SYMPOSIUM

THE GLOCAL NET: STANDING ON JOEL REIDENBERG'S SHOULDERS

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Information technology and digital networks are global, and information can easily cross borders. Laws, however, are territorial, local, and specific. This is the meeting of the global and the local. Imposing local laws on global technology can result in a conflict, but it may give birth to a new condition, the "glocal net": the fusion of the global and the local. Under the condition of the glocal net, as a matter of practice, people experience the internet differently in different places around the globe. As an ideal, the glocal net would strive to enable both the global and the local dimensions, integrated or side-by-side.

This essay is a tribute to Professor Joel Reidenberg and his scholarship. I revisit the first generation of cyberlaw studies with an emphasis on Reidenberg's work on internet jurisdiction; the discussion revisits the Yahoo! France case and juxtaposes it with a recent decision by the Court of Justice of the European Union, Google v. CNIL*, on the scope of a right-to-be-forgotten order examining whether it should be local, European, or global.*

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* Professor of Law, Faculty of Law, Tel Aviv University. This Essay was prepared in connection with a symposium to celebrate the scholarly and personal contributions of Joel Reidenberg. The event was cancelled in light of the COVID-19 pandemic. Thanks to Woodrow Hartzog, Alon Susz, and Ari Waldman for helpful comments, and to Joel Reidenberg ז"ל for his friendship and mentorship.

PRELUDE: JOEL

It was an early morning coffee with conference pastry, New York-style, in the spring of 2000. We survived the Y2K bug, the dot-com bubble was yet to burst, and downtown, the World Trade Center scraped the sky. Inside the conference room at the New York University School of Law, where I was completing my J.S.D., scholars gathered to discuss the exciting intersection of old legal principles with that new technology: the internet.[1] As I entered the conference room, I realized that my footnotes had risen from the text and were there in the flesh. There was Footnote Ten having coffee! Footnote Thirty-Three just grabbed one cookie too many before the session commenced! The excitement of meeting the heroes of my research in person was the realization of OTSOG—[standing] on the shoulders of giants.[2] One of these giants was Joel Reidenberg. He was a pioneer in the field of digital copyright law, my main interest at the time, and he guided us all to realize the regulatory potential of technology—namely, *Lex Informatica*.[3] It was an eye-opening insight, which has structured so much of our collective thinking (including my own) about the complex relationship between law and technology.

Later on, as I increasingly paid attention to privacy law, I encountered Joel's scholarship again, realizing that he was a privacy giant. Whenever I found myself in intellectual trouble, wondering about yet another peculiarity of the law, trying to figure out a technological challenge, or playing with grand ideas, Joel's work came to me, speaking words of wisdom.[4] Whether about the EU-U.S. personal data transactions,[5] jurisdictional issues,[6] or the conundrum of privacy in public,[7] Joel had already thought about it and set the stage with thoughtful analysis and well-articulated form. Over the years, we met numerous times, but never enough, at Fordham, at the Privacy Law Scholars Conference, at the Research Conference on Communications, Information, and Internet Policy (TPRC), at the Computers, Privacy & Data

1. The conference, titled "Free Information Ecology in the Digital Environment," was held from March 30–April 2, 2000.

2. For the history of the metaphor, see ROBERT K. MERTON, ON THE SHOULDERS OF GIANTS: A SHANDEAN POSTSCRIPT (1993).

3. Joel R. Reidenberg, *Lex Informatica: The Formulation of Information Policy Rules Through Technology*, 76 TEX. L. REV. 553 (1998).

4. While I realize this may challenge law review editors, sometimes no reference is better than spoiling the pun, and if you did not get it, well, let it be.

5. *See* Joel R. Reidenberg, *E-Commerce and Trans-Atlantic Privacy*, 38 HOUS. L. REV. 717 (2001).

6. *See* Joel R. Reidenberg, *Technology and Internet Jurisdiction*, 153 U. PA. L. REV. 1951 (2005).

7. *See* Joel R. Reidenberg, *Privacy in Public*, 69 U. MIA. L. REV. 141, 153 (2014).

Protection conference, in Mishkenot Sha'ananim in Jerusalem overlooking the Tower of David, at the seminar room at Tel Aviv University's Buchmann Faculty of Law, and at the Book Worm Café in Tel Aviv, where Pascale joined. I learned about data protection, European adequacy standards, internet jurisdiction, privacy in the workplace, binding corporate rules (BCR),[8] surveillance in public, and much more. I also learned about personal French, American, and Israeli connections, and some American politics.

This Essay is a tribute to Joel's scholarship and to him. I was fortunate to have met him early in my career, and I am comforted that he had the chance to read a draft of this Essay and offer some comments just weeks before he passed away. This Essay took me back to first-generation cyberlaw scholarship and will take us to two of Joel's main locational data points, the United States and France, connecting his interest in the relationship between law and technology, data protection, and jurisdiction.

Part I discusses the trajectory of the legal and scholarly understanding of the relationship between the internet, understood as a global technology, and local norms, reflected in local laws. I identify the enthusiasm of the global dimension in the 1990s, the sobering in the 2000s, and the localization of the internet that we reached by the 2020s. Part II focuses on the first substantial case, decided by a French court, about the relationship between the global internet and local laws (anti-hate speech laws specifically, as discussed in that case). I hop between France and the United States, where courts have addressed the same issue, providing us with a convenient opportunity for comparison. I assess the tension between the global technology and local laws that emerged in those cases on both sides of the Atlantic. Part III tackles a recent case, decided by the Court of Justice of the European Union (CJEU) in 2019, as another important node in the ongoing dialectic relationship between the global and the local. The discussion enables us to see that the debate has been, at least for the time being, decided in favor of the local, rather than the global, dimension. The final part points to the fusion of the global and the local—the *glocal net*—both as a descriptive framing and as a normative model for mitigating global-local tensions.

I. GLOBAL TECHNOLOGY AND LOCAL LAWS

The intersection of law and technology lies at the heart of Joel Reidenberg's work.[9] Another of his main interests is how this intersection

8. BCR is a European legal term denoting data protection policies formed and applied by multinational corporations. *See* Regulation 2016/679, General Data Protection Regulation, art. 4(20), 2016 O.J. (L 119) 1, 34 [hereinafter GDPR] (providing the definition); *id.* art. 46(2)(b) (including BCRs as an appropriate safeguard for the export of European personal data); *id.* art. 47 (explaining the required content and procedures for approving BCRs). If approved by the European Union (EU), BCRs allow exporting personal data of European citizens out of the EU.

