

The problem of overregulation and predictability of law in the world of new technologies

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Introduction

The problem of overproduction of law was already pointed out in the 1930s in scientific literature (concerning the financial sector): „*The present greatness of the utility industry must be attributed in a large measure to the benefits of wise regulation, which has allowed the utilities to grow up and give better service than would have been possible under a competitive system. On the other hand, it seems as though unwise regulation or too much regulation sometimes threatens to destroy the industry which wise regulation had done so much to build up, and such a situation some of us think is confronting us at the present time. It should not be necessary to point out that there is a difference between regulation and administration, and that the administration of any business enterprise, even though it is tinged with a public interest, must remain in the hands of its owners.*”

Definitions

Overregulation is an excess of legal regulations that has the potential to disrupt the structure and functioning of the legal system. This phenomenon occurs when states attempt to impose their own rules in a given area, leading to regulatory conflicts and hindering development and functioning.

Legal fragmentation – lawmakers attempt to regulate every issue in detail, rather than building a single, coherent legal system or general legal framework within which specific legal problems could be interpreted using the principles of legal interpretation. Each legal act often contains its own glossary of terms, and sometimes legal acts contradict one another.

Problems

Cyberspace poses challenges to state authority, e.g. access to information across jurisdictions.

The borderless nature of the internet makes it difficult for individual states to enforce laws effectively.

Jurisdictional ambiguity arises when users access or store information across multiple legal territories.

States attempt to regulate the internet, which leads to conflicts between legal orders (e.g. access to data vs. privacy).

Efforts by states to regulate the internet often result in clashes between legal regimes, such as: Data access vs. privacy protection, national security vs. freedom of expression.

These conflicts undermine legal certainty for users and businesses operating internationally.

Overregulation disrupts the internet.

A cosmopolitan approach is needed, recognizing the transnational nature of the internet.

It is necessary to consider the “domicile of data” when resolving regulatory conflicts.

The idea of the "domicile of data" should be adopted to resolve jurisdictional conflicts and define which legal system governs data depending on its origin, storage, or user base.

This approach would help anchor regulation to a specific legal context without ignoring global dynamics.

Key Issues

- **Lack of Systemic Coherence:** instead of developing general legal norms or principles that can be applied flexibly to various situations, the law becomes a patchwork of isolated regulations. This makes it harder to understand the legal system as a whole and complicates legal education and practice.
- **Difficulty in Interpretation:** since there's no overarching legal framework, courts and lawyers cannot easily apply interpretive principles to resolve conflicts or gaps in the law. Legal interpretation becomes fragmented and inconsistent.
- **Redundancy and Contradiction:** when each legal act includes its own definitions (glossaries) and regulatory scope, overlaps and contradictions between different laws are more likely. This undermines legal certainty and predictability—essential elements of a functioning legal system.
- **Administrative and Judicial Burden:** authorities, courts, and citizens must constantly cross-check multiple legal acts to understand the applicable law, increasing the complexity and cost of legal compliance and dispute resolution.



Threats of overregulation in cyberspace

- excessive internet regulation and censorship, instead of increasing control can reduce effective governance of cyberspace
- increase use of the invisible web (deep web and dark web), which is harder to monitor or control
- tension between government control and individual rights like privacy, net neutrality, and freedom of access
- users often bypass censorship through tools and technologies that access blocked or hidden content.

FINAL REMARKS: Predictability of the law

1. The law should be durable and resistant to sudden political changes.
2. The judicial system must be free from political pressure. It should be based on the principles of meritocracy and ensure equal treatment of all parties.
3. The law must be clearly formulated, logically consistent and consistently applied. Entrepreneurs must understand what obligations apply to them and what they can expect in the event of disputes.
4. Political stability and the reduction of extreme divisions increase predictability. High polarization makes the law unpredictable and dependent on current political conflicts.
5. Overly restrictive regulations that can stifle technological and economic development should be avoided.
6. Adherence to the rule of law principle is a key condition for building trust among investors.
7. International coordination is essential for legal stability in the context of the global economy. Common legal standards support certainty in cross-border trade and investment.

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