Internet Law: Class 1

Internet, Internet Law, Physical Infrastructure, Localization Requirement, and Data Blocking

Introduction

Faculty

Meet the Dean

Full Time Faculty

Visiting Faculty

Emeriti Faculty

Distinguished Fellow in Gaming Law

Distinguished Fellow in Law and Leadership

Distinguished Fellow in Law and Policy

Senior Fellows

Saltman Senior Fellows

Adjunct Faculty

Publications

Faculty in the News

Faculty Enrichment

Marketa Trimble

Samuel S. Lionel Professor of Intellectual Property Law

Areas of expertise:

Patent Law, Conflict of Laws, Cyberlaw, International Intellectual Property Law, Private International Law, Intellectual Property Law, Copyright Law, European Union Law, Comparative Law

Bio:

Marketa Trimble specializes in international intellectual property law and publishes extensively on issues at the intersection of conflict of laws/private international law and intellectual property law, particularly patent law and copyright law. She has authored numerous works on these subjects, including *Global Patents: Limits of Transnational Enforcement* (Oxford University Press, 2012), and is the co-author of a leading international intellectual property law casebook, *International Intellectual Property Law* (with Paul Goldstein, Foundation Press, 2012, 2016, and 2019). She has also authored several works in the area of cyberlaw, particularly relating to the legal issues of geoblocking and the circumvention of geoblocking. Her areas of interest have led to the investigation of alternative dispute resolution mechanisms employed to resolve intellectual property disputes, such as disputes regarding internet domain names and IP infringements at trade shows. She is a member of several professional and academic organizations; she is an elected member of the American Law Institute and of the International Academy of Comparative Law. Professor Trimble joined UNLV after receiving her second doctoral degree from Stanford Law School. In 2019-2020 she is teaching "Copyright," "Patents, Trademarks, and Trade Secrets;" and "International Intellectual Property."

In the News

- May 4, 2020
  COVID-19 and Transnational Issues in Copyright and Related Rights
  Springer Link
- January 3, 2020
  Java API Classes as Fictional Characters—A Proposal for Google v. Oracle (Guest Blog Post)
  Technology & Marketing Law Blog
- August 22, 2019

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Scholarship
Publications

Curriculum Vitae
Marketa Trimble's CV

Education
- Mgr., Law School of Charles University in Prague, 1997
- JUDr., Ph.D., Law School of Charles University in Prague, 2001 and 2002
- J.S.M., Stanford Law School, 2006
- J.S.D., Stanford Law School, 2010

Websites / Blogs
- SSRN Page

Class 1 (18 May 2020): Internet, Internet Law, Physical Infrastructure, Localization Requirement, and Data Blocking

Class 2 (20 May 2020): Localization, Geolocation, Geoblocking, and the Circumvention of Geoblocking

Class 3 (22 May 2020): Regulatory, Prescriptive, and Adjudicatory Jurisdiction, Alternative Regulation and ADR, Domain Names

Class 4 (25 May 2020): Intermediaries, Liability of Intermediaries, Private Regulation, and Conclusions

Class times (Munich time):

14:00 – 15:00	**class**
15:00 – 15:15	**break 1**
15:15 – 16:15	**class**
16:15 – 16:30	**break 2**
16:30 – 17:25	**class**

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marketa.trimble@unlv.edu

INTERNET LAW

COURSE MATERIALS

Marketa Trimble, Ph.D.

Samuel S. Lionel Professor of Intellectual Property Law
William S. Boyd School of Law, University of Nevada, Las Vegas

MIPLC 2020

18 – 25 May, 2020

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HOME OPTIONAL READINGS

"Internet Law"
2020

In this course we analyze a variety of internet law topics through the prism of a single theme: the conflict between the territoriality of political-legal structures and the ubiquity of the internet. The architecture of the internet, at least in its initial form, defied the territorial limits within which national legal systems operate; however, national legal systems do not yield easily to the ubiquity of the medium. The goal of the course is to investigate whether and how the architecture of the internet has affected the territorial functioning of national legal systems and whether and how the territoriality of national legal systems has shaped the internet since its