9. Reidenberg's first published engagement with the matter was *Rules of the Road for Global Electronic Highways: Merging the Trade and Technical Paradigms*, 6 HARV. J.L. & TECH. 287 (1993), where he juxtaposed what, at the time, he called a trade paradigm with a technical paradigm. The former referred to state regulatory policy, whereas the latter referred

maps onto the global world. Technology is global, in the sense that internet access and use are available today almost everywhere in the world,[10] subject to various digital divides that qualify the internet's global character,[11] and of course, a user in one country can access content originating from another. Whereas information can easily cross borders, laws are territorial, local, and specific. This is the meeting of the global and the local. Imposing local laws on global technology can result in conflict, but it may give birth to a new condition: the glocal net, the fusion of the global and the local. Under the condition of the glocal net, as a matter of practice, people experience the internet differently in different places around the globe. As an ideal, the glocal net would strive to facilitate both the global and the local dimensions, either integrated or side-by-side, rather than prioritize either at the expense of the other. Is this a desirable outcome? To answer these questions, we need to go back to the 1990s.

A. The 1990s: Celebrating the Global Information Infrastructure

When the no-longer-American-only Defense Advanced Research Projects Agency (DARPA) network of networks was privatized and commercialized, then popularized in the mid-1990s, it became the internet.[12] The global network was celebrated as the quintessential mode of liberty. Discussion of the Global Information Infrastructure (GII), as the internet was often called in the late 1990s,[13] chanted three interrelated slogans. First, "everyone can be a speaker," as free speech theories stepped out of the books and became real.[14] More people could speak, achieving better opportunities for

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to technology. *See id.* at 288–89. He crystalized the thesis on the relationship between law and technology in *Lex Informatica*, where he pointed to the ability and power of technology to regulate various online behavior, such as content restrictions, data protection, and intellectual property. *See* Reidenberg, *supra* note 3, at 558–60, 562–68 (discussing content restrictions, data protection, and intellectual property). Importantly, he argued that it should be policy makers, not technologists, who should make the decision to use technologies as regulatory tools. *See id.* at 556, 585–86.

10. In his 1993 article, Reidenberg discussed "seamless global networks." Reidenberg, *supra* note 9, at 287.

11. Digital divides are caused not only by financial limitations but also by technological literacy, language, disabilities, and more. For an early discussion, see MARK WARSCHAUER, TECHNOLOGY AND SOCIAL INCLUSION: RETHINKING THE DIGITAL DIVIDE (2004). The effect may be exclusion from various communities and services and from political participation. For the latter effect, see KIERON O'HARA & DAVID STEVENS, INEQUALITY.COM: POWER, POVERTY AND THE DIGITAL DIVIDE 91–118 (2006).

12. For the history of the internet, as documented by those who led the various developments from the 1960s onward, see Barry M. Leiner et al., *A Brief History of the Internet*, 39 COMPUT. COMMC'N REV. 22 (2009).

13. For an early discussion of the internet framed as a global information infrastructure, see CHRISTINE L. BORGMAN, FROM GUTENBERG TO THE GLOBAL INFORMATION INFRASTRUCTURE: ACCESS TO INFORMATION IN THE NETWORKED WORLD (2000) (predicting that the internet would become neither evolutionary nor revolutionary).

14. *See, e.g.*, Eugene Volokh, *Cheap Speech and What It Will Do*, 104 YALE L.J. 1805, 1807 (1995) (writing that "[c]heap speech will mean that far more speakers—rich and poor, popular and not, banal and avant garde—will be able to make their work available to all"—although not using the explicit chant). For an early critical discussion, see Neil Weinstock Netanel, *Cyberspace Self-Governance: A Skeptical View from Liberal Democratic Theory*,

individual self-fulfillment and participation in the collective political process. Indeed, the marketplace of ideas had never been as lively as in online forums, chatroom discussions, and Web 2.0 comments that followed Web 1.0 news stories. The people could finally exercise their self-governance in earnest.[15] A second popular slogan was "information wants to be free," attributing to information an unstoppable, inevitable direction, resisting any kind of censorship.[16] A third slogan concerned the global village: the world seemed closer than ever before.[17] The global reach of network technology was exciting. "Cyberspace, of course, is not localized," one scholar declared, adding that "it is international."[18] Scholars, including Reidenberg, realized that local laws would be difficult to enforce online.[19] Together, the new speech opportunities, the new flows of information, and the bright side of globalization were a cause for celebration.

However, the new technology led to new concerns. A 1995 *Time* magazine cover story alarmed American parents that their children had easier access to more pornography than ever before.[20] The Telecommunications Act of 1996[21] followed, seeking to protect children.[22] John Perry Barlow responded to the new law and published *A Declaration of the Independence*

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88 CALIF. L. REV. 395, 462–65 (2000) (criticizing the early calls for cyberspace independence and calling for a selective and careful regulation of cyberspace).

15. *See, e.g.*, OWEN M. FISS, THE IRONY OF FREE SPEECH 3 (1996) (emphasizing the role of free speech in promoting collective self-determination); ALEXANDER MEIKLEJOHN, POLITICAL FREEDOM: THE CONSTITUTIONAL POWERS OF THE PEOPLE 19–21 (1965) (emphasizing free speech and self-governance).

16. This slogan even has a Wikipedia entry, which attributes the slogan to Stewart Brand in 1984. *See Information Wants to Be Free*, WIKIPEDIA, https://en.wikipedia.org/wiki/Information_wants_to_be_free [https://perma.cc/KFN2-KLTV] (Nov. 22, 2021, 11:51 PM).

17. For a critical analysis of the discursive power of this slogan, see Nisha Shah, *From* Global Village *to* Global Marketplace*: Metaphorical Descriptions of the Global Internet*, 4 INT'L J. MEDIA & CULTURAL POL. 9, 18–21 (2008).

18. Henry H. Perritt, Jr., *Jurisdiction in Cyberspace: The Role of Intermediaries*, *in* BORDERS IN CYBERSPACE: INFORMATION POLICY AND THE GLOBAL INFORMATION INFRASTRUCTURE 164, 165 (Brian Kahin & Charles Nesson eds., 1997).

19. *See* Joel R. Reidenberg, *States and Internet Enforcement*, 1 U. OTTAWA L. & TECH. J. 213, 217 (2003–2004).

20. *See* Philip Elmer-Dewitt, *Online Erotica: On a Screen Near You*, TIME (July 3, 1995), http://content.time.com/time/magazine/article/0,9171,983116,00.html [https://perma.cc/QW2X-7EPM]. The cover featured a child viewing a screen, amazed (or terrified?) by the images, under the heading "Cyberporn," with a subtitle: "A new study shows how pervasive and wild it really is. Can we protect our kids—and free speech?" *TIME Magazine Cover: Cyber Porn*, TIME (July 3, 1995), http://content.time.com/time/covers/0,16641,19950703,00.html [https://perma.cc/4VU3-QDX7]. Scholars criticized this depiction and classified it as moral panic. *See, e.g.*, Julia Wilkins, *Protecting Our Children From Internet Smut: Moral Duty or Moral Panic?*, HUMANIST, Sept.–Oct. 1997, at 4.

21. Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15, 18, and 47 U.S.C.). The Supreme Court invalidated some parts of the Act. *See* Reno v. ACLU, 521 U.S. 844, 874–85 (1997).

22. *See generally* Communications Decency Act of 1996, Pub. L. No. 104-104, tit. V, 110 Stat. 56, 133–43 (codified as amended in scattered sections of 18 and 47 U.S.C.) (addressing obscenity and violence).

of Cyberspace.[23] Barlow eloquently offered a series of juxtapositions: governments versus "us," flesh and steel versus "mind," past versus future.[24] He addressed the "Governments of the Industrial World"[25] and posed a stop sign: "You have no sovereignty where we gather."[26] Barlow further explained his understanding of sovereignty: the consent of the governed is the (only) source for the states' just powers, and absent such consent in cyberspace, governments should keep out.[27] Instead, he announced, "We are forming our own Social Contract."[28]

Indeed, the borderless dimension of the internet excited many. John Lennon's 1971 lyric "[i]magine all the people sharing all the world" was only a click away.[29] At the time, "sharing" was still nice,[30] and social networks were yet to corporate-wash it.[31] Turning to the law, David Johnson and David Post argued that the law should treat cyberspace as a distinct place.[32] In their view, the global dimension of cyberspace undermined the legitimacy and feasibility of territorial laws.[33] They argued that geography-based laws made sense when the laws have attributes of *power* (the ability to exercise control), *effects* (local law in one place matters less for other places), *legitimacy* (the consent of the governed), and *notice* (physical boundaries signal the delineation of law).[34] These attributes, they argued in 1997, were inapplicable or irrelevant to the internet.[35] Instead, Johnson and Post suggested "recognizing a legally significant border between Cyberspace and the 'real world.'"[36] As for conflicts between cyberspace law and local laws, Johnson and Post pointed to the doctrine of comity,[37] which enables territorial sovereigns to exercise their power, but with restraint.[38]

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23. *See* John Perry Barlow, *A Declaration of the Independence of Cyberspace*, ELEC. FRONTIER FOUND. (Feb. 8, 1996), https://www.eff.org/cyberspace-independence [https://perma.cc/P4F7-5FD6].

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. JOHN LENNON, *Imagine*, *on* IMAGINE (Apple Records 1971).

30. *See, e.g.*, Yochai Benkler, *Sharing Nicely: On Shareable Goods and the Emergence of Sharing as a Modality of Economic Production*, 114 YALE L.J. 273 (2004).

31. For the many meanings of sharing and the way the term was co-opted to serve commercial interests, see NICHOLAS A. JOHN, THE AGE OF SHARING (2017).

32. *See* David R. Johnson & David Post, *Law and Borders—The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367, 1367 (1996).

33. *Id.*

34. *Id.* at 1369–70.

35. *Id.* at 1370.

36. *Id.* at 1378.

37. *Id.* at 1391–92. In an earlier article, Reidenberg referred to this idea as "[n]etwork [f]ederalism." Joel R. Reidenberg, *Governing Networks and Rule-Making in Cyberspace*, 45 EMORY L.J. 911, 928 (1996).

38. *See* Johnson & Post, *supra* note 32, at 1392. The doctrine of comity means respecting judicial orders from a foreign jurisdiction, unless they offend local policy. *See generally* John Kuhn Bleimaier, *The Doctrine of Comity in Private International Law*, 24 CATH. LAW. 327 (1997).

B. The 2000s: Sobering

Much has changed since. The internet's popularity met misuses and abuses. The initial excitement slowed and was replaced with sobering anxiety: copyright infringement mushroomed, defamation became easier, child pornography and other obscene content spread, state governments and corporations alike engaged in privacy violations, hate speech proliferated, and public discourse quickly grew toxic. We learned about cyberbullying, revenge porn, deep fakes, and, more generally, cyber harassment;[39] we encountered new forms of sophisticated fraud, criminal and terrorist activities, and, unfortunately, much more.[40] As for the three noted slogans, everyone could become a speaker, but this did not guarantee that there were listeners or that a conversation followed;[41] information overload and shorter attention spans meant more noise rather than more speech.[42] While old intermediaries, such as publishers and shops, lost power, new and stronger intermediaries emerged.[43] Information wanted to be free, but powerful entities controlled it.

Technology changed too. Johnson and Post assumed that "controlling the flow of electrons across physical boundaries is . . . difficult,"[44] and accordingly, they reached a binary conclusion: a local jurisdiction seeking to prevent access to some content "must either outlaw all access to the Net . . . or seek to impose its will on the Net as a whole."[45] However, there are ways to control the flow of information across digital borders. The internet protocol (IP) easily enables geolocation: internet service providers (ISPs) and any other platform can identify users' IP addresses and, accordingly, their localities at the time of visiting websites or using applications.[46]

The IP address provides the key to applying local law: by applying Johnson and Post's attributes of power, effects, legitimacy, and notice, IP addresses facilitate the imposition of power, as courts can instruct ISPs to remove hosted websites or block specific users from accessing certain content. IP addresses enable linking a legal measure to the territory—in other

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39. The term was coined by Danielle Keats Citron. *See* DANIELLE KEATS CITRON, HATE CRIMES IN CYBERSPACE 3 (2014) (referring to threats of violence, privacy invasions, reputation-harming lies, and more).

40. *See generally* THE OFFENSIVE INTERNET: SPEECH, PRIVACY, AND REPUTATION (Saul Levmore & Martha C. Nussbaum eds., 2010).

41. *See* Netanel, *supra* note 14, at 463 (noting the concern that "a world of custom-designed communications mixes could lead to considerable balkanization and self-insulation"). *See generally* CASS SUNSTEIN, REPUBLIC.COM (2001) (arguing that there is a fragmentation of the public discourse).

42. For an early discussion, see DAVID SHENK, DATA SMOG: SURVIVING THE INFORMATION GLUT (1997).

43. Accordingly, one of the major legal challenges in the 1990s was the liability of such intermediaries. For an early discussion in the context of copyright law, see Niva Elkin-Koren, *Copyright Law and Social Dialogue on the Information Superhighway: The Case Against Copyright Liability of Bulletin Board Operators*, 13 CARDOZO ARTS & ENT. L.J. 345 (1995).

44. Johnson & Post, *supra* note 32, at 1394.

45. *Id.*

46. Reidenberg pointed also to packet interception, which raises privacy concerns. *See generally* Reidenberg, *supra* note 19, at 227.

words, achieving effects. Applying local laws to that locality's users rather than to noncitizens fits the requirement of legitimacy.[47] Finally, as users increasingly learn about IP addresses, various means can be used to signal which law applies. The signals can be explicit, such as a statement about applicable law, or implicit, by showing notices that indicate that the local laws preclude some activity.

