Enforcement of national legislation on global social networks: mission impossible?

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Social networks, global reach...

Social network sites (SNS)
→ *global* online space where opportunities and risks go hand in hand

Tip: What you say on Twitter may be viewed all around the world instantly. You are what you Tweet!
When something goes wrong...

Acts of SNS providers are in breach of national legislation

Acts of SNS users are in breach of national legislation
Global computer-based communications cut across territorial borders, creating a new realm of human activity and undermining the feasibility – and legitimacy – of laws based on geographic boundaries.

David Johnson and David Post, Law and Borders – the Rise of Law in Cyberspace, 1996, p. 1367
Law and regulation have been organised on the assumption that activities are on the whole geographically delimited: the right to regulate conduct is shared out between geographically defined States on a predominantly geographic basis – each State can regulate what occurs within its territory.

So an inadequate system for allocating regulatory responsibility undermines the effectiveness of substantive laws, which is the underlying worry.

Uta Kohl, Jurisdiction and the Internet, 2007, p. 4 & 8
Jurisdiction

1. The right to prescribe law
2. The right to adjudicate disputes
3. The right to enforce the rules/judgment
Question 1: Is law of country B applicable to SNS provider?

Country of origin ↔ country of destination (‘directed at’)
↓
May lead to worldwide competence as SNS in principle direct their services to a global audience

Question 2: Can dispute/case be brought before the court in country B?

What about clauses in Terms of Use? Cf. Facebook/France

Question 3: Can the judgment/order of country B be enforced against SNS provider of country A?

Cf. Yahoo/France, Twitter/France (#unbonjuif)
Cooperation?

• Private law
  o Willingness to apply foreign substantive law to disputes heard in local courts or to enforce judgments handed down in foreign courts
    • *EXCEPT*: when enforcement would be in conflict with public policy
  o In some cases: legal basis (e.g. Brussels I Regulation)

• Public law
  o Reluctance to apply foreign public or criminal laws or enforce foreign judgments
Consequence?

Ineffectiveness of national/regional substantive legislation that aims to protect its citizens

Because...

• SNS providers reluctant to cooperate with (foreign) national authorities
• National authorities reluctant to cooperate with each other
Remedies: what could States do?

- Harmonise legislation
- Cooperate with regard to enforcement
- Prosecute without enforcement (symbolically)
- Impose penalties/fines on related local parties
- Impose measures on intermediaries, other related services or end-users
- Block services
- OR...
Alternative approaches?

- **Self-regulatory initiatives** have been set up by SNS providers in an attempt to minimise certain risks and make their services safer for users
  - *Safer Social Networking Principles for the EU*
  - *CEO Coalition for a Better Internet for Kids*
  - *ICT Principles Coalition*

  BUT evaluations have shown that the commitments made by industry are often only implemented to a **limited extent**
Conclusion

• Should SNS providers accept that ‘without pain there is no gain’?

• Should governments
  o improve international cooperation?
  o incentivise SNS providers to implement self- (or co-) regulation in a legally compliant manner?

• The importance of national / regional values & context...
Thank you!

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