Marketa Trimble is the Samuel S. Lionel Professor of Intellectual Property Law at the William S. Boyd School of Law, University of Nevada, Las Vegas. In her research she focuses on intellectual property and issues at the intersection of intellectual property and private international law/conflict of laws; this focus leads her to the investigation of various internet law problems. She has authored numerous works on these problems, including the first comprehensive study ever published (2012) on the

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HOME OPTIONAL READINGS

"Internet Law" 2020 - Optional Readings

Class 1: Internet, Internet Law, Physical Infrastructure, Localization Requirement, and Data Blocking

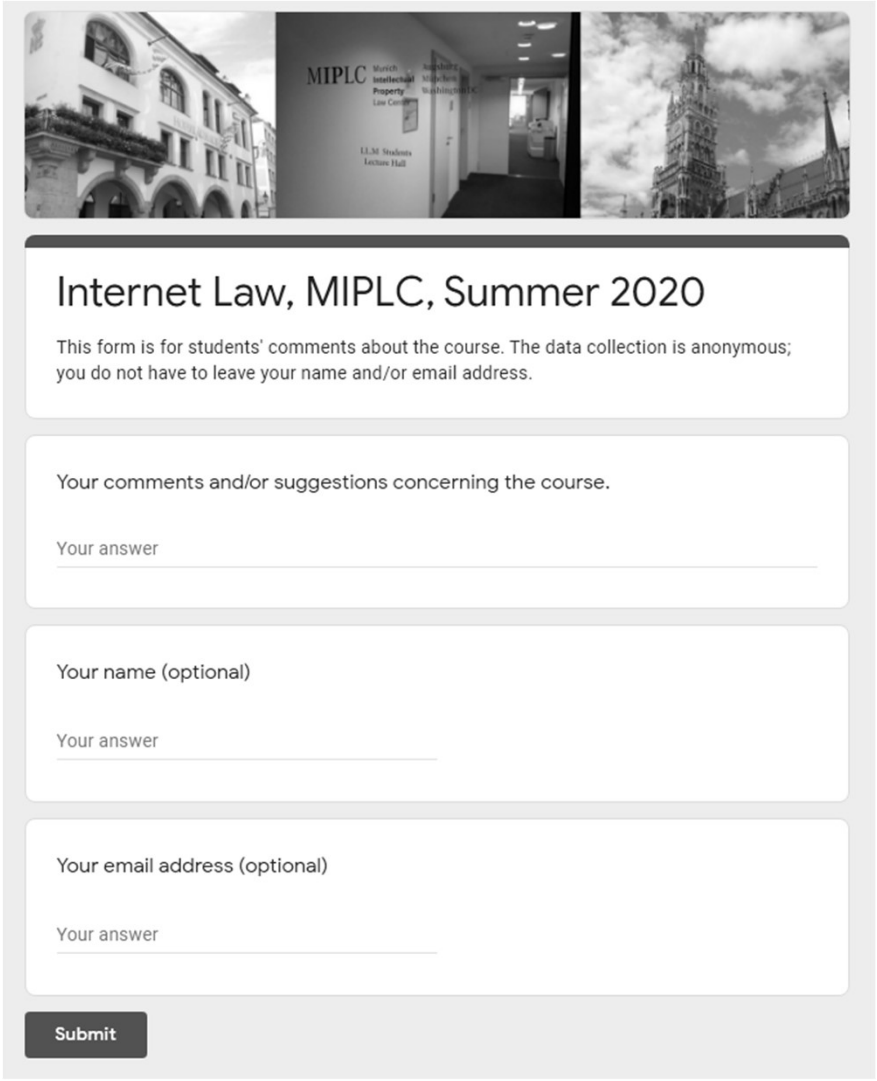
- Communication from the United States: Measures Adopted and Under Development by China Relating to Its Cybersecurity Law, WTO, 3 October 2018
- Microsoft Corp. v. USA, 829 F.3d 197 (2d Cir. 2016)
- Promoting Public Safety, Privacy, and the Rule of Law Around the World: The Purpose and Impact of the CLOUD Act, U.S. Department of Justice, White Paper, April 2019
- Brendan Ittelson, "Coming April 18: Control Your Zoom Data Routing," Zoom Blog, 13 April 2020
- Jennifer Daskal, *Micorosft Ireland, the CLOUD Act, and International Lawmaking 2.0*, 71 Stanford Law Review (2018)
- John J. Chung, Critical Infrastructure, Cybersecurity, and Market Failure, 96 Or. L. Rev. 441 (2018)
- Anupam Chander & Uyen P. Le, *Data Nationalism*, 64 Emory L.J. 677 (2015)
- Marketa Trimble, *The Circuitous International Travel of Your Data*, Technology & Marketing Law Blog, 22 August 2019
- Marketa Trimble, *A Patent For Geotagging IP Packets Raises*

