

Legal Aspects of Electronic Contracts

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Introduction to the course

► 1 – METHODS TO BE USED:

- The classes are designed to introduce students already familiar with the contract law to ecommerce regulation throughout the world. Each session will contain some material and discussion dealing with each of the topics mentioned on the syllabus.

Introduction to the course

► 2 – STUDENTS' ACTIVITIES:

- Students must be prepared to discuss the material assigned by the Professor. This also includes to research the recommended additional reading material and the selected case law.

Introduction to the course

▶ 3 – LEARNING EVALUATION CRITERIA:

- ▶ The learning evaluating criteria will be constant during each class regarding the students' participation. Additionally, a final test will be carried out other than a paper to be written by students.

BIBLIOGRAPHY:

- ▶ GEIST, Michael. *Internet Law in Canada*. 3. ed. Ontario (CA): Captus Press Inc., 2002.
- ▶ MANN, Ronald J.; WINN, Jane K. *Electronic Commerce*. 2. ed. New York: Aspen Publishers, 2005.
- ▶ CASTELLS, Manuel. The rise of the network society. 2. ed. *The information age: economy, society and culture*. vol. 1. Massachusetts: Blackwell, 2000.

Methodology: understanding how to work with case law

- ▶ Social Science: challenges
- ▶ Goal: to design good case studies and to collect, present, and analyze data fairly
- ▶ How do I know if I should use the case study method? – ***how or why some social phenomenon works***

Methodology: understanding how to work with case law

- ▶ “Defining your research question(s) is probably the most important step to be taken in a research study, so you should be patient and allow sufficient time for this task” (Robert K. Yin, *Case Study Research: design and methods*. 5. ed. Los Angeles: SAGE, 2014)
- ▶ Ex. How do the Canadian courts deal with the consent on electronic contract environment?
- ▶ Ex. Why is the consent problematic regarding electronic contracts?

Why teaching and studying this subject in English?

- ▶ “Since websites are accessible worldwide, the prospect that a website owner might be haled into a courtroom in a far off jurisdiction is much more than a mere academic exercise, it is a very real possibility”.

GEIST, Michael. Is there a there there? Toward greater certainty for Internet jurisdiction. *In: Berkeley Technology Law Journal*, vol. 16, 2002. p. 1345–1406.

1 – Introduction to Online Environment

- ▶ Moving from atoms to bits
- ▶ Rivalrous and nonrivalrous goods
- ▶ Legal challenges of the informational society
 - 1) Digitalization
 - 2) Non territorial
 - 3) Notion of time

1 - Introduction to Online Environment

- Regulating the digital environment
- **Can the digital environment be regulated?**
 - Efficient regulation
 - Binding effects worldwide
 - Jurisdiction and applicable law

Cyberlibertarianism X Cyberpaternalism

Jonh Perry Barlow: Declaration of Independence of Cyberspace

- Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, **the new home of Mind**. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather.
- We have no elected government, nor are we likely to have one, so I address you with no greater authority than that with which liberty itself always speaks. I **declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us**. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear.

Jonh Perry Barlow: Declaration of Independence of Cyberspace

- Governments derive their just powers from the **consent of the governed**. You have neither solicited nor received ours. **We did not invite you**. You do not know us, nor do you know our world. **Cyberspace does not lie within your borders**. Do not think that you can build it, as though it were a public construction project. You cannot. **It is an act of nature and it grows itself through our collective actions**.
- You have not engaged in our great and gathering conversation, **nor did you create the wealth of our marketplaces**. You do not know **our culture, our ethics, or the unwritten codes that already provide our society more order than could be obtained by any of your impositions**.

Jonh Perry Barlow: Declaration of Independence of Cyberspace

- You claim there are problems among us that you need to solve. **You use this claim as an excuse to invade our precincts.** Many of these problems don't exist. Where there are real conflicts, where there are wrongs, we will identify them and address them **by our means. We are forming our own Social Contract.** This governance will arise according to the conditions of our world, not yours. **Our world is different.**
- **Cyberspace consists of transactions, relationships, and thought itself, arrayed like a standing wave in the web of our communications.** Ours is a world that is both everywhere and nowhere, but it is not where bodies live.

Jonh Perry Barlow: Declaration of Independence of Cyberspace

- We are creating a world that **all may enter without privilege or prejudice accorded by race, economic power, military force, or station of birth.**
- We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity.
- **Your legal concepts of property, expression, identity, movement, and context do not apply to us. They are all based on matter, and there is no matter here.**
- Our identities have no bodies, so, unlike you, we cannot obtain **order by physical coercion.** We believe that from ethics, enlightened self-interest, and the commonweal, our governance will emerge. Our identities may be distributed across many of your jurisdictions. The only law that all our constituent cultures would generally recognize is **the Golden Rule.** We hope we will be able to build our particular solutions on that basis. But we cannot accept the solutions you are attempting to impose.

Jonh Perry Barlow: Declaration of Independence of Cyberspace

- In the United States, you have today created a law, the **Telecommunications Reform Act**, which repudiates your own Constitution and insults the dreams of Jefferson, Washington, Mill, Madison, DeToqueville, and Brandeis. These dreams must now be born anew in us.
- You are terrified of your own children, since they **are natives in a world where you will always be immigrants.** Because you fear them, you entrust your bureaucracies with **the parental responsibilities** you are too cowardly to confront yourselves. **In our world, all the sentiments and expressions of humanity, from the debasing to the angelic, are parts of a seamless whole, the global conversation of bits.** We cannot separate the air that chokes from the air upon which wings beat.
- In China, Germany, France, Russia, Singapore, Italy and the United States, you are trying to ward off the virus of liberty by erecting guard posts at the frontiers of Cyberspace. These may keep out the contagion for a small time, but they will not work in a world that will soon be blanketed in bit-bearing media.

Jonh Perry Barlow: Declaration of Independence of Cyberspace

- ▶ Your increasingly obsolete information industries would perpetuate themselves **by proposing laws**, in America and elsewhere, that claim to own speech itself throughout the world. These laws would declare ideas to be another industrial product, no more noble than pig iron. **In our world, whatever the human mind may create can be reproduced and distributed infinitely at no cost.** The global conveyance of thought no longer requires your factories to accomplish.
- ▶ These increasingly hostile and colonial measures place us in the same position as those previous lovers of freedom and self-determination who had to reject the authorities of distant, uninformed powers. **We must declare our virtual selves immune to your sovereignty, even as we continue to consent to your rule over our bodies. We will spread ourselves across the Planet so that no one can arrest our thoughts.**
- ▶ We will create a civilization of the Mind in Cyberspace. May it be more humane and fair than the world your governments have made before.

Davos, Switzerland (February 8, 1996)

Other suggestion: Lawrence Lessig's regulation model

- ▶ Norms
- ▶ Law
- ▶ Market
- ▶ Architecture

2 – Pros and Cons of ecommerce

- ▶ **Positive aspects:**
 - Worldwide (distance shortening)
 - Save consumers the hassle of traveling to the merchant's location (time saving)
 - Mass media of communication

2 – Pros and Cons of ecommerce

► Positive aspects:

- Cheaper products
- Tailor-made products and services
- “Free” culture

2 – Pros and Cons of ecommerce

► Negative aspects

- Remote arrangements (the parties don't meet in person)
- The use of “*robotic devices*” for contracting
- Problems concerning electronic contracts' validity and enforceability

2 – Pros and Cons of ecommerce

- UCC §2-204: “[a] contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements”.
- Failure of a web site or errors in robot programming can invalidate the contract?
