

Internet Law: Class 1

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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>

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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>

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What Is Internet Law?

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

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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)

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What is Internet Law?

Four modalities of Internet Law:

Law	Architecture
Market Forces	Social norms

Lawrence Lessig, Code and Other Laws of Cyberspace, 1999

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The Architecture of the Internet?

- A distributed network (Baran)

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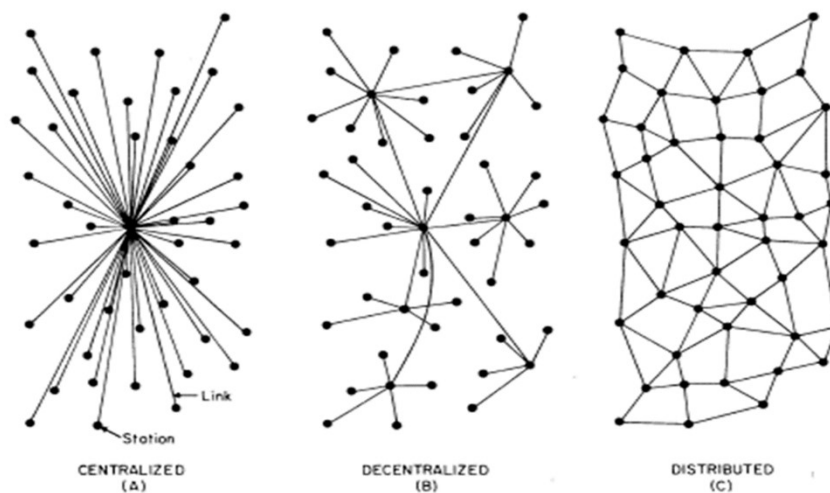
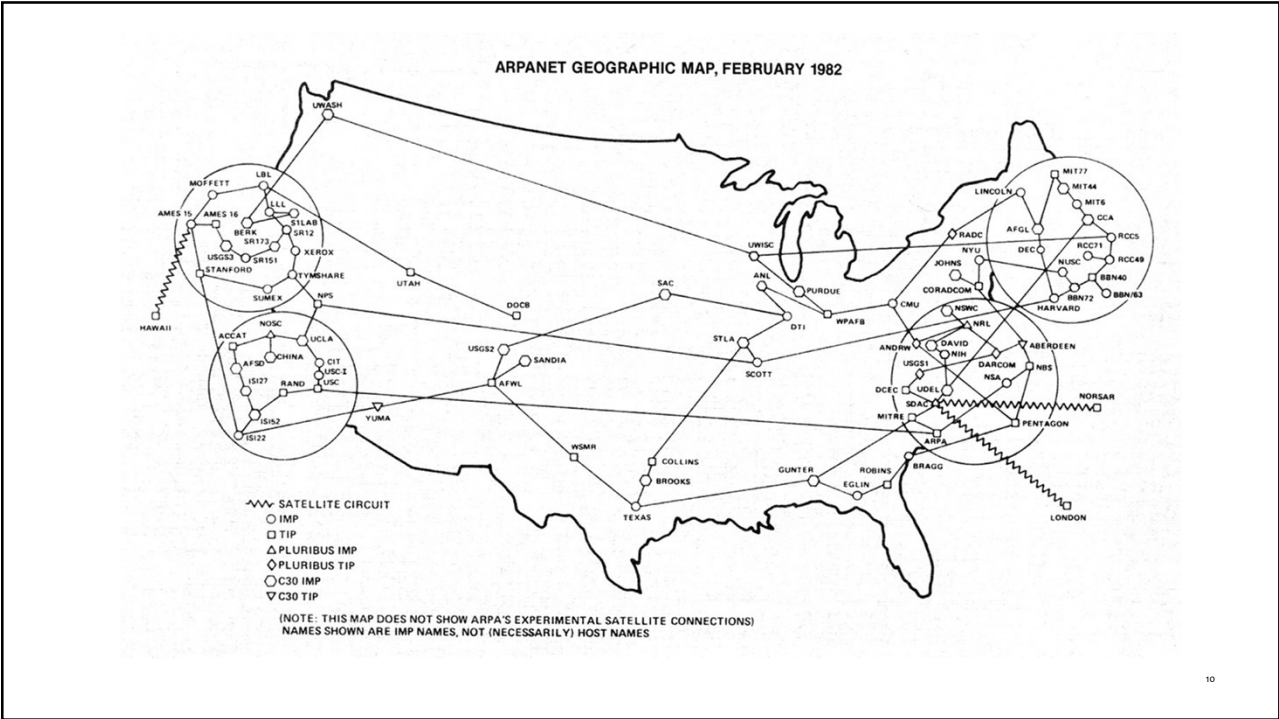
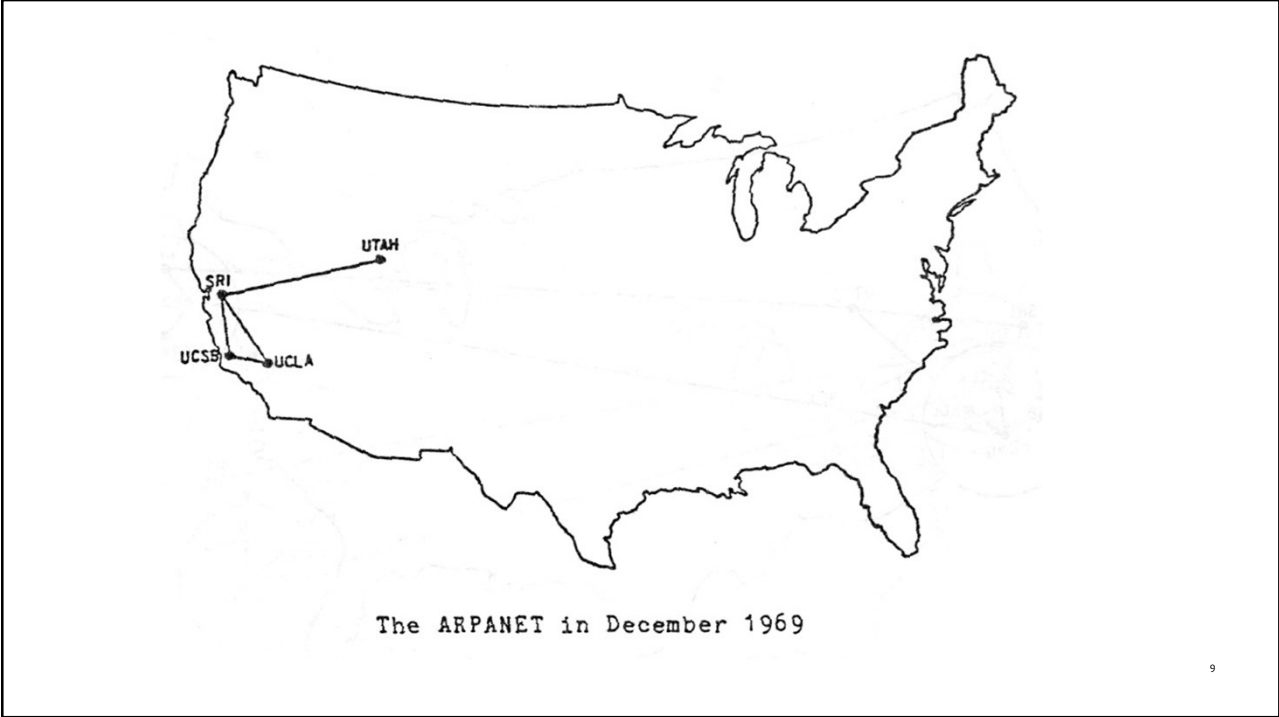


FIG. 1 - Centralized, Decentralized and Distributed Networks

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

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The Architecture of the Internet

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

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Localization
Geolocation
Geoblocking