Class 2: Localization, Geolocation, Geoblocking, and the Circumvention of Geoblocking

- In re Google Location History Litigation, 2019 WL 6911951 (N.D.Cal. 2019)
- Groupe Canal+ v. European Commission, CJEU, T-873/16, 12 December 2018
- Spanski Enterprises, Inc. V. Telewizja Polska, S.A., 883 F.3d 904 (D.C. Cir. 2018)
- Carpenter v. United States, 585 U.S. --- (2018)
- Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market
- Commission Recommendation of 8 April 2020 on a common Union toolbox for the use of technology and data and exit from the COVID-19 crisis, particularly concerning mobile applications and the use of anonymized mobility data, European Commission, C(2020) 2296 final, 8 April 2020
- Geo-blocking Practices in E-Commerce, European Commission, Commission Staff Working Document, SWD(2016) 70 final, 18 March 2016

http://internetlawinmiplc.com/readings.html

https://forms.gle/G6JwuiLPrn9FZLVn8



What Is the Internet?

"The system for connecting computers around the world that allows people to share information, visit websites, communicate using email, etc."

Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/internet

What Is Cyberspace?

Cyberspace is “the interdependent network of information technology infrastructures, and includes the Internet, telecommunications networks, computer systems, and embedded processors and controllers in critical industries.”

THE WHITE HOUSE, NATIONAL SECURITY PRESIDENTIAL DIRECTIVE/NSPD-54 3, 8 January 2008, https://fas.org/irp/offdocs/nspd/nspd-54.pdf

Internet Law

What Is Internet Law?

- A particular area of law or an industry perspective?
- Judge Easterbrook (7th Cir.): "law of the horse"

What Is Internet Law?

- Norms of Internet governance
  - Example: domain name system

- Norms governing conduct on the Internet
  - Internet-specific
    - Liability of Internet intermediaries (v. liability of any intermediaries)
  - Generic
    - Commercial law (v. e-commerce-specific rules)

- National, regional, international, v. extra-national
  - E.g., Convention on Cybercrime (Council of Europe)

What is Internet Law?

Four modalities of Internet Law:

Law	**Architecture**
Market Forces	**Social norms**

Lawrence Lessig, Code and Other Laws of Cyberspace, 1999

Internet Architecture

The Architecture of the Internet?

- A distributed network (Baran)

