes down to be able to affect the writers of the software code that is to be regulated (Lessig, 2006: 71). While the United States of America can enact an effective regulation about most of the software-related questions, the People’s Republic of China has a much more limited power and Hungary can only enact effective regulation in some very special cases, like software especially tailored to the requirements of Hungarian public bodies (and even in these cases the regulated topic is not the software, but the choice of public bodies is limited in what software to use, and therefore a market incentive is created to produce such software).

In these cases the only viable alternative is to separate a special area from its global counterpart – like it has happened in the case of document management software for Hungarian public bodies. And China has done the same with the Internet.

I. The Golden Shield of China

By all accounts the most extensive state control over the Internet was established by the People’s Republic of China. Sometimes – misleadingly – called the Great Firewall of China the Golden Shield is much more than a simple firewall solution. It is noteworthy that the technology behind the Golden Shield is available and is widely used all over the world, for example in filtering software made for the parental supervisory of minors, or firewall installed at virtually every network. Legal and technical methods are combined to extensively filter and monitor the Internet traffic. It is also worth mentioning that officially the Chinese authorities deny filtering the Internet. A Chinese official at Athens, Greece in October 2006 explicitly stated that:

“In China, we don't have software blocking Internet sites. Sometimes we have trouble accessing them. But that's a different problem. I know that some colleagues listen to the BBC in their offices from the Webcast. And I've heard people say that the BBC is not available in China or that it's blocked. I'm sure I don't know why people say this kind of thing. We do not have restrictions at all.”²

² Declan McCullough: China: We Don’t Censor the Internet. Really, available at http://news.zdnet.com/2100-9588_22-6130970.html, accessed 30th January 2008.

However the various research carried out by universities and human rights groups does not support this position. In fact the official Chinese standpoint is contradicted quite starkly. According to the studies the situation is the following:

The Golden Shield project was started in 2000 sponsored by the Ministry of Public Security. According to a no longer available press release (cited by Walton, 2001) the aim of the project was to promote *"the adoption of advanced information and communication technology to strengthen central police control, responsiveness, and crime combating capacity, so as to improve the efficiency and effectiveness of police work"*. The project has evolved and changed considerably as studies point out. The main elements of the current Golden Shield are the following (according to the most recent Human Rights Watch (HRW) report 2006):

- blocking of sources (based on IP or URL) at the network backbone level,
- content filtering by content providers,
- filtering the contents of private messages (email, voip and chat mostly).

Blocking of Sources

Internet access is provided through nine big, state-licensed Internet Access Providers (IAPs) to Internet Service Providers. The individual users then buy Internet access through these ISPs. Accessing foreign websites is available through the IAPs, therefore providing a rather centralized, controlled access. The first layer of content blocking or filtering is carried out by the administrators at the IAP level, using the widely available filtering techniques of routers and firewalls by entering Ultimate Resource Locators, IP addresses and keywords. This is reinforced by deploying these same methods at ISP level as well. The usual response for trying to access blocked sites is resetting the DNS (probably trying to conceal the filtering), resulting in a standard "The Connection was reset" message.

Content Filtering by the Content Providers

It is noteworthy that ISPs do not enjoy the usual "common content carrier" privileges they have in the democratic western world. Therefore – as they are held liable for the hosted content – filtering measures has to be implemented in order to protect themselves from legal consequences.

However the main question is the legal surroundings of Internet Content Providers or ICPs. All ICPs are to register for and keep their license for operation and are liable for the content appearing on their websites even if it was created by a visitor. Therefore in order to be able to operate they must police the content by either automatic or manual means or both. More than that they are required to sign an 'optional' "Public Pledge of Self-Regulation and Professional Ethics for China Internet Industry" initiated by the Internet Society of China (ISOC). In this document the requirements of law are supplemented by caring for "the rich cultural tradition of the Chinese nation and the moral code of socialist spiritual civilization", and "state security", "social stability", and refraining from spreading "superstition" and "obscenity".