Physical Location and Physical Territory and the Internet

- Internet governance
- Regulatory/Prescriptive jurisdiction
 - Choice of applicable law
- Adjudicatory jurisdiction
 - Personal jurisdiction; subject-matter jurisdiction
- Enforcement jurisdiction

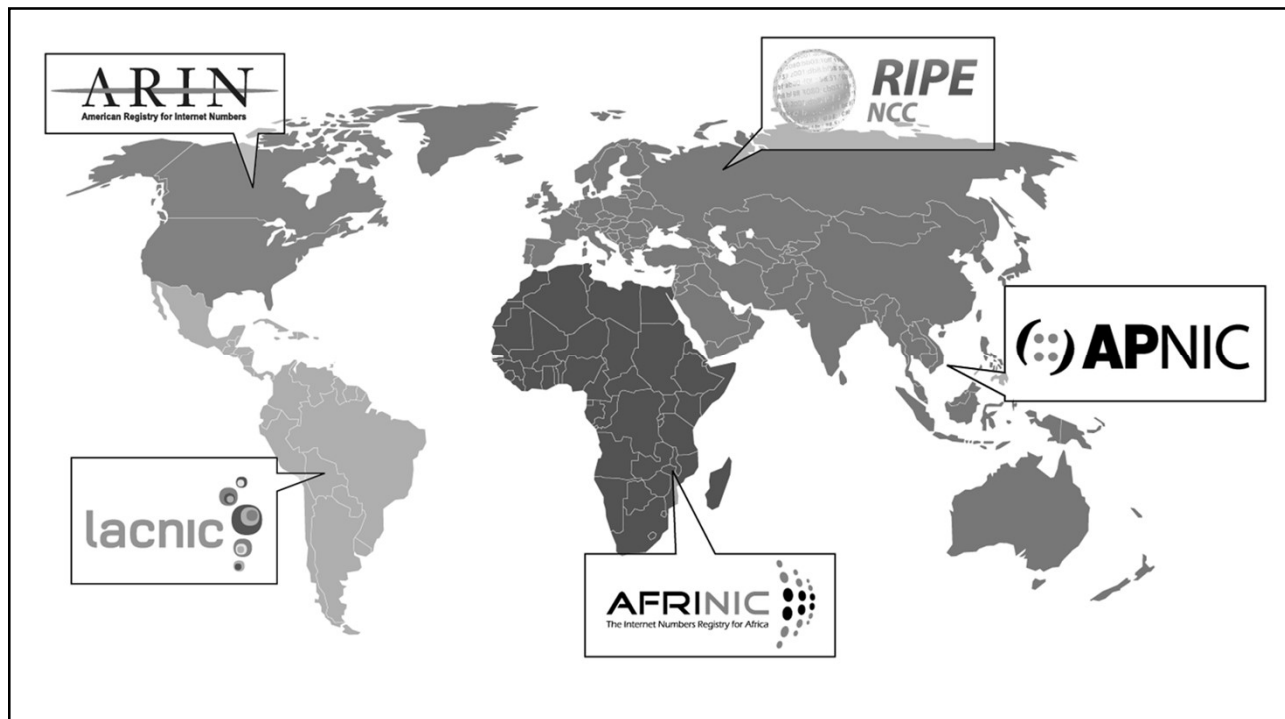
Physical Locations on the Internet

- User (recipient, viewer of content)
- Website operator
- Content creator (uploader)
- ISP
 - User connection
 - Website hosting
- Domain name registrar
- Domain name registry
- Computer / device
- Server
- Network (gateways, routers, switches, cables)

IP Addresses

- Internet protocol addresses
 - IPv4 192.0.2.53
 - IPv6 2001:0db8:582:ae33::29
- Domain names
- User connections
- Any location on the internet

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IP2LOCATION
LITE

Home Free Databases **IP Addresses** Free Plugins FAQs Contact

Home > IP Address Ranges by Country

IP Address Ranges by Country

This page displays the complete IPv4 address ranges organized by country. There are 249 countries listed below, and each link will bring you to a new page containing the respective IP address ranges.