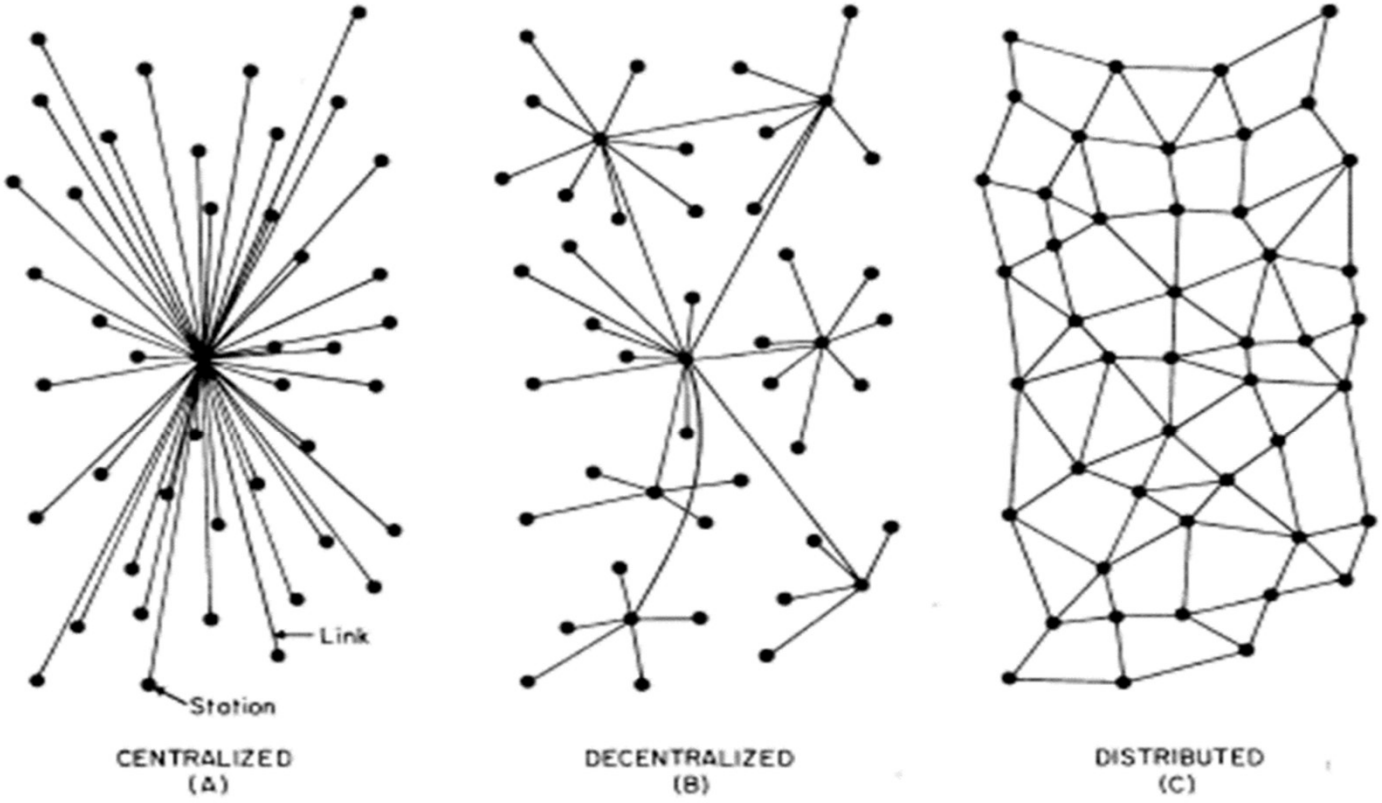
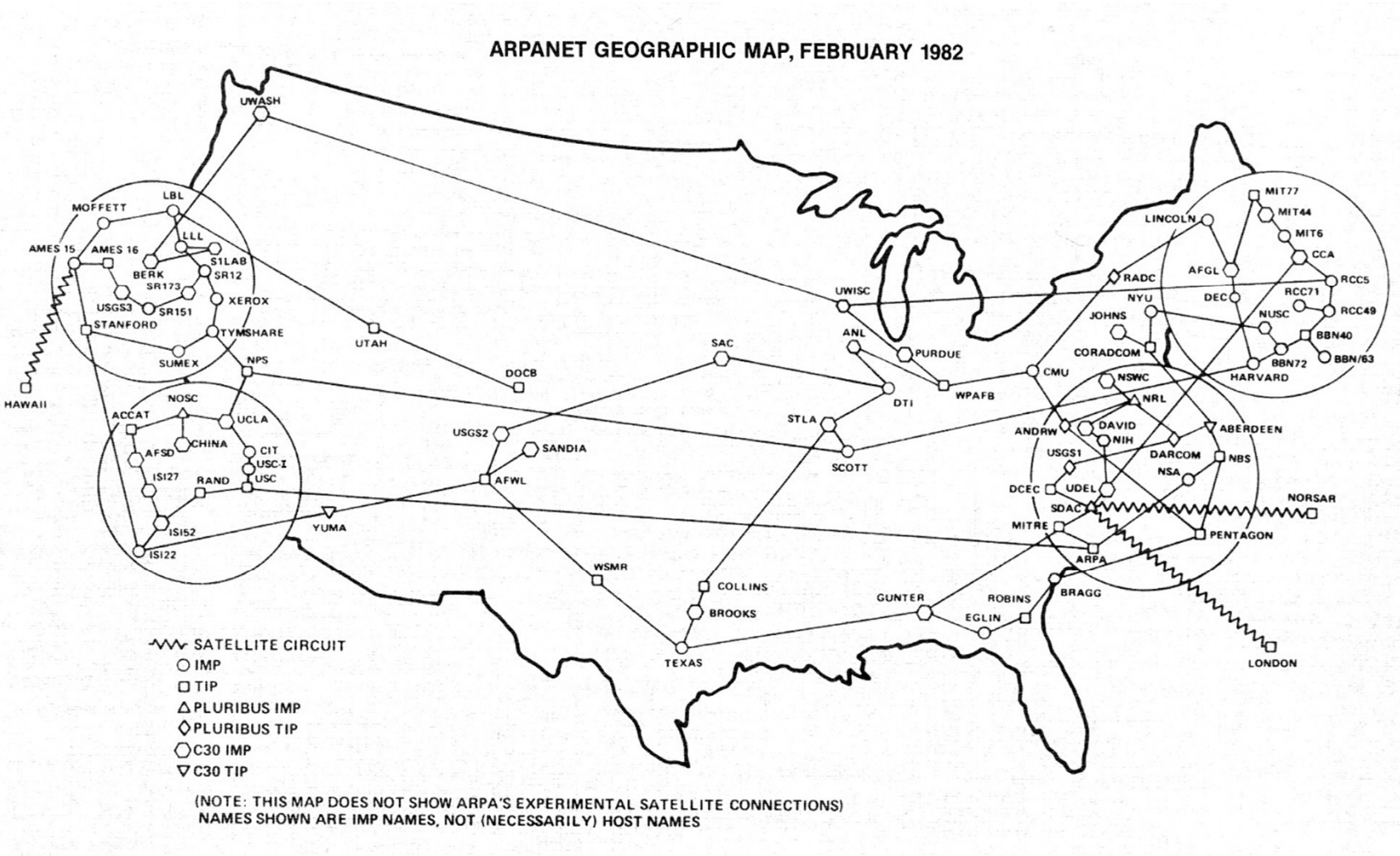


