

# **Cross-Border Law Enforcement in the Information Society**

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## **Agenda**

- The environment
  - Undesirable conducts
  - Typical sanctions
- Cross-border law enforcement
  - Traditional law enforcement (direct)
  - Alternative law enforcement (indirect)
- Enforcement under current regime
- Building a new regime

# **The environment**

## **Is there a 'Cyberspace'?**

### **Undesirable acts**

- Dangerous conduct (physical or national safety)
  - Threatening behaviour, child pornography, unlicensed online health care, cyberterrorism and cyberwar
- Fraudulent conduct (economic safety)
  - Hacking activity posing the threat of financial loss, deceitful business practices, online fraud
- Other unlawful conduct (illegal but not criminal)
  - Copyright, pornography, defamation, offensive or overly aggressive business practices

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# **Typical sanctions**

## **Public law sanctions**

- Custodial penalties
- Pecuniary penalties
- Confiscation and injunction
- Disqualification

## **Civil law sanctions**

- Unenforceability
- Damages
- Injunction

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# **Cross-border law enforcement**

## **What is it?**

- Sovereignty and territory
  - Trade agreements (EU, NAFTA, WTO etc.)
- Traditional law enforcement (direct)
  - Private enforcement
  - Public enforcement
- Alternative law enforcement (indirect)
  - Joint liability
  - Market forces

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# **Private enforcement**

## **Jurisdiction and enforcement in EU and EFTA**

- 2000 Brussels Regulation
  - [1968 Brussels convention]
- 1988 Lugano Convention

## **Consumer contract**

- 1980 Rome Convention

## **Tort**

- Draft Rome II Regulation
- Karl Heinz Henkel Case
- The 2000 E-Commerce Directive (COO)

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# Public enforcement

## In general

- Request structure
- Principle of dual criminality
- Broad exemption clauses

## Recognition and enforcement

- 1970 Hague Convention (international validity)
- 1991 Brussels Convention (enforcement)

## Extradition

- 1957 Paris Convention
- 1996 EU Convention – TEU art 34

## Injunction

- 1998 Injunction Directive

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# Alternative law enforcement

**Vasiliy Gorshkov & Alexey Ivanov**

## Joint liability

- Users
- Content and technical intermediaries
  - Limitations in 2000 E-Commerce Directive
- Payment intermediaries

## Market forces

- Punishment or incentive
  - Both public and private enforcement
- Fair trial? (liability)

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# **Enforcement under current regime**

## **Enforcement perspective**

- The lesson from Karl Heinz Henkel
- Alternative law enforcement
- Limitations in trade-agreements

## **Business perspective**

- Expected benefit > expected loss
  - Holistic approach
  - Legal Risk Management

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# **Building a new regime**

## **Effective national enforcement system**

- 2000 E-Commerce Directive (COO)

## **Reducing the need for enforcement**

- Information about the law
- Encourage self-regulation
- Technical standards (code as law)
  - Sanctions / market driven
  - Geographical features

## **International co-operation (inter state)**

- Material harmonisation
- Procedural harmonisation
- Investigation, evidence and mutual assistance

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# Questions and comments

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