CORPORATE DECISIONS AND SOCIAL ORDERING

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The Institutionalization of Global Internet Governance: Multistakeholderism, Multilateralism and Beyond
Bern, December 7th, 2013
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?

Digital Territories

- Shops – Search
- – Social Media –
- User-Generated Content

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

Desire for Uniformity

Convergence of ToS – de Facto

Multiple Stakeholderships

Limits of the Monopoly of Representation?

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

**Innovation**

- Complementary Mechanisms
- Beyond the Dichotomy

**Process Challenges**

- Universality vs Critical Mass
- Inclusion vs Manageability

**Embedded References**

- In Law / in ToS
- Analogy UDRP
DO TERMS OF SERVICE DE FACTO AMOUNT TO INTERNATIONAL LAW?

WHAT ROLE CAN TERMS OF SERVICE PLAY IN HARMONIZATION?
THANKS

QUESTIONS?

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