FIG. 1 — Centralized, Decentralized and Distributed Networks

-2-

Paul Baran, *On Distributed Communications, Memorandum,* RAND Corp., 1964, https://www.rand.org/content/dam/rand/pubs/research_memoranda/2006/RM3420.pdf

The ARPANET in December 1969


ARPANET GEOGRAPHIC MAP, FEBRUARY 1982
UWASH
MOFFETT
LBL
AMES 15
AMES 16
LLL
S1LAB
BERK
SR12
SR173
XEROX
USGS3
SR151
STANFORD
TYMSHARE
SUMEX
NPS
HAWAII
UTAH
DOCB
NOSC
ACCAT
UCLA
CHINA
AFSD
CIT
USC-I
ISI27
RAND
USC
ISI52
ISI22
YUMA
SAC
USGS2
SANDIA
AFWL
WSMR
COLLINS
BROOKS
TEXAS
UWISC
ANL
PURDUE
DTI
WPAFB
STLA
SCOTT
GUNTER
ROBINS
EGLIN
BRAGG
LINCOLN
MIT77
MIT44
MIT6
CCA
AFGL
RADC
RCC5
DEC
RCC71
NYU
RCC49
JOHNS
NUSC
BBN40
CORADCOM
BBN72
BBN/63
HARVARD
CMU
NSWC
NRL
ANDRW
DAVID
NIH
ABERDEEN
USGS1
DARCOM
NBS
NSA
DCEC
UDEL
SDAC
NORSAR
MITRE
PENTAGON
ARPA
LONDON
SATELLITE CIRCUIT
IMP
TIP
PLURIBUS IMP
PLURIBUS TIP
C30 IMP
C30 TIP
(NOTE: THIS MAP DOES NOT SHOW ARPA'S EXPERIMENTAL SATELLITE CONNECTIONS)
NAMES SHOWN ARE IMP NAMES, NOT (NECESSARILY) HOST NAMES