There are multiple official bodies that are monitoring the compliance with the rules. Although ISOC formally is not an official body it is supervised by the Ministry of Information Industry. The State Council Information Office and the Communist Party's Propaganda Department and other state bodies are also known to monitor the ICPs. This system is further obfuscated by the absence of an official list of forbidden topics or terms, therefore the ISPs and ICPs are known to act proactively and err on the side of caution resulting in over-blocking. The search results are also filtered making even the existence of forbidden content unknown.

Filtering Private Messages

The email providers, chat services and some VOIP companies have been known to filter the content of these messages. The email providers are also readily giving away copies of messages for the authorities which have lead to the conviction of at least four critics of the government. Some instant messages also failed to arrive and Skype has admitted to employ a filter in their Chinese version.

The Effects of the Golden Shield

The accessibility of foreign websites from China has been at the forefront of researchers from at least 2002. Two researchers of the Berkman Center for Internet & Society of the Harvard Law School, Jonathan Zittrain and Benjamin Edelman conducted an overview of over 200.000 websites and tracked roughly 19.000 websites that were more than a single occasion unavailable from China (Zittrain-Edelman, 2002). They summed up their findings in three points: *“(1) that the Chinese government maintains an active interest in preventing users from viewing certain web content, both sexually explicit and non-sexually explicit; (2) that it has managed to configure overlapping nationwide systems to effectively – if at times irregularly – block such content from users who do not regularly seek to circumvent such blocking; and (3) that such blocking systems are becoming more refined even as they are likely more labor- and technology-intensive to maintain than cruder predecessors.”*

This study was repeated in 2005 and surprisingly the results show that except two topics – Tiananmen Square and Falun Gong – the rest was more accessible than in 2002. However, the filtering has become more sophisticated – for example allowing general content about Tibet, but strongly filtering topics about the independence of Tibet (Opennet Initiative, 2005).

However breaching the Golden Shield is not impossible. According to a study of the Chinese Academy of Social Sciences conducted in 2005 (cited by HRW report, 2006) around 9% of the respondents used at least ‘sometimes’ a foreign proxy to access unauthorized pages.

The bottom line of this figure is that although it is possible to circumvent the censorship on an overall level the effort is successful. The Chinese government has succeeded in gaining control over the Internet use of its citizens and limiting the influence of effects from abroad. Although individuals may breach occasionally the Shield, these have no effect on the grand scale of the society.

As for our current topic, the ‘Administration of Internet News Information Service Provisions’ was made available in English by the Ministry of Information Industry on 21st December 2007, although at least two non-official translation was made back in 2005. Article 19 of the Provisions contains the topics that are to be inaccessible, including gambling in section (6).

The Golden Shield in Spotlight: Internet Access of the Press during the Beijing 2008 Olympic Games

The Olympic Games of 2008 provided an unparalleled view and test of Internet filtering, as a great number of independent people were in China at the Main Press Center.

Before the Games on 5th April a testing visit was made by official personnel of the International Olympic Committee who were satisfied with the steps China has taken in order to provide unfettered internet access – like unblocking the YouTube website – despite the strengthening of Internet filtering as part of the response to the latest Tibet uprisings.

However that turned out to be somewhat misleading. It turned out on 30th of July – just as the first members of the international press were arriving for the Games – that the International Olympic Committee had agreed to a number of limitations somewhere around the middle of July. Therefore some pages were blocked

by the Chinese authorities, who – although first network access and host problems were blamed – later acknowledged the blocking of some pages, although this blocking – as it was told – did not affect the covering of the Games, like the website of Amnesty International.

A list of blocked websites grouped by the form of blocking was assembled by the Opennet Initiative (ONI Analysis, 2008), containing sites mainly about Tibet and other topics inconvenient for the Chinese Leadership (like those about the Three Gorges Dam).

