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CENTRE FOR COMMERCIAL LAW

# Internet Jurisdiction - Thinking Outside the Box(es)

Workshop organised by  
the ELI Intellectual Property Law Special Interest Group  
together with  
the Centre for Commercial Law Bond University

28 November 2016

Juridicum (Top Floor)  
Schottenbastei 10-16,  
1010 Vienna  
Austria

Currently, questions around Internet jurisdiction are gaining an unprecedented level of attention. Yet, progress is both slow and limited. Arguably, the most significant obstacle for progress is found in the fact that our current thinking on jurisdiction is largely dominated by, and rooted in, notions of territoriality. It is fair to say that, in our current paradigm, the territoriality principle represents the jurisprudential core of our thinking on jurisdiction – a State has jurisdiction over all that occurs in its territory for the simple reason that it occurs in its territory. But as is well-known, it is not always easy – or indeed possible – to determine where (in real space geographical terms) events take place online.

The fact that the territoriality principle is a poor fit for the largely border-disregarding, if not 'borderless', Internet is well established. However, apart from (now largely discredited) calls in the mid-90s for the law not to apply to the Internet at all, few real alternatives to territoriality as the cornerstone of jurisdiction have been advanced until recently.

Moving forward on Internet jurisdiction will require creativity and a willingness to reconsider, and potentially depart from, established legal approaches, concepts and doctrines. This colloquium is aimed at taking steps in that direction.

## **Draft program**

- |               |                                                                                                                                        |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------|
| 10:00 - 10:30 | <b>Opening Remarks</b><br>Speakers: Christiane Wendehorst, Dan Svantesson                                                              |
| 10:30-11:30   | <b>Session One – The territorial scope of data privacy law online</b><br>Speakers: Christopher Kuner, Giovanni Sartor, Michał Czerński |
| 11:30-11:45   | Coffee Break                                                                                                                           |
| 11:45-12:45   | <b>Session Two – Cross-border law enforcement online</b><br>Speakers: Anna-Maria Osula, Bertrand de La Chapelle, Mark Zoetekouw        |
| 12:45-14:00   | Lunch                                                                                                                                  |
| 14:00-15:00   | <b>Session Three – The role of geo-location</b><br>Speakers: Andreas Wiebe, Tereza Kyselovska, Julia Hörnle                            |
| 15:00-15:15   | Coffee Break                                                                                                                           |
| 15:15-16:15   | <b>Session Four – Jurisdictional overreach online</b><br>Speakers: Agata Jaroszek, Uta Kohl, Anabela Susana Sousa Gonçalves            |
| 16:15-16:45   | <b>Concluding Observations and Closing Remarks</b><br>Speakers: Michael Bogdan, Radim Polčák                                           |

## **About the sessions**

### **Session One: The territorial scope of data privacy law online**

More and more countries introduce data privacy laws, the majority with express or implied “extraterritorial” reach. Most significantly, the EU has opted for a ‘targeting’ test extending the Regulation’s scope over a large number of foreigners. Will the EU approach be effective? What are the consequences of other countries adopting the same model? What are the alternatives?

### **Session Two: Cross-border law enforcement online**

Evidence, both in relation to various forms of cybercrime and in relation to traditional crime, is now frequently found online. To be effective, law enforcement needs access to such evidence often stored in cloud arrangements at either unknown locations, or locations outside the geographical territory of the country of the relevant law enforcement agency. How can the different interests present in such situations be balanced?

### **Session Three: The role of geo-location**

Geo-location technologies – allowing the identification of individual Internet users’ geographical location – have been used for some time now. However, their use is now gaining considerable attention. The use of geo-location represents a potential ingredient in addressing overlapping claims of jurisdiction. At the same time, geo-location represents a threat to the Internet as we know it by catering for fragmentation. What is the future of geo-location? How, if at all, should geo-location be regulated?

### **Session Four: Jurisdictional overreach online**

In engaging in activities online, users – from individuals to the major Internet companies – are exposed to multiple, overlapping, and potentially contradictory laws and jurisdictional claims. How serious is this situation? Is it, due to enforcement difficulties, merely a theoretical problem? Does it undermine the rule of law?



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The **Centre for Commercial Law at Bond University** was established in 1989 and can be contacted via [ccl@bond.edu.au](mailto:ccl@bond.edu.au). The key objectives of the Centre are to:

- Provide a Centre of excellence for research, teaching, seminars, conferences, colloquia and publications in the area of commercial law.
- Encourage and organise interaction with Australian and overseas scholars and legal and business practitioners and related professional groups.
- Initiate and develop transnational and global links for the various programs of the Centre; and aspire to be at the forefront of electronic publishing and blended educational presentation techniques.
- Actively participate in work towards appropriate law reform in the area of commercial law.

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