If you are interested to learn more about the ranking of IP addresses allocated for each country, please visit [IP Address Reports](#) for details.

Afghanistan	Aland Islands	Albania
Algeria	American Samoa	Andorra
Angola	Anguilla	Antarctica
Antigua and Barbuda	Argentina	Armenia
Aruba	Australia	Austria
Azerbaijan	Bahamas	Bahrain
Bangladesh	Barbados	Belarus
Belgium	Belize	Benin
Bermuda	Bhutan	Bolivia (Plurinational State of)
Bonaire, Sint Eustatius and Saba	Bosnia and Herzegovina	Botswana
Bouvet Island	Brazil	British Indian Ocean Territory
Brunei Darussalam	Bulgaria	Burkina Faso

IP Addresses

- Static v. dynamically assigned IP addresses

Which Are Known and to Whom?

- User (recipient, viewer of content)
- Website operator
- Content creator
- ISP
 - User connection
 - Website hosting
- Website registrar
- Website registry
- Computer / device
- Server
- Network (gateways, routers, switches, cables)

Location v. Identity

- Attribution problem
- Domain names & Whois databases

Location v. Identity

- Attribution problem
- Domain names & Whois databases
- Computer fingerprinting
 - <https://panopticklick.eff.org/>

Geolocation

- There are various means to determine the location of a user
- Might be based on a user's answer to a question
- Might be based on an IP address
- Might be based on a combination of indicators
 - IP address
 - Cookies
 - GPS signal
 - WiFi signal
- Might provide detailed localization

Examples of Geolocation Uses

- Content localization
 - Advertising
 - Tailored content (beyond advertising)
- Security
- “Soft” market partitioning, price discrimination
- Identifying the location of a user for jurisdictional purposes (e.g., John Doe sues in the U.S.)

(Il)legality of Geolocation

- Detection of location
- Collection of location data
- Storing of location data
- Tracking location over time

- Anonymized v. identifiable data

- Personal data?

EU Electronic Communications Sector Data Directive

- Location data “more precise than necessary for the transmission of communications” which “are used for the provision of value added services”
- Processing only if data anonymous or with consent of the users to the extent and for the duration necessary for the provision of the value added service

EU GDPR

- “Natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, such as internet protocol addresses, cookie identifiers or other identifiers such as radio frequency identification tags. ...” (Recital 30)
- “‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person...” (Article 4(1))

Geoblocking

Examples of Geoblocking Uses

- Security
- Effective market partitioning
 - Different pricing (price discrimination)
 - Staggered release of content
 - Safety standards, territorially-limited warranties
- Delimitating jurisdictional reach
- Compliance with contractual obligations (e.g., territorially-limited copyright licenses)
- Compliance with territorially-limited national laws

(Il)legality of Geoblocking

- Market partitioning
- WTO rules
- EU and other regional internal market/free trade rules
- National (internal) rules (e.g., the U.S. Dormant Commerce Clause)
- National competition (antitrust) laws
- Anti-discrimination rules
- EU anti-geoblocking rules

EU Cross-Border Portability

- 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

EU Cross-Border Portability

Definition of cross-border portability

Article 1:

“This Regulation introduces a common approach in the Union to the cross-border portability of online content services, by ensuring that **subscribers to portable online content services which are lawfully provided in their Member State of residence can access and use those services when temporarily present in a Member State other than their Member State of residence.**”

EU Cross-Border Portability

Services covered by the Regulation

Article 2(5):

- “ ‘online content service’ means a service as defined in Articles 56 and 57 TFEU that a provider lawfully provides to subscribers in their Member State of residence on agreed terms and online, which is portable and which is:
 - (i) an audiovisual media service as defined in point (a) of Article 1 of Directive 2010/13/EU, or
 - (ii) a service the main feature of which is the provision of access to, and the use of, works, other protected subjectmatter or transmissions of broadcasting organisations, whether in a linear or an on-demand manner;...”

