ONLINE INTERMEDIARIES PROJECT:
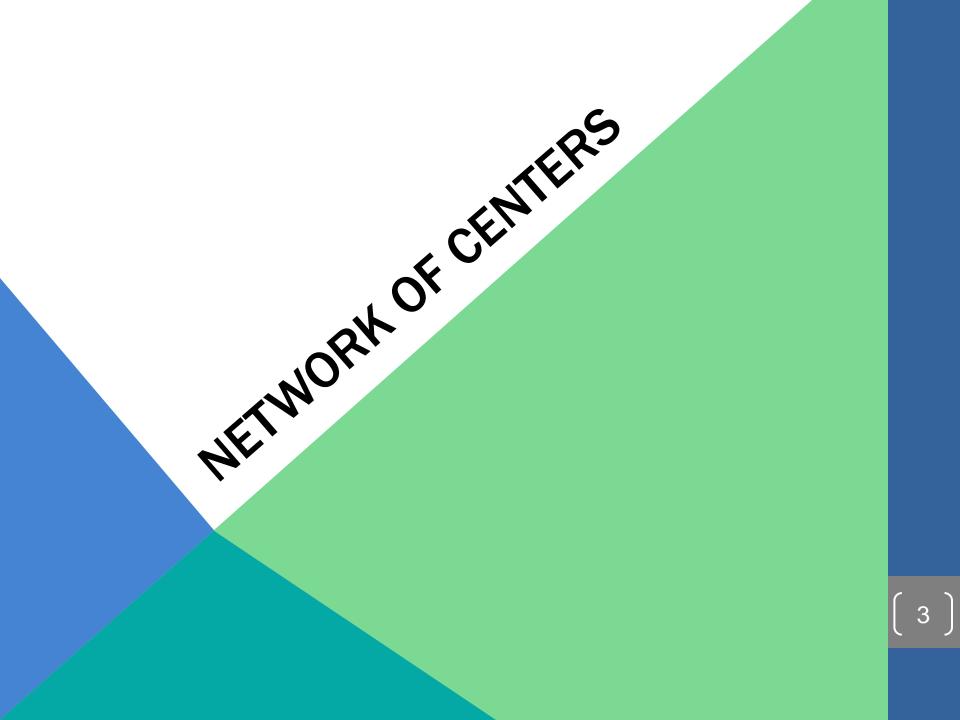
OVERVIEW OF FINDINGS AND RECOMMENDATIONS

Open Net and Berkman Center Seminar on Intermediary Liability

Seoul, May 28, 2015

Urs Gasser (@ugasser)

AGENDA

- Brief Introduction – Global Network of Internet & Society Centers; Intermediaries Project

- Findings: Some General and Some Specific Observations

- Selected Policy Considerations

NETWORK OF CENTERS

GLOBAL NETWORK OF INTERNET & SOCIETY CENTERS (NOC)

Network of Centers

HOME   ABOUT   CENTERS   EVENTS   GET INVOLVED   NEWS   RESEARCH

SPECIAL INITIATIVES

Centers

Network Participation

In line with the NoC's guiding principles, the Network continues to be incubated from the bottom-up and will continue to expand over time, building upon existing and future collaborations with the participating centers and collectively evolving its structure and practices. The Network being peer-based and built upon actual collaboration, it has thus far been directed by a steering committee consisting of director-level liaisons of the NoC's founding centers, with governance based on the principle of "rough consensus". The administrative lead, which has been exercised by the Alexander von Humboldt Institute for Internet and Society in the NoC's first two years, periodically alternates among the participating centers. The Nexa Center for Internet and Society at Politecnico di Torino took the administrative lead in ctober 2014.

The NoC encompasses two types of participants:

"Participating Centers", i.e., academic research centers whose agenda is primarily focused on Internet & Society topics;

"Affiliated Participants", i.e., other types of institutions, still with Internet & Society-related open threads, carried out, e.g., as non-academic research centers, policy-support entities, or think tanks.

