

CORPORATE DECISIONS AND SOCIAL ORDERING

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The Institutionalization of Global Internet Governance:
Multistakeholderism, Multilateralism and Beyond
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Disclaimer:

This presentation is made on a personal basis as an exploration of a theoretical approach.

It should not be considered as an outcome of the Internet & Jurisdiction Dialogue Process, nor as reflecting the position of its participants.

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A PROVOCATIVE QUESTION

DO TERMS OF SERVICE
DE FACTO AMOUNT TO
INTERNATIONAL LAW?

ToS AS INTERNATIONAL LAW?

1. WHY THE QUESTION?

2. IS IT BAD?
... IN A WAY, YES

3. BUT IS IT ONLY BAD?
PROBABLY NOT

4. CAN THIS BE
LEVERAGED?
AND HOW?

WHY THE QUESTION?

Shops – Search
– Social Media –
User-Generated Content

Digital Territories

Trans-border
Social Cyberspaces

ToS as Law of these
Digital Territories

Freedom of Expression,
Privacy or IP Rules
for these Spaces

Contracts
of Adhesion

IS IT BAD? ... IN A WAY, YES

Potential Tensions
with 190+
National Laws

Extra-Territorial Extension of Sovereignty

Non-Democratic
Elaboration of
these ToS

White Lists
– Black Lists

Transparency of
Decision-Making?

Quasi-Jurisdictional Decisions by Private Actors

Lack of Procedures and Safeguards

Unwanted Responsibility
by the Private Actors

ONLY BAD? ... PROBABLY NOT

New Social
Geographies

Multiple Stakeholderships

Limits of the Monopoly
of Representation?

Desire
for Uniformity

Convergence
of ToS – de Facto

**A Tool for
Harmonization?**

Part of a Solution, not only a Problem?

CAN THIS BE LEVERAGED?

Digital Coexistence

Trust Building
Race to the Top

Multi-Stakeholder Framework

Procedural Interfaces Dispute Resolution Distribution of Responsibilities

Process Challenges

Universality vs
Critical Mass Inclusion vs
Manageability

Innovation

Complementary
Mechanisms

Beyond the
Dichotomy

Embedded References

In Law / in ToS

Analogy UDRP

DO TERMS OF SERVICE
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INTERNATIONAL LAW?



WHAT ROLE CAN
TERMS OF SERVICE
PLAY IN HARMONIZATION?

THANKS

QUESTIONS?

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