However overall the number of blocked sites were probably reduced – especially by some English sites, like the BBC5 – as the official policy of deciding what to block is still shrouded and no clear rules are set the basic way and principle of operating the Golden Shield has not changed – what the citizens of the People's Republic of China should read and know is still decided by the state.

Providing Gambling Services Online

I. The Legal Environment of Gambling in Hungary

The Hungarian Regulation of Gambling

The primary legal rule on gambling is the 16th Act of Parliament in 1991 on concessions. It is established that some services – including organized gambling – is allowed only by either companies whose majority is held by a local authority or the state or by acquiring a temporally right through a concession treaty with the state or a local government. The term of gambling and the conditions of organizing gambling is defined in the 34th Act of Parliament in 1991 on organizing gambling as “every such game when the player after paying a sum or other financial value becomes entitled for an amount of money or financial values on certain conditions and the outcome is dependent only or mostly on luck”. There is also a vague enumeration of the various form of gambling, including drawing of lots, machines and establishing an organization for gambling (casinos) and horse races. Some forms are liberalized, like the operating of various gambling machines and games with lots sold only on the scene of a game with less than 5000 pieces or a total sum no more than 500.000 forints and at least 80% of the income is distributed among the winners. It is also laid down in this act that gambling operation through communication networks also fall under these rules.

Therefore, the online gambling operations strictly fall under these rules.

Even the banks were prohibited from ‘lending technical assistance’ in November 2005 as the Article 1. Section (5) declared prohibited for the communication service providers and financial institutions to take part in or lend technical support for unauthorized gambling operations.

The aim for this regulation is twofold: first: to allow the state to harvest its share of the monetary gains of gambling and to protect its citizens.

The main body of organizing gambling in Hungary is called Szerencsejáték Zrt. (roughly Gambling Ltd.), an exclusively state-held company.

The EU-law on gambling

The accession of Hungary to the European Union has considerably influenced the powers of the state to establish or maintain monopolies. The so-called four freedoms – in this case especially the freedom to provide services – limit the regulatory power of the Member States. These freedoms are the very core of the European Union, enshrined in the Treaty establishing the European Community, in Article 49:

“Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.”

Often a race to the bottom is established, providing services from the Member State that sponsors the least burdensome legal circumstances. And often – in response – legal norms are adopted by the EU bodies (mostly by the Commission or by the Commission and the Parliament) while the common practice is established by the European Court of Justice through the preliminary ruling procedure as per Article 234 EC, the

interpretation of community law, validity of the law made by the EC in accordance with the treaties, and establishing whether some member state practices are in conflict with the community law – effectively ruling on the validity of the legal norms and practices of the Member States.

Concerning the case of online gambling there are two worth mentioning. The first one is the Gambelli case (case no. C-243/01) from 2003. In this case Piergiorgio Gambelli and 137 other defendants were charged with unlawfully organizing clandestine bets and being the proprietors of centres carrying on the activity of collecting and transmitting betting data, which constituted an offence of fraud against the state.

Gambelli and others were collecting bets of Italian citizens and transmitting them through the Internet to Stanley International Betting Ltd, an English capital company registered in Liverpool as a bookmaker with a license to carry on its activity in England and abroad. Stanley is subject to rigorous control by the authorities of the United Kingdom. It established its presence in Italy by signing commercial agreements with operators operating data transmission centres. The communication between Stanley and these data transmission centres happened over the Internet. The defendants were registered with the Italian Chamber of Commerce as proprietors running data centres and obtained authorization for data transmissions. However legal proceedings were launched against them on the basis of tax fraud on the basis that they operated an unauthorized gambling operation and infringed on the monopoly of the CONI, the Italian Olympic Body solely authorized for accepting bets on sport events (except horse races for which a different body was established).

The case was referred to the ECJ for a preliminary ruling for the question whether such a procedure is in compliance with Articles 43 and 49 EC.

The hornet's nest was stirred up by the case. Opinions were submitted by no less than 8 Member State (of the 15 Member State total at that time). The Commission also felt the necessity to express its views on the matter.

