

Should cyberspace be treated as international space?

Introduction

Named by U.S. sci-fi writer William Gibson in 1984, cyberspace is the virtual environment created by the huge international network of computers called the Internet. It contains vast amounts of information on every subject imaginable, which is found through search engines such as Google and "Ask Jeeves." People communicate across cyberspace by electronic mail, or e-mail, making possible shopping and commerce with completely cyberspace-based retailers like Amazon. However, cyberspace also has its dark side—pornography is rife and readily accessed; illegal drugs and contraband are widely available; and terrorists or subversive organizations meet, recruit, and even attack targets over cyberspace. Regulation and law enforcement are clearly needed, although there is fierce debate about who has national sovereignty and jurisdiction over information that can be spread or easily moved across national borders.

The Internet began in the 1970s as ARPANET, a network of American military defense computers funded by the Advanced Research Projects Agency. This technology was released to U.S. universities in the 1980s, and by the mid-1990s was accessible to private individuals over their phone-lines. Since its conception the internet has doubled in size each year, with by the early 21st century almost half a billion people worldwide having access to it. The Internet's global nature has blurred trade markets between countries because residents of one nation can easily examine and purchase goods from another. In particular, international cyberspace-based trade is estimated to surpass \$7 trillion in 2004. Meanwhile, futurists predict that by 2010 over half of the world's population will use cyberspace, comprising a vast global market for electronically purchasable goods and entertainment.

Legally, however, cyberspace has two contrasting features in how it functions. Physically, the Internet is a collection of real computers containing data that are situated in actual countries. Moreover, the networks connecting these computers are also physical and commonly financed by governments from their residents' general taxation. On the other hand, it can be unclear which country has jurisdiction over Internet content. For example, a Middle Eastern resident could remotely place material on computers across Europe, which is available to individuals in the United States. Furthermore, newsgroups and Internet-based organizations, such as legal pop artist fan bases and illegal hacking groups, have members spread across the globe.

Individual countries have attempted measures to control the content and access of cyberspace. China employs strict laws that prevent antigovernment media, and has created its own national Internet separated from outside by the "great firewall of China." Yet dissidents find ways round these controls, such as routing information through apparently innocuous sites. Meanwhile, Australia passed cyberspace censorship laws in 1999 to regulate Australian Internet Service Providers (ISPs). In response, organizations such as Electronic Frontiers for Australia found this legislation "a dismal failure," and the American Civil Liberties Union branded Australia the world's Internet "village idiot." More recently, in 2004, a French judge ruled that the ISP Yahoo! must stop French users accessing its online auctions of Nazi memorabilia. Although technologically possible, lawyers for the company questioned whether France has jurisdiction over an American website.

Motivated by the international way in which the Internet operates, some legal thinkers argue for a new area of law to regulate cyberspace. For example, Professor David Post points out many difficulties in multi-jurisdictional legal systems, so that "claims for self-government [are] strengthened." Such self-rule would require an international "cyberlaw," along with policemen and judiciaries to enforce these laws. Yet other lawyers question this view. In particular, Professor Jack Goldsmith, an expert in jurisdictional law, counter-argues "many transactions in the real world seem to implicate several different laws." Moreover, in every other context local governments usually regulate harms that cause local effects, and cyberspace should be treated no differently.

Meanwhile, the Group for the Internationalization of Cyberspace argues that the Internet is a new space from sociological, economical, and legal points of view. They assert that no state should claim sovereignty over it, with cyberspace treated like international space similarly to the high seas. Conversely, traditional lawyers claim that the Internet is just another way of communicating and does not need a new legal field. Like telephones or the postal service, it should be covered by existing state, national, and international protocols. Thus Prof. Goldsmith asserts "there is nothing new about the net."

The two following articles take opposing views about whether a new area of international law for cyberspace is needed. The first article is an address to a computer policy and law conference by Prof. David Post, a lecturer in law at Temple University His argument is that the Internet requires a new concept of sovereignty, of which nobody is yet sure. The second article is a column by Lee Gomes for the *Wall Street Journal*, a respected American business newspaper. He cites the views of "cyberskeptics," who argue that events online are legally the same as on Main Street.

Summary

Although the writers of the two articles agree that the Internet is an important new technology, they disagree completely about whether it requires a new area of international law to regulate cyberspace.

David Post, the author of the "yes" article, argues that the net challenges existing notions of national sovereignty, and restructures the hierarchies around which we organize society. In particular, questions such as, "where did a transaction happen?" lose meaning because the Internet is designed to make geography irrelevant. Moreover, relations between elements of society are completely upset in a networked, not hierarchical, world. Therefore the net demands that we take another look at political sovereignty and question what law governs.

Lee Gomes, the author of the "no" article, asks is there really a cyberspace full of "cybercitizens" and accountable to their own "cyberlaws?" Skeptics, who are usually found in law journals rather than tech conferences, say that cyberspace is no different from "phone space." Thus something happening online should be the same under law as on Main Street. Put another way, "the steam engine probably transformed American law, but the law of the steam engine never existed." Gomes finishes by quoting the view of several law professors, who see "cyberactivists" as youthful idealists, technophiles, and elitist.