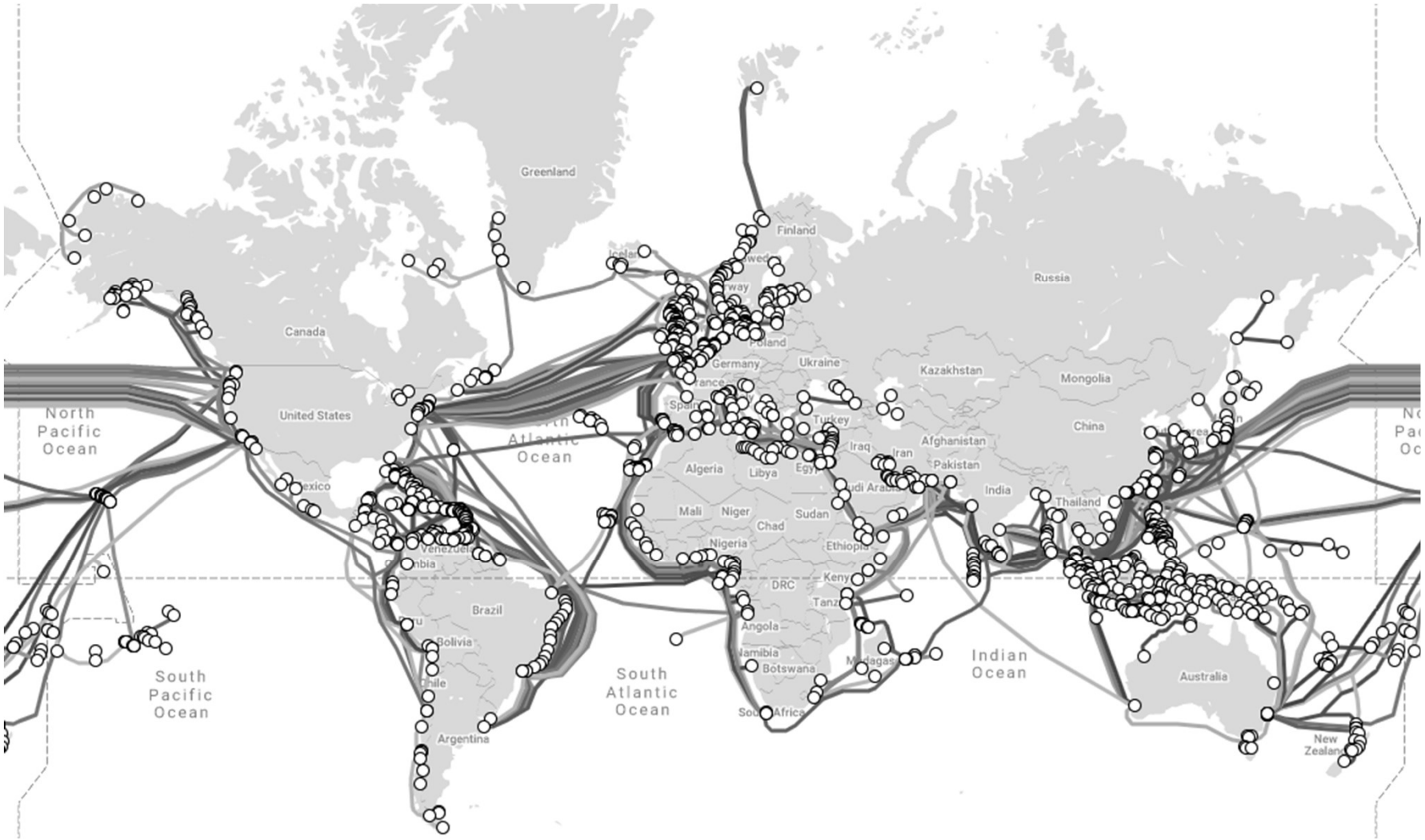
Internet user penetration

			3 year CAGR
1st	Iceland	96.5%	(+1%)
2nd	Bermuda	95.3%	(+4%)
3rd	Norway	95.1%	(+1%)
4th	Sweden	94.8%	(+2%)
5th	Denmark	94.6%	(+2%)
6th	Andorra	94.0%	(+5%)
6th	Netherlands	94.0%	(+1%)
7th	Luxembourg	93.8%	(+1%)
7th	Liechtenstein	93.8%	(+5%)
8th	Finland	91.5%	(+2%)
9th	Monaco	90.7%	(+7%)
10th	Faroe Islands	90.0%	(+6%)