During the preliminary ruling procedure it was established that the aforementioned practice is undoubtedly a service under the EC Treaty. And as connection to a bookmaker through the Internet and payment by credit card was identified as a criminal act by the Italian Government at the hearing, this practice was found restricting the freedom of providing services by the ECJ. The last question was whether this practice could be acceptable as per Articles 45 and 46 EC or by the practice of the Court. Despite the arguments of the Greek and Portugal Governments respectively the issue of taxation was not accepted as a matter of overriding interest. Moral, religious and cultural factors, morally or financially harmful consequences for the individual and society associated with betting and gambling could be found as such in case these could have been justified by the imperative requirements, would have been suitable for achieving the objective and would have been proportional. However at the same time the Italian Government have broadly expanded the gambling operations. In the end the final decision was – as always is – referred back to the national court.

It was nevertheless established that providing gambling opportunities over the Internet is a service under the EC Treaty and generally a state monopoly is restricting the freedom of providing services and is only justifiable under special circumstances.

The polite guidance of the ECJ failed to reach its destined effects. The very same topic came up in the Placanica case (case no. C-338,359,360/4 joined cases, decided in March 2007) in which operators of data transmission centres for the very same Stanley International Betting Ltd. Were charged with violating the criminal laws with organizing unauthorized gambling. However the way the Italian government handled gambling was reorganized somewhat. The former monopoly, CONI has issued a thousand licences for a duration of six years with an option to extend to another six years in 1998 to licensees whose shareholders were at all times personally identifiable, effectively excluding publicly held companies. The Corte Suprema di Cassazione (High Court) identified the need to channel illegal betting and gambling into legal channels as the true motive

behind this move. After obtaining the license licensees were to register with the police in order to operate legal gambling and betting operations. This court also found that this rule was non-discriminatory because not only the foreign companies whose shareholders cannot be precisely identified were excluded. Although this requirement was abolished in 2002 the licenses were not cancelled and no new licenses were issued.

Placanica and others had pursued the activity of collecting bets without police authorization. They had tried to obtain a licence but were refused and after applying for police authorization they never received a response.

The ECJ ruled that even this revised system restricts the freedom of both establishment and providing services provided for Articles 43 and 49 EC. Although the ECJ did not take a position whether the exact number of licenses issued were appropriate for preventing fraud and illegal betting this time they expressly ruled that the practice and established regime of the Italian legislation is still excluding the companies whose shares are traded on the public market, and therefore the criminal procedure against Placanica and others is in breach of Community law.

2. The Reality of Online Gambling

The Current Situation

The legal norms detailed above have not exactly achieved either goal concerning online gambling. Probably there was a turning point sometime during the early years of the 21st century where the Szerencsejáték company might have turned to the online sphere establishing not only a Hungarian but an English presence as well. However this did not happen. Instead in November 2005 the law detailed above was established.

Currently many EU-based (mostly United Kingdom (including Gibraltar) or Malta) companies do offer not only services available from Hungary but even interfaces in Hungarian. Also their ads have been running frequently on the leading sport channel Sport1 TV since 2002, and at the time of this writing the website³ of it contains a banner belonging to an online poker casino. The site bwin.com⁴ does offer a Hungarian interface providing betting, poker playing and casino playing options. The website onlinepoker.hu⁵ was moved in November 2005 to a dotcom top level domain from its preceding Hungarian domain, and allows playing online poker there. The site Sportingbet⁶ also offers a Hungarian interface with options to play poker, place bets or traditional casino. More examples could be mentioned.

There are absolutely no news or information about any difficulties arising accessing these services or from using bank accounts for online games. It can be assumed that the prohibition on 'lending technical assistance' for unauthorized gambling operations has no real effects.

Many high-profile members of the Hungarian society are known to engage in online gambling, including a journalist/writer and a singer. There are several blogs dealing with the topic of playing online poker. There are even professional poker players who are making a living from these games.