Center Map

Leaflet

http://networkofcenters.net/

NETWORK OF INTERDISCIPLINARY INTERNET & SOCIETY
RESEARCH CENTERS (NOC)

Guiding Principles

1. Mission

The global Network of Internet & Society Centers is a collaborative initiative among academic institutions with focus on interdisciplinary research on the development, social impact, policy implications, and legal issues concerning the Internet. It aims to increase interoperability between participating centers in order to collectively confront transnational issues on a global level.

2. Core Values

The Network participants are committed to the principles of openness, collaboration, and diversity. The Network operates independent from governments, political parties and economic interests and does not take formal positions on policy issues.

3. Governance

The Network is peer-based and built upon actual collaboration. It is directed by a Steering Committee, consisting of director-level liaisons of the participating centers, and based on the principle of "rough consensus". The administrative lead periodically alternates among the participating centers.

4. Activities

Through facilitation, periodic consultation, and collaboration, the Network seeks to create meaningful synergies among the research activities of the participating centers, which remain exclusively in charge with determining their respective research agendas. The Network's envisioned activities include learning calls, meetings, conferences, exchanges of researchers, collaborative project work, co-teaching, and related academic activities.

ONLINE INTERMEDIARIES GOVERNANCE PROJECT

- Policy-oriented research initiative aimed at examining rapidly changing landscape of online intermediary governance at intersection of law, technology, norms, and markets

- Develop criteria, comparative methods, and a shared data repository; compile insights and lessons learned across diverse communities of knowledge to inform Internet policy-making globally

- Initial outputs consist of case study series on online intermediary liability: Brazil, EU, India, South Korea, US, Thailand, Turkey, and Vietnam, plus synthesis paper

- Results available at http://networkofcenters.net/research/online-intermediaries

SELECTED OBSERVATIONS

EVOLUTIONARY PATHS

- Governance of online intermediaries is in flux – different levels of maturity across the globe in terms of law and regulation

- Moving target: Changing role and characteristics of intermediaries in the light of evolving technology (e.g. role of algorithms and Internet of Things) and user behavior

- Single events can change the development path (e.g. ECJ "Google Spain case")

- International developments (e.g. FTAs) as another driver of change, also Human Rights frameworks and multi-stakeholder processes (NETmundial)

PICTURE FULL OF NUANCE, BUT PATTERNS

- Genesis and state of intermediary governance frameworks vary significantly across the cases reviewed

- Governance frameworks deeply influenced by cultural context and values as well as socio-economic conditions

- Three basic groups of countries: (a) lack of specific frameworks; (b) emerging frameworks; (c) advanced frameworks

- Cross-sectional issues: (a) problem of definitions; (b) different types of intermediaries; (c) safe harbor – or not?; (d) design of notice-and-takedown systems; (e) cost of compliance; (f) enforcement mechanisms; (g) unintended consequences