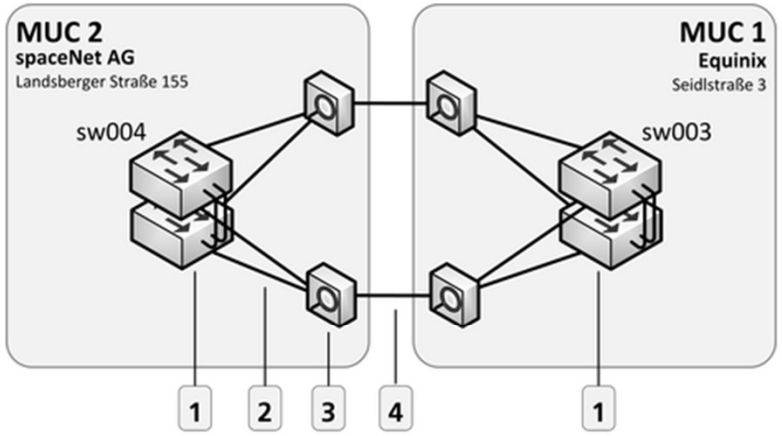
https://www.internetsociety.org/map/global-internet-report/, May 15, 2017

The Architecture of the Internet

- Devices
- Routers
- Gateways
- Hubs or Internet exchange points (IXPs)
- Datacenters
- Cables



http://www.submarinecablemap.com/, May 15, 2020



1 2x stacked DELL s4810P
2 Multiple 10G-Connections
3 CWDM MUX 8 Channel
4 redundant Dark Fiber - Working Line

https://www.de-cix.net/products-services/de-cix-munich/

The Internet and Critical Infrastructure

- Access needs
  - "Digital divide"
  - "Bandwidth crisis"

- Which elements are "critical infrastructure"?

Critical Infrastructures Protection Act of 2001, 42 U.S.C. § 5195c(e)

Critical infrastructure (CI) means the "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters."

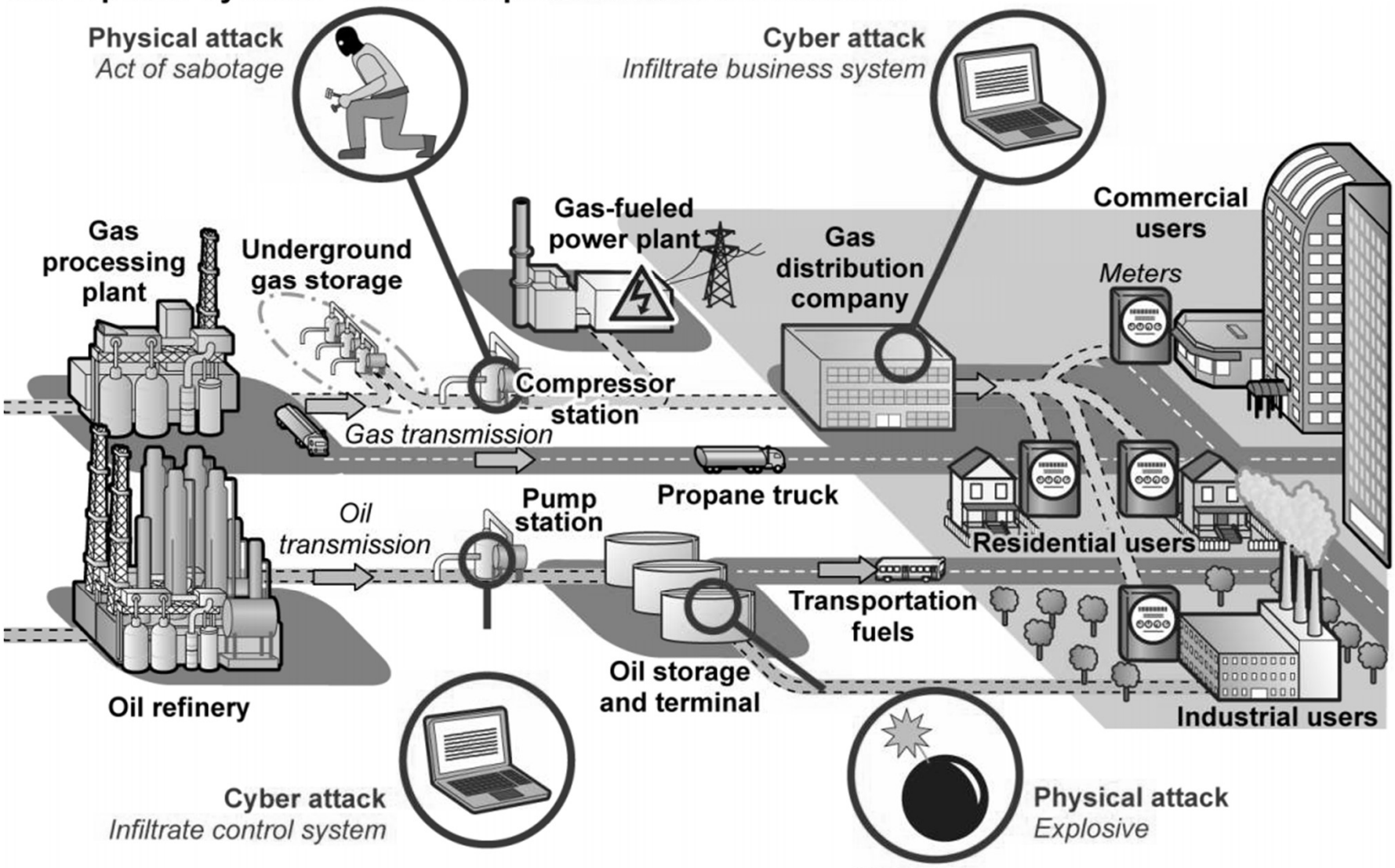
Figure 1: Sixteen Critical Infrastructure Sectors and the Related Sector-Specific Agencies