³ <http://www.sport1tv.hu/>, accessed 29th January 2008.

⁴ <http://www.bwin.com/>, accessed 29th January 2008.

⁵ <http://www.onlinepoker.hu/>, accessed 29th January 2008.

⁶ <http://hu.sportingbet.com/>, accessed 29th January 2008.

Could Hungary Succeed in Fighting Online Gambling?

After establishing the legal and technical background of limiting online gambling the question must be examined whether there is a real opportunity for establishing a marginally effective barrier for online gambling. As the first main chapter of this paper has (supposedly) shown nothing short of complete and close control can limit net traffic – and even such an extensive system is subject to so simple breaches like entering an IP address at the relevant part of the browser program.

It took six years for China to create and refine the Golden Shield. It is indisputable that China had much more resources to draw on, more skilled technical personnel available, a stronger economy and a culture putting up with restricted Internet access. Although the Chinese Golden Shield can be and is breached on the overall level it has achieved its goals. Even if Hungary could count on the same resources that China has this would not prove to be a short-term solution.

But the real difference lies in the legal surroundings. Hungary, a member state of the European Union cannot unilaterally establish restrictions on the freedom of providing services. Even the idea is nothing short of absurd. The freedom of providing services is one of the almost sacred four freedoms of the European Union established in the Founding Treaty of the EC. In the view of the Author the only thing that has stopped the ECJ from ruling the current system of state monopoly on gambling inconsistent with Community law as per the Gambelli and Placanica cases is that a real legal dispute is required for the ECJ, and currently there was no serious attempt to try to enforce the provisions of the 34th Act of 1991 on organizing gambling, and therefore no case has arisen. The sustenance of the state monopoly could only be justified by the overriding importance of protection of the moral, religious and cultural factors, morally or financially harmful consequences for the individual and society associated with betting and gambling. However as the current supervisor is the Tax Office of gambling operations it could hardly be argued successfully that this is the case, when the same time the national lottery has an own TV show and the leading sports paper regularly contains ads from the Szerencsejáték Zrt.

However there are possible negative effects of gambling, like corruption of sports events and the addiction to gambling. These are more likely to spin out of control as gambling operations not under the supervision of the state will grow in importance.

Conclusions

It is hard to argue that the general findings on online gambling could not be extrapolated to other areas and other countries. Virtually all Member States of the European Union are challenged by the same problem – except the one with the lowest requirements gaining on tax increase concerning a specific service over the Internet. Of course the scope of the problem is differing for each country depending on a number of reasons, like size, the language used, etc.

But this effect of the Internet is not specific to the question of online gambling services. Virtually all and every service that can be moved to an online model is affected. However gambling is a perfect example because of the stark contrast of former state monopolies versus the freely accessible online gambling operations. The results are not only a loss in incomes but the loss of the regulating power of the state. The effect is that more and more such interactions are conducted extraterritorially. The question is not whether it is possible to do something online. But when a considerable amount of activities are carried out over the Internet concerning the society as a whole the regular controls of the state are circumvented.

What is really shocking is the pace the legislative power of the states is slipping away in case of Internet-related issues. Among these areas are intellectual property protection, defamation, libel, child pornography, financial services, telecommunication, identity and privacy and much more. The limits cannot even be drawn. Ten years ago the transmission of voice over the Internet Protocol (VOIP) was extremely limited now it is widely – and freely – available, making the tapping of phone communications harder. It is happening right now with access to online video comparable to television in quality, with such websites as Hulu spearheading this move.

One of the main regulating systems of society is law and currently there are no real alternatives to replace it. The effective level of law is the state however the Internet is over crossing borders without even noting their existence. Therefore a discrepancy is emerging between the level of effective regulation and the level of reality. If an authority has no physical access currently, it cannot impose effective control, and even with physical access it calls for draconian measures. On the worldwide level the effectiveness of law is severely limited by the differences of values and interests of the countries. There is no such thing as a coherent international legal regime, separate contracts exist, and there are no working international enforcement methods. Many of the concerned services over the Internet are viewed in different light in different countries.