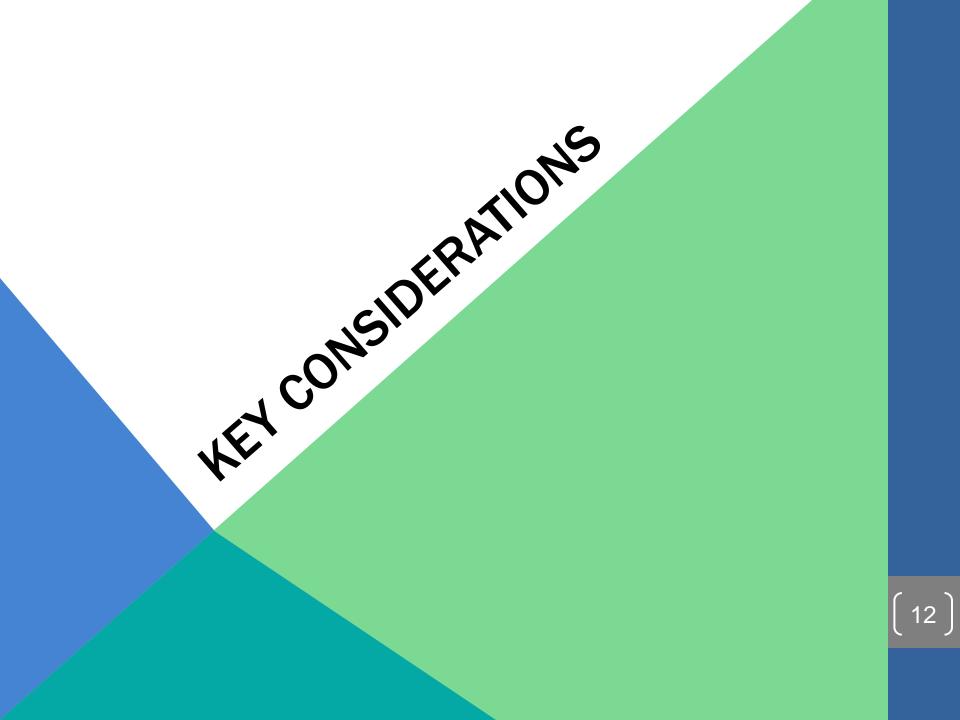- Patterns allow at least formulation of "good practices"

GOVERNANCE APPROACHES

- In all cases studies, online intermediaries are already governed; some countries regulate explicitly and with special frameworks (e.g. US), others apply general rules/laws (e.g. Brazil before Marco Civil)

- Different types of conflicts (as drivers behind interventions) are predominant in different countries, ranging from state interests (e.g. Thailand, Vietnam) to user-user conflicts (e.g. EU, US)

- Predominance of "contextual regulation"

- Most countries deal with claims based on copyright separately

- Existence and scope of and motivations for safe harbors vary significantly

- Differences also regarding notice-and-take-down procedures

ROLE AND FUNCTION OF GOVERNANCE AND GOVERNMENTS

- Governance models might serve as an enabler, especially where dramatically limiting the liability exposure of online intermediaries (e.g. US framework), enabling flourishing and growth of intermediaries and digital environment

- Governance models and liability regimes can also serve as levelers aimed at reducing power asymmetries (e.g. ECJ "Google Spain case"), or as a general or specific constraint (e.g. blocking statutes, licensing regimes)

- Enforcement and compliance, but also ramifications of various models heavily depend on incentives, esp. symmetric or asymmetric incentives by intermediaries to take down content to avoid liability

- Across all functions, governments may play different roles with values in tension that need to be coordinated

KEY CONSIDERATIONS

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POLICY CONSIDERATIONS

- Understand different functions and economics of intermediaries

- Specify the justification and timing of intervention as supported by sound evidence ("what problem do you intend to solve, why now?")

- Emphasize the normative dimension of intermediary regulation

- Analyze and evaluate the full range of regulatory mechanisms and governance approaches

- Consider full costs of intermediary regulation, including risk of over-regulation and (likely) unintended consequences

- Strengthening mechanisms of learning

Above all, "Do No Harm" in quicksilver technology environment with rapidly evolving function of online intermediaries that is constitutive for our shared and evolving digital environment

RECOMMENDED RESOURCES

- OECD, The Economic and Social Role of Online Intermediaries (2010)
- Frank La Rue, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (2013)
- UNESCO, Open Society Foundation, and the Internet Society: The Freedom of Expression Online – The Role of Online Intermediaries (2014)
- World Intellectual Property Organization, Online Intermediaries and Creative Content, http://www.wipo.int/copyright/en/internet_intermediaries/
- Stanford Intermediary Project, http://cyberlaw.stanford.edu/focus-areas/intermediary-liability
- Network of Centers, Governance of Online Intermediaries Project, http://networkofcenters.net/research/online-intermediaries
- The Manila Principles on Intermediary Liability, https://www.manilaprinciples.org/