A familiar example is a copyright notice that appears on users' screens, stating that content is blocked due to copyright law.[48] Moreover, the notice about online borders is amplified by redirecting users to other URLs (e.g., when located in Tel Aviv, and typing google.com, one is redirected to google.co.il), and by using other signals (e.g., one can access Airbnb's website in English, but the default currency choice is the Israeli Shekel). Of course, tech-savvy users can fool the system: using virtual private networks (VPN) creates a secure channel of communications that limits an adversary's ability to inspect and block the user's web destination, thus bypassing local content limitations.[49] Using various intermediation tools, such as remailing services,[50] anonymizers,[51] or Tor,[52] can achieve the same effect. Currently, for most users, however, these bypass options are the exception rather than the norm.

C. The 2020s: Localizing Information Infrastructure

With the demise of cyber utopianism, the realization that global technology has darker sides, and the emergence of geolocation, it is no surprise that the law entered the scene.

Contrary to Barlow's declaration, today, governments of the world routinely apply territorial laws to cyberspace. Back in 2003, Reidenberg observed the early steps of this phenomenon and stated: "A number of countries such as China and Saudi Arabia have already established the

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47. *See supra* text accompanying note 34.

48. *See, e.g.*, Steven Loeb, *Google Ordered to Shore Up Copyright Filters on YouTube*, VATORNEWS (Apr. 21, 2012), https://vator.tv/news/2012-04-21-google-ordered-to-shore-up-copyright-filters-on-youtube [https://perma.cc/4BWN-GEGL].

49. For example, one VPN boasts that its service allows users to "[w]atch, listen, and stream content from censored and blocked websites around the world, even while traveling." *ExpressVPN Features*, EXPRESSVPN, https://www.expressvpn.com/features [https://perma.cc/TDS8-ZV5J] (last visited Feb. 2, 2022).

50. *See, e.g.*, *W3-Anonymous Remailer*, GLOB. INTERNET LIBERTY CAMPAIGN, http://gilc.org/speech/anonymous/remailer.html [https://perma.cc/J3EM-Y9Y3] (last visited Feb. 2, 2022).

51. For example, one service explains, "Our free Web proxy allows you to unblock any blocked website. Just type the website address in the box below and access any site you want." *Free Private Proxy Browser*, HIDEME, https://hide.me/en/proxy [https://perma.cc/4EQK-BCH4] (last visited Feb. 2, 2022).

52. The Tor Project was initiated in the U.S. military, with the intention of enabling a private communications channel. *See History*, TOR PROJECT, https://www.torproject.org/about/history/ [https://perma.cc/5TVJ-2QFX] (last visited Feb. 2, 2022). While Tor may be used by dissidents in nondemocratic countries (i.e., whistleblowers), it facilitated the dark web, where various crimes take place. *See* ROBERT W. GEHL, WEAVING THE DARK WEB: LEGITIMACY ON FREENET, TOR, AND I2P, at 58–61 (2018).

equivalent of online national borders by requiring service providers to filter internet traffic. These electronic borders therefore replicate general national boundaries on the internet."[53] Since then, many more countries, including Western democracies, have joined this online replication of their physical borders by imposing their laws on a virtual space, using IP addresses as a marker of online borders.

The upshot is that there is no single internet. Those who travel around the globe experience the differences firsthand. Design, language, and content vary around the world, even with the same services: searching the word "Jew" in Germany, the United States, and Israel,[54] or searching for "Tiananmen Square" in Beijing or Tokyo, yields different organic results. Searching online for individuals in Spain may provide the user with fewer and different results than searching for the same person using an Argentinian IP address. Facebook and Google and their many applications are not available in China,[55] and we have seen Middle Eastern governments shut down access to social networks to hinder criticism and block protest.[56]

Today, local laws are routinely applied to virtual spaces, and they vary substantially.[57] For example, anti-hate speech laws apply in France and Germany[58] but not in the United States.[59] The European Union (EU) applies the so-called *right to be forgotten* online.[60] Germany enacted the Network Enforcement Act,[61] which requires large social networks to remove

53. *See* Reidenberg, *supra* note 19, at 227 (footnote omitted).

54. *See* James Grimmelmann, *The Google Dilemma*, 53 N.Y.L. SCH. L. REV. 939, 943–45 (2008) (discussing Google's response to anti-Semitic search results for the term "Jew").

55. *See* Li Yuan, *A Generation Grows Up in China Without Google, Facebook or Twitter*, N.Y. TIMES (Aug. 6, 2018), https://www.nytimes.com/2018/08/06/technology/china-generation-blocked-internet.html [https://perma.cc/49DA-VTNQ].

56. *See generally* ZEYNEP TUFEKCI, TWITTER AND TEAR GAS: THE POWER AND FRAGILITY OF NETWORKED PROTEST (2017) (discussing the use of social networks in mobilizing protests in various countries, including Turkey and Egypt).

57. *See generally* FREEDOM HOUSE, FREEDOM ON THE NET 2019: THE CRISIS OF SOCIAL MEDIA (2019), https://www.freedomonthenet.org/sites/default/files/2019-11/11042019_Report_FH_FOTN_2019_final_Public_Download.pdf [https://perma.cc/34C4-9USY] (documenting internet freedom in sixty-five countries).

58. *See, e.g.*, Strafgesetzbuch [StGB] [Penal Code], tit. 3, § 86 (Ger.), https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html [https://perma.cc/HXX2-G7FX] (prohibiting "[d]issemination of propaganda material of unconstitutional organisations," including political parties and governments in Germany); *Everything You Need to Know About Freedom of Expression in France*, GOUVERNEMENT, https://www.gouvernement.fr/en/everything-you-need-to-know-about-freedom-of-expression-in-france-0 [https://perma.cc/3TSB-VBRM] (last visited Feb. 2, 2022) (explaining that, in France, "racial, national or religious provocation, defamation and slander are punishable under the penal code").

59. *See Hate Speech and Hate Crime*, AM. LIBR. ASS'N, https://www.ala.org/advocacy/intfreedom/hate [https://perma.cc/42CH-SCXG] (last visited Feb. 2, 2022) ("Under current First Amendment jurisprudence, hate speech can only be criminalized when it directly incites imminent criminal activity or consists of specific threats of violence targeted against a person or group.").

60. GDPR, *supra* note 8, art. 17. For more on the right to be forgotten, see *infra* Part II.A.

61. Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken [Netzdurchsetzunggesetz] [NetzDG] [Network Enforcement Act], Sept. 1, 2017, BGBl I at 3352 (Ger.), https://www.gesetze-im-internet.de/netzdg/BJNR335210017.html

prohibited content within twenty-four hours of receiving a report, referring to a list of categories of speech restrictions.[62] China heavily censors websites and performs extensive surveillance of Chinese online activity.[63] Singapore prohibits the communication in Singapore (whether initiated from within or outside the country) of false statements that are deemed prejudicial to its security, public health, or elections results, with a series of powers to require removing, blocking, or correcting such statements.[64] Israel enacted a law authorizing a court to issue blocking or removal orders regarding websites that offer prostitution services, sell drugs, or are related to terror organizations.[65]

The diversity of local laws in a global network causes friction. One theoretically optimal solution should be removed from the table: "Let's have an international treaty!" was a frequent cry in early discussions,[66] but this was neither a plausible nor a feasible solution.[67] Experience has taught us that international treaties tend to impose the strongest parties' will on weaker parties, serving the former's interests while ignoring the latter's. Intellectual property provides an example.[68] We are far away from a global consensus.