EU Cross-Border Portability

- “The provider of an online content service provided **against payment of money** shall enable a subscriber who is temporarily present in a Member State to access and use the online content service in the same manner as in the Member State of residence, including by providing access to the same content, on the same range and number of devices, for the same number of users and with the same range of functionalities.” Art. 3(1)
- “The provider of an online content service provided **without payment of money** may decide to enable its subscribers who are temporarily present in a Member State to access and use the online content service on condition that the provider verifies the subscriber’s Member State of residence in accordance with this Regulation.” Art. 6(1)

EU Cross-Border Portability

- **Impact on localization (choice of law & jurisdiction)**
 - “The provision of an online content service under this Regulation to a subscriber who is temporarily present in a Member State, as well as the access to and the use of that service by the subscriber, shall be deemed to occur solely in the subscriber’s Member State of residence.” Art. 4
- **Impact on privacy**
 - “At the conclusion and upon the renewal of a contract for the provision of an online content service provided against payment of money, the provider shall verify the Member State of residence of the subscriber by using not more than two of the following means of verification and shall ensure that the means used are reasonable, proportionate and effective...” Art. 5(1)

EU Cross-Border Portability

- **Impact on licensing practices**
 - “Any contractual provisions, including those between providers of online content services and holders of copyright or related rights or those holding any other rights in the content of online content services, as well as those between such providers and their subscribers, which are contrary to this Regulation, including those which prohibit cross-border portability of online content services or limit such portability to a specific time period, shall be unenforceable.” Art. 7(1)
- **Impact on geolocation and geoblocking**

EU Anti-Geoblocking Regulation

- Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers’ nationality, place of residence or place of establishment within the internal market...

EU Anti-Geoblocking Regulation

- “A trader shall not, through the use of technological measures or otherwise, block or limit a customer's access to the trader's **online interface** for reasons related to the customer's nationality, place of residence or place of establishment.” (Art. 3.1)
- “A trader shall not apply different general conditions of **access to goods or services**, for reasons related to a customer's nationality, place of residence or place of establishment...” (Art. 4.1)
- “A trader shall not, within the range of means of payment accepted by the trader, apply, for reasons related to a customer's nationality, place of residence or place of establishment, the location of the payment account, the place of establishment of the payment service provider or the place of issue of the payment instrument within the Union, different conditions for a **payment transaction...**” (Art. 5.1)

EU Anti-Geoblocking Regulation

- However, geoblocking is permitted for example in cases of electronically supplied “services the main feature of which is the provision of access to and use of **copyright protected works** or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form...” (Art. 4.1(b))
- A review shall be conducted to assess “whether this Regulation should also apply to electronically supplied services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form, provided that the trader has the requisite rights for the relevant territories” (Art. 9.2)

Circumvention of Geoblocking

Circumvention of Geoblocking

- Means
 - Proxies
 - VPNs
 - TOR

Examples of Uses of Circumvention of Geoblocking

- To access content that is not available in the user's current physical location
- To bypass security
- To avoid market partitioning
- To access content that is illegal in the current location (gambling, copyrighted content, censorship)
- To anonymize

(Il)legality of Circumvention of Geoblocking

- Terms of service of the circumvention tool provider
- Terms of service of the content provider (e.g., SAT1)
- Access/content limitations
- Digital rights management tool under copyright law?
 - 1996 WIPO Treaties
 - U.S.: 17 USC 1201
- Anti-hacking laws?
- 1998 EU Conditional Access Directive?
- Secondary transmissions (e.g., Aereo)?

Circumvention of Geoblocking

- Global Mode dispute in Australia
- BBC's iPlayer
- VPN advertisements and other statements

- Additional issues
 - Cybertravel from a country where content is legal to a country where it is illegal
 - Inadvertent cybertravel to a random jurisdiction

Data Localization Requirements

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.”

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

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

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.

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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.

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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.

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