Sector-specific agency

Departments of Agriculture (USDA), Defense (DOD), Energy (DOE), Health and Human Services (HHS), Homeland Security (DHS), Transportation (DOT), the Treasury; Environmental Protection Agency (EPA); and the General Services Administration (GSA)

Source: GAO analysis of Presidential Policy Directive-21 and DHS's National Infrastructure Protection Plan 2013; Art Explosion (clip art). | GAO-18-211

U.S. Pipeline Systems' Basic Components and Vulnerabilities



Source: GAO analysis of Transportation Security Administration information. | GAO-19-48

Localization

Localization v. Location

To "localize" means

"to adapt oneself … in order to conform to local circumstances or surroundings,"

"to make local in character," or

"to associate with a particular place or location" in the sense of "to find or determine the location of."

(Oxford University Press. http://www.oed.com/view/Entry/109560?redirectedFrom=localize&)

To "locate" means "to establish, site, or place in a particular location"

U.S. v Microsoft (Data Stored in Ireland)

- A warrant issued under the Stored Communications Act requiring Microsoft to disclose all e-mails and other information associated with a customer's account that was believed to be involved in illegal drug trafficking

- U.S. Court of Appeals for the Second Circuit (2016): "Neither explicitly nor implicitly does the statute envision the application of its warrant provisions overseas."

- U.S. Supreme Court (April 2018): The case vacated as moot in light of the CLOUD Act.

The CLOUD Act

- Clarifying Lawful Overseas Use of Data Act (CLOUD Act), Pub. L. 115–141, amending the Stored Communications Act, 18 U.S.C. 2701 (March 2018)

- "A [service provider] shall comply with the obligations of this chapter to preserve, backup, or disclose the contents of a wire or electronic communication and any record or other information pertaining to a customer or subscriber within such provider's possession, custody, or control, regardless of whether such communication, record, or other information is located within or outside of the United States."

USMCA
(effective 1 July 2020)

Canada
Mexico
United States

(NAFTA 2.0)

CPTPP
(effective 30 December 2018)

Australia
Brunei
Canada
Chile
Japan
Malaysia
Mexico
New Zealand
Peru
Singapore
Vietnam

USMCA

Article 15.6: Local Presence
No Party shall require a service supplier of another Party to establish or maintain a representative office or an enterprise, or to be resident, in its territory as a condition for the crossborder supply of a service.

CPTPP

Article 10.6: Local Presence
No Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

USMCA

Article 19.12: Location of Computing Facilities

No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

CPTPP

Article 14.13: Location of Computing Facilities

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:
   (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
   (b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

Internet Governance

Who Governs the Internet?

Models of governance:

(1) Self-governance (libertarian)

(2) Global Transnational (transnational legal institution)

(3) Code and Internet Architecture (voluntary organizations)

(4) National Governments and Law

(5) Market-Based or Economic-Based Regulation

Internet Law: Class 1

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