The utopian ideal of the global network of the 1990s reluctantly gave way to a localized or differential internet in the 2020s. Nevertheless, the moral and legal questions persist: Is this a good outcome? Are states justified in imposing their laws onto a virtual duplicate of their territory? What is the reach of such laws?

[https://perma.cc/PF2B-SYK2], *translated in* ACT TO IMPROVE ENFORCEMENT OF THE LAW IN SOCIAL NETWORKS (NETWORK ENFORCEMENT ACT) (2017), https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf?__blob=publicationFile&v=2 [https://perma.cc/PNS8-SZMA].

62. *See id.*

63. *See* FREEDOM HOUSE, *supra* note 57, at 13, 16.

64. Protection from Online Falsehoods and Manipulation Act 2019, June 3, 2019, Gov't Gazette Acts Supplement No. 26, June 28, 2019, (Sing.), https://sso.agc.gov.sg/Acts-Supp/18-2019/Published/20190625?DocDate=20190625 [https://perma.cc/KVY2-FYSX].

65. *See* Authorities for the Prevention of Committing Crimes Through Use of an Internet Site Law, 5777-2017, SH 2650 1040 (2017) (Isr.), http://fs.knesset.gov.il/20/law/20_lsr_390328.pdf [https://perma.cc/CV4W-ZHAF].

66. *See, e.g.*, Viktor Mayer-Schönberger & Teree E. Foster, *A Regulatory Web: Free Speech and the Global Information Infrastructure*, *in* BORDERS IN CYBERSPACE: INFORMATION POLICY AND THE GLOBAL INFORMATION INFRASTRUCTURE 235, 247 (Brian Kahin & Charles Nesson eds., 1997). The authors acknowledged that the speech restrictions on which they focused can be enforced only locally and hence asserted that "[o]nly an international perspective can overcome the current shortsightedness of free speech absolutists and regulators alike," suggesting international legal instruments that would reflect "global consensus and positively bind[] all nations." *Id.*; *see also* Marc H. Greenberg, *A Return to Lilliput: The* LICRA v. Yahoo! *Case and the Regulation of Online Content in the World Market*, 18 BERKELEY TECH. L.J. 1191, 1193 (2003) (arguing for the development of international guidelines to address regulation of online content).

67. Again, Reidenberg was the first to be skeptical about global solutions: "[H]armonization of legal standards is not a realistic solution for global information issues." Reidenberg, *supra* note 3, at 577.

68. *See, e.g.*, PETER DRAHOS WITH JOHN BRAITHWAITE, INFORMATION FEUDALISM: WHO OWNS THE KNOWLEDGE ECONOMY? (2002) (documenting the globalization of intellectual property rights in the 1990s).

II. *YAHOO!*, NAZI MEMORABILIA, AND FREE SPEECH

The first major case that brought attention to the tension between global technology and local laws emerged in the virtual and legal gaps between the United States and France. The *LICRA v. Yahoo!*[69] case, decided by a French court with subsequent litigation in the United States, raised many issues, particularly the global-local tension: should a local French law apply to a global (in this case, American) technology? To answer this question, this part begins in Paris, before turning to Silicon Valley and consulting Reidenberg and others on the matter.

A. France

French criminal law prohibits the display of Nazi objects.[70] The historical background of the Holocaust is obvious. Although the prohibition limits speech-related activities, such limitations are permitted under French law[71] and European human rights law, namely the European Convention on Human Rights (ECHR).[72] As the decision explains, Yahoo!, the American company, at the time conducted an auctions site where users communicated directly, buying and selling items.[73] Like other consumer-to-consumer services, Yahoo! provided the platform but was not involved in the transactions. The International League Against Racism and Anti-Semitism (LICRA) and the French Union of Jewish Students (UEJF) sued Yahoo! for enabling the sales of Nazi memorabilia in France, such as Nazi uniforms, medals, and anti-Semitic texts.[74]

The Superior Court in Paris carefully distinguished between yahoo.com (the American website URL), operated by Yahoo! Inc., and yahoo.fr (the French website URL), operated by a local branch, Yahoo France.[75] In a first decision, the court ordered Yahoo! Inc. to "dissuade and render impossible any and all consultation on Yahoo.com of the auction service for Nazi objects."[76] The court ordered Yahoo France to warn users using yahoo.*fr* before clicking a link to pursue a search at yahoo.*com* for such objects.[77] The

69. Tribunal de grande instance [TGI] [ordinary court of original jurisdiction] Paris, May 22, 2000 (LICRA & UEJF v. Yahoo! Inc. & Yahoo France (LICRA I)).

70. Code pénal [C. pén.] [Penal Code] art. R645-1 (Fr.).

71. *Id.*

72. *See* Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953). Article 10(2) allows such restrictions if they are "prescribed by law and are necessary in a democratic society, in the interests of national security . . . for the protection of . . . morals." *Id.*

73. Tribunal de grande instance [TGI] [ordinary court of original jurisdiction] Paris, May 22, 2000 (LICRA & UEJF v. Yahoo! Inc. & Yahoo France (LICRA I)). At present, the service operates only in Taiwan and Japan.

74. *See* JACK GOLDSMITH & TIM WU, WHO CONTROLS THE INTERNET?: ILLUSIONS OF A BORDERLESS WORLD 1–10 (2006) (detailing the case background).

75. Tribunal de grande instance [TGI] [ordinary court of original jurisdiction] Paris, May 22, 2000 (LICRA & UEJF v. Yahoo! Inc. & Yahoo France (LICRA I)).

76. *See id.* For an early discussion of the case, see Greenberg, *supra* note 66, at 1206–10, 1213–18.