Even at the level of the European Union there are serious differences and the enforcement bodies are missing or have extremely limited scope. It does not fall in the scope of this article whether the European Union could take a more serious legislative and (coordination of) enforcement role, however the lack of direct legitimation and participation – the so-called democratic deficit⁷ – has been known for years.

It is a safe bet that the problems of Internet regulation will become even more serious before some form of solution will be worked out. One possible scenario is the replacement of the underlying protocols with some control implemented into the backbone of the Internet (Lamb, 2004). Another is the development and strengthening of regional-cultural regulating bodies. The emergence of a global regulating body (perhaps by the transformation of ICANN) is also not impossible, however unlikely that is at the time of this writing

⁷ For a brief overview please see the glossary of the European Union http://europa.eu/scadplus/glossary/democratic_deficit_en.htm, accessed 31st January 2008.

Of course this question has not eluded the attention of the legal scientific community. Two distant groups have emerged, those who share the belief that the Internet is regulable with traditional methods including the current procedures of international law are called unexceptionalists. Their most prominent member is possibly Jack Goldsmith is proposing that the current methods – especially the extradition procedures and enforcement of foreign judgements, especially default judgements, and content providers monitoring the content (Goldsmith, 1998). At the end of the article he sums up his position:

“Cyberspace transactions are no different from “real-space” transnational transactions. They involve people in real space in one jurisdiction communicating with people in real space in other jurisdictions in a way that often does good but sometimes causes harm. There is no general normative argument that supports the immunization of cyberspace activities from territorial regulation. And there is every reason to believe that nations can exercise territorial authority to achieve significant regulatory control over cyberspace transactions. Resolution of the choice-of-law problems presented by cyberspace transactions will be challenging, but no more challenging than similar problems raised in other transnational contexts.”

Of course the main weakness of this way of thinking is that the states do not share generally each other’s values and interests. Perhaps in 1998 it was a possible development that international law gains more credibility and acceptance, however this turned out to be an illusion. Currently for example Russia and China has not too much respect of the intellectual property rights of the Western World while their methods and ways of controlling the press and limiting free speech is not shared by the other parties. In these cases it is very unlikely that a country would carry out a judgement which confronts its values and interests.

The position of the regulation sceptics or so-called exceptionalists looks like a better aimed forecast for the current situation. As David Post puts it (Post, 2002):

“A world in which virtually all events and transactions have border-crossing effects is surely not “functionally identical” to a world in which most do not, at least not with respect to the application of a principle that necessarily requires consideration of the distribution of those effects. A world in which the Effects Principle returns the result “No Substantial Effects Outside the Borders” when applied to the vast majority of events and transactions is not “functionally identical” to a world in which application of the same principle to the vast majority of events and transactions returns the opposite result.”

It is noteworthy that the aforementioned debate occurred in a state with the strongest economy and a developed central legislative system, the United States of America. The possibilities that Goldsmith spoke of cannot be extrapolated to small and middle-sized countries even if they exist for bigger ones.

It is not questioned that the Internet has brought and will continue to bring a great deal of positive change, opening possibilities for enhancing democracy, the flow of information, new economic opportunities, etc. However the Internet has brought and will continue to bring challenges as well. The current situation in the Author's view is best portrayed by the words of Post (Post, 2002):

“The legal system is the balloon. There has been friction at the surface, border-crossing events and transactions – “airplane crashes, mass torts, multistate insurance coverage, or multinational commercial transactions” – where the Consent Principle and the Effects Principle collide, setting off small explosions. As long as these remain on the surface – at the margin – the system as a whole is stable. If, however, these collisions start to occur throughout the entire volume of the balloon, no longer confined to a narrow band at the surface, the heat generated becomes overwhelming and the balloon explodes.”

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