77. Tribunal de grande instance [TGI] [ordinary court of original jurisdiction] Paris, May 22, 2000 (LICRA & UEJF v. Yahoo! Inc. & Yahoo France (LICRA I)).

order further required Yahoo France to "interrupt the consultation of the relevant site."[78]

In a subsequent order, the court dismissed Yahoo! Inc.'s argument that the French court lacked jurisdiction.[79] Yahoo! argued that, technically, the French court could not enforce the orders and that, substantively, the order violated (American) free speech principles.[80] As for the former, technical argument, the court was unpersuaded. The court was confident in explaining how internet protocols and IP addresses worked by using expert testimony.[81] Following the expert testimony, the court was assured that a majority of French users could be identified as French.[82] In fact, Yahoo! used the IPs to offer advertisements to French users in French, further demonstrating that Yahoo! could identify its users' nationalities.[83] One of the experts was none other than Vinton Cerf, one of the fathers of the internet.[84] He expressed reservations regarding a proposal that users were to be asked about their nationality, raising privacy concerns.[85] The court also noted that Yahoo! already prohibited the offering for sale of some items, such as human organs, drugs, pedophile material, cigarettes, or live animals.[86] In other words, it was not that Yahoo! could not block Nazi content; it simply didn't want to.[87]

The court did not directly address the American-based free speech argument, but it clearly rejected it. Yahoo! Inc. argued that "a coercitive measure against it could not be applied in the United States because this would contravene the first amendment of the Constitution of the United States which guarantees to all citizens freedom of speech and of expression."[88] The French court did not spend much time on this argument; rather, it applied French law to what it considered an activity that took place in France.[89]

Thus, Yahoo! did not take Barlow's path that there was no law applicable to it,[90] nor did Yahoo! take Johnson and Post's path that cyberspace required a different, separate global law.[91] Instead, Yahoo! agreed that a territorial law applied to its activities; albeit, it argued that it was not the French law that was applicable but American law.[92] Yahoo! pointed to the location of

78. *Id.*
79. Tribunal de grande instance [TGI] [ordinary court of original jurisdiction] Paris, Nov. 20, 2000 (UEJF & LICRA v. Yahoo! Inc. & Yahoo France (LICRA II)).
80. *See id.*
81. *See id.*
82. *See id.*
83. *See id.*
84. *See id.*
85. *See id.*
86. *See id.*
87. *See id.*
88. *See id.*
89. *See id.*
90. *See supra* notes 23–28 and accompanying text.
91. *See supra* notes 32–38 and accompanying text.
92. Tribunal de grande instance [TGI] [ordinary court of original jurisdiction] Paris, Nov. 20, 2000 (UEJF & LICRA v. Yahoo! Inc. & Yahoo France (LICRA II)).

its incorporation and its servers as an anchor for applying American law.[93] The French court took for granted that the relevant consideration for which law to apply was the presence of French users, rather than other territorial anchors, such as Yahoo!'s place of incorporation.[94]

Yahoo! was unhappy, and in an attempt to regain control, it initiated a preemptive lawsuit in California.[95] However, in the interim, it changed its policies and prohibited hate speech, in accordance with the French court's ruling.[96]

B. United States

Yahoo! Inc. tried to block the French plaintiffs from seeking enforcement of the French order in the United States and sought a declaratory judgment that the French orders were unrecognizable and unenforceable.[97] The U.S. District Court for the Northern District of California agreed that the French orders violated the First Amendment and issued the requested declaration.[98] On appeal, the Ninth Circuit reversed the district court's judgment.[99]

Following Yahoo!'s change of policy after the French decision was published, the American judges went into great detail regarding whether Yahoo! had already complied with the French order by the time it reached American shores. In its discussion, the Ninth Circuit referred to the law that prohibited sales of Nazi memorabilia in France.[100] The court's plurality stated: "[T]he only question would involve a determination whether the First Amendment has extraterritorial application. The extent of First Amendment protection of speech accessible solely by those outside the United States is a difficult and, to some degree, unresolved issue."[101] Given that the American court was uncertain whether the French court would be satisfied with Yahoo!'s new policy, the case was not ripe.[102] The court emphasized:

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93. *See id.*

94. *See id.*

95. As reported by French lawyer Daniel Arthur Lapres, there were subsequent proceedings in France in 2004 and 2005, with criminal charges brought against the company and its CEO for violating French criminal law on the matter, but they were acquitted. *See* Daniel Arthur Lapres, *Webliography on the Yahoo Case*, LAPRES.NET, http://www.lapres.net/yahweb.html [https://perma.cc/T4X8-XF9N] (last visited Feb. 2, 2022).

96. *See* Jon Henley, *Yahoo! Agrees to Ban Auctions of Nazi Memorabilia*, GUARDIAN (Jan. 4, 2001, 11:43 AM), https://www.theguardian.com/technology/2001/jan/04/internetnews.media [https://perma.cc/T4U4-7HZ2].

97. *See* Yahoo! Inc. v. La Ligue Contre le Racisme et, l'Antisemitisme, 145 F. Supp. 2d 1168, 1171 (N.D. Cal. 2001).

98. *See* Yahoo! Inc. v. La Ligue Contre le Racisme et l'Antisemitisme, 169 F. Supp. 2d 1181, 1183, 1186–94 (N.D. Cal. 2001).

99. *See* Yahoo! Inc. v. La Ligue Contre le Racisme et l'Antisemitisme, 433 F.3d 1199, 1224 (9th Cir.) (en banc), *cert. denied*, 547 U.S. 1163 (2006). Three judges of the en banc panel concluded that the case was not ripe. *See id.* at 1211–24. Three other judges concurred in judgment but thought that the court lacked personal jursidiction. *See id.* at 1224–28 (Ferguson, J., concurring). For the conclusion of the various opinions, see *id.* at 1224 (plurality opinion).

100. *See id.* at 1202–03.

101. *Id.* at 1217.

102. *See id.* at 1217–18, 1221–24.

"[T]he French court's interim orders do not by their terms require Yahoo! to restrict access by Internet users in the United States. They only require it to restrict access by users located in France."[103] The dissent focused primarily on the First Amendment in its analysis, concluding that the French order was vague and overbroad regarding the prohibited items and content and hence had a chilling effect on speech.[104] The U.S. Supreme Court denied certiorari.[105]

Thus, the question persists: which law applies to a global company operating in numerous jurisdictions?[106] The jurisdictional question is a proxy for the substantive norms that apply. In this case, was it the First Amendment to the U.S. Constitution, with its strong objection to any content-based restrictions, or the French criminal law that prohibited hate speech? Nevertheless, some common grounds were also evident. As Reidenberg observed in 2003, the French court, the U.S. district court, and the Ninth Circuit's dissent agreed that national law applied to the internet, but they disagreed as to which law and how.[107]

C. Global or Local?

In a 2001 article, Reidenberg offered a serious, in-depth analysis of the French case and its ramifications.[108] He unapologetically supported the French decision.[109] His reading of the case ran against the mainstream commentary in the United States, where the French decision was met with criticism on First Amendment grounds.[110] Yahoo!, Reidenberg emphasized, had an active presence in France: it was doing business there.[111] In this sense, he argued, the case was an ordinary one, applying basic jurisdictional principles.[112] Indeed, it was similar to the American jurisdictional principle of purposeful activity: when a foreign entity purposely avails itself to the forum, it is subject to its laws.[113]

Nevertheless, this case, Reidenberg observed, was about more than applying offline jurisdiction principles to the internet. First, he saw it as a significant step in the internationalization of the internet, going beyond

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103. *Id.* at 1221.

104. *Id.* at 1233–37, 1243–45, 1252–53 (Fisher, J., concurring in part and dissenting in part).

105. La Ligue Contre le Racisme et l'Antisemitisme v. Yahoo! Inc., 547 U.S. 1163 (May 30, 2006) (No. 05-1302) (mem.).

106. For an early discussion, see Michael A. Geist, *Is There a There There?: Toward Greater Certainty for Internet Jurisdiction*, 16 BERKELEY TECH. L.J. 1345 (2001).

107. *See* Reidenberg, *supra* note 19, at 216 (referring to both the French and American decisions, writing that they "illustrate both the profound obligation of states to execute their democratically chosen policies, and the need for states to transpose enforcement powers online").

108. *See generally* Joel R. Reidenberg, *Yahoo and Democracy on the Internet*, 42 JURIMETRICS 261 (2002).

109. *See generally id.*

110. *See generally id.*

111. *See id.* at 267.

112. *See id.* at 263.

113. *See id.* at 269.

American origins.[114] Second, Reidenberg saw the case as the victory of the law over technology, or more accurately, over technologists.[115] This observation built on his prior work concerning the power of technology to regulate human behavior, a power which he argued should be exercised by the state, rather than by technologists (and the companies that employ them).[116]

The recognition of the regulatory power of technology presupposed that technology embeds values. This insight is a fundamental premise of science, technology, and society studies.[117] According to this premise, technology is not merely a tool; it should always be treated as carrying values, embedded in them, either deliberately by the designers (who are situated in a social and legal environment) or by the users (who construct the technology's meaning). Once we acknowledge the social dimension of technology, we can ask various questions: Who embeds the values? Which values are prioritized over others?

In practice, it was the developers and the emerging industry that made the design choices. Since the first major internet companies were American, the values the developers embedded in the internet architecture were, unsurprisingly, influenced by American values, especially the First Amendment, and by the separatist view (i.e., that the internet is an independent space) echoing Barlow's declaration.[118] Accordingly, for Reidenberg, the French decision had important political implications. He argued that it meant that "[s]tates prove that sovereignty still matters in cyberspace" and that it "shifts this rule-making power back to political representatives."[119] More generally, he pointed to accountability as an important value: "Public accountability under national law rejects the Internet separatists' view that technologists should determine the network rules for democratic society."[120]

In another article, he argued that democratic states have an *obligation* to enforce their laws online.[121] Indeed, his analysis was a principled one. He recognized the regulatory power of technology, implicitly accepting its value-laden character, and thought that there should be a lexical order in which states may use technology as a regulatory tool but that "technology" cannot act on itself.[122] Moreover, for Reidenberg, sovereignty not only

114. *See id.* at 271–72.
115. *See id.* at 272.
116. *See generally* Reidenberg, *supra* note 3.
117. For an early discussion, see Robin Williams & David Edge, *The Social Shaping of Technology*, 25 RSCH. POL'Y 865 (1996) (reviewing studies of social shaping of information technologies); HUMAN VALUES AND THE DESIGN OF COMPUTER TECHNOLOGY (Batya Friedman ed., 1997) (discussing various questions based on the premise that technology is not value-neutral).
118. Reidenberg, *supra* note 108, at 272–74. Reidenberg did not mention Barlow in this context.
119. *Id.* at 272.
120. *Id.* at 276.
121. *See* Reidenberg, *supra* note 19, at 216.
122. *See generally id.* at 216–17.

legitimized the enforcement of a country's law online but required it.[123] As for the values at stake, Reidenberg did not make an explicit judgment but deferred to the French choice, as applied to an activity that took place in France.[124]

Other scholars joined in defending the deglobalization of the once global information infrastructure. Professors Jack Goldsmith and Tim Wu, for example,[125] pointed to three reasons for the "global network . . . becoming a collection of nation-state networks"[126]: (1) people's interest and need for content in their language reflecting local culture, (2) technological developments that enabled geo-identification, and (3) the enforcement of national laws.[127] These three reasons are deeply interrelated. Local laws should reflect the history, culture, and shared values of a political community; technology is a tool that enables states to impose their laws.

The French *Yahoo!* case dealt with a country imposing its local values, through its law, on what France considered a French virtual space. Score years later, Barlow's wish for independence is all but history; Reidenberg's support for state sovereignty in the online sphere is the practice.

III. GOOGLE, FORGETTING, AND PRIVACY

Speech restrictions often reflect local values. Whereas other human rights may be less politically and culturally controversial, their scope and power vary in different countries.[128] Privacy is one example. Should the right to privacy be recognized and enforced outside of one's domicile? In most cases, one's privacy matters most within the person's community. How many Slovenians care about what someone in Chile, who they have never met nor are they likely to meet, knows about them? However, in the online global village, some individuals' personas may receive broader, extraterritorial attention. Immigrants, foreign business partners (e.g., an Airbnb host or a restaurant), or academics (e.g., an Israeli academic publishing with the *Fordham Law Review*) may care about their reputation beyond their immediate geographical community. In such cases, can we claim that our rights deserve global protection?

The 2019 judgment of the CJEU in *Google LLC v. CNIL*[129] dealt with the global reach of human rights online. But first, a short detour to Spain, to present the right to be forgotten.

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123. *See generally id.*
124. *See generally id.*
125. GOLDSMITH & WU, *supra* note 74, *passim*.
126. *Id.* at 149.
127. *See id.* at 149–50.
128. *See* Michael D. Birnhack, *Global Copyright, Local Speech*, 24 CARDOZO ARTS & ENT. L.J. 491, 537 (2006).
129. Case C-507/17, Google LLC v. Commission Nationale de l'Informatique et des Libertés (CNIL), ECLI:EU:C:2019:772 (Sept. 24, 2019).

A. The Right to Be Forgotten

In 2009, Mario Costeja González did what was once considered a vanity search and today should be a regular measure of managing one's self-impression: he googled himself.[130] He found out that *La Vanguardia*, a leading Catalonian newspaper and one of the leading newspapers in Spain, digitized its archive.[131] To his surprise, one of the results was a brief notice on page thirteen of the March 9, 1998, edition, announcing an auction for Mr. Costeja González and his wife's house due to outstanding debts.[132] Being a financial advisor, he was unhappy: whatever financial issues he had in 1998 were long gone by 2009.[133] Costeja González wanted the obsolete notice to return to oblivion.[134] Both the newspaper and Google declined to delete the notice, but the Spanish data protection (i.e., privacy) regulator, supported him in his efforts to remove the information from Google search results but not from the newspaper's archives.[135] The case went to court and eventually reached the highest instance in the EU—the CJEU. Its landmark decision was handed down in May 2014,[136] and the decision gave birth to the right to be forgotten.

The CJEU reviewed the case against the background of the 1995 Data Protection Directive,[137] the predecessor of the more famous General Data Protection Regulation (GDPR).[138] The Directive was silent about deleting personal data. The CJEU found that Google processed and controlled "personal data," as defined in the Directive, and hence it was obliged to meet the Directive's requirements,[139] including the requirement that personal data must be "adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed."[140] Moreover, the CJEU determined that since Google established a branch in Spain, it processed the data in Spain[141] and that the 1998 auction notice was no longer relevant in

130. For vanity searches, see Catherine C. Marshall & Siân E. Lindley, *Searching for Myself: Motivations and Strategies for Self-Search*, CHI 2014: ONE OF A CHIND CONFERENCE PROCEEDINGS 3675 (2014).

131. *See generally Hemeroteca*, LA VANGUARDIA, https://www.lavanguardia.com/hemeroteca [https://perma.cc/WZ36-6A5C] (last visited Feb. 2, 2022).

132. *See Venda Directa D'immobles*, LA VANGUARDIA, Mar. 9, 1998, at 13, http://hemeroteca.lavanguardia.com/preview/2013/02/27/pagina-13/33837533/pdf.html [https://perma.cc/V28H-NGD4].

133. *See* Andreas Marckmann Andreassen, *Nine Lines That Changed History–At Least on the Internet*, EUOBSERVER (Sept. 13, 2017, 8:52 AM), https://euobserver.com/digital/138958 [https://perma.cc/WT3J-VWBY].

134. *See id.*

135. *See id.*

136. *See* Case C-131/12, Google Spain SL v. Agencia Española de Protección de Datos (AEPD), ECLI:EU:C:2014:317 (May 13, 2014).

137. Directive 95/46/EC, of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 1995 O.J. (L 281) 31, 31 (EU) [hereinafter 1995 Directive].

138. *See* GDPR, *supra* note 8.

139. *Google Spain SL,* ECLI:EU:C:2014:317, ¶¶ 21–41.

140. *See* 1995 Directive, *supra* note 137, art. 6(1)(c); *Google Spain SL,* ECLI:EU:C:2014:317, ¶ 94.

141. *Id.* ¶¶ 42–61.

2014.[142] The CJEU concluded that (European) people have the right to require that certain search results be no longer linked to their names,[143] even if the original publication stays intact.[144] The GDPR replaced the Directive in May 2018,[145] explicitly anchoring the right to be forgotten or, more precisely, the right to erasure,[146] also known as delinking or dereferencing.[147]

Europeans now routinely exercise this right, and internet platforms review requests for erasure of search results.[148] However, the right applies only to people in Europe or, more accurately, only regarding a European virtual sphere. What is the global scope of the right? This issue was decided by the CJEU in 2019.[149]

B. Google v. CNIL

At stake in this case were four right-to-be-forgotten cases. Google was willing to delink certain search results.[150] The dispute was about the territorial scope of the right: Does it apply only within a particular European country (it was France, once again)? Does it apply throughout each of the EU's twenty-seven member states? Or perhaps, should it even have a global reach?[151] I call these options the *local*, *European*, and *global* options, respectively. Google argued for the local option and embedded it in its technological design; namely, users were redirected to the Google extension of the country from which they accessed the search engine.[152] For example,

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142. *Id.* ¶¶ 98–99.

143. *Id.* ¶¶ 89–99.

144. *Id.* ¶¶ 62–88. The court set some guidelines as to the interpretation and application of the right. For discussion of the right to be forgotten, predating the CJEU's decision, see VIKTOR MAYER-SCHÖNBERGER, DELETE: THE VIRTUE OF FORGETTING IN THE DIGITAL AGE (2009). For a comparative and theoretical discussion, see MEG LETA JONES, CTRL+Z: THE RIGHT TO BE FORGOTTEN (2016) (arguing that the right should be reconceptualized as a matter of informational stewardship).

145. *See* GDPR, *supra* note 8, art. 94(1).

146. *Id.* art. 17; *see also id.* at recitals 65–66.

147. For these terms for the right to be forgotten, see, e.g., CATALINA BOTERO MARINO ET AL., DEMOCRACY IN THE DIGITAL AGE: FREEDOM OF EXPRESSION IN THE AMERICAS AND EUROPE'S 'RIGHT TO BE FORGOTTEN' 3 (2017), https://media.sipiapa.org/adjuntos/186/documentos/001/818/0001818489.pdf [https://perma.cc/V8C7-W3RJ].

148. Google offers some data about such requests. *See Google Transparency Report: Requests to Delist Content Under European Privacy Law*, GOOGLE, https://transparencyreport.google.com/eu-privacy/overview?hl=en [https://perma.cc/W6F4-6ZZP] (last visited Feb. 2, 2022).

149. *See* Case C-507/17, Google LLC v. Commission Nationale de l'Informatique et des Libertés (CNIL), ECLI:EU:C:2019:772 (Sept. 24, 2019).

150. The CJEU's opinion does not state the facts; those are found in news reports. *See, e.g.*, Foo Yun Chee, *You Have the Right to Be Forgotten by Google–But Only in Europe*, REUTERS (Sept. 24, 2019, 4:15 AM), https://www.reuters.com/article/us-eu-alphabet-privacy/you-have-the-right-to-be-forgotten-by-google-but-only-in-europe-idUSKBN1W90R5 [https://perma.cc/P4X4-LT9Z]. The cases concerned "a satirical photomontage of a female politician, an article referring to someone as a public relations officer of the Church of Scientology, the placing under investigation of a male politician and the conviction of someone for sexual assaults against minors." *Id.*

151. *See generally Google LLC*, ECLI:EU:C:2019:772.

152. *See id.* ¶ 42.

even if a French user typed "google.co.uk," the user received search results from google.fr. Results that had been deleted from the French domain were not shown to the user in France.[153] The French data protection regulator, Commission Nationale de l'Informatique et des Libertés (CNIL), argued for the global option.[154] The CJEU adopted the European option but with a local qualification.

The CJEU noted the global dimension of the internet[155] and placed the user ("data subject" in European privacy parlance) at center stage: "In a globalised world, internet users' access—including those outside the Union—to the referencing of a link referring to information regarding a person whose centre of interests is situated in the Union is thus likely to have immediate and substantial effects on that person within the Union itself."[156] However, the CJEU acknowledged that other countries had not recognized the right to be forgotten.[157] Absent explicit authorizing language in either the Directive or the GDPR, the CJEU concluded that under EU law, a European regulator cannot require Google to undertake global dereferencing.[158] Given the European harmonization mission of the GDPR, the dereferencing should take place within the entire EU.[159] The CJEU then added a qualification, which seems to have confused some non-European commentators, that while current EU law did not require global dereferencing, it did not prohibit it either.[160] Thus, a local European regulator or court may, after balancing all rights and interests at stake, order global dereferencing.

What can be made of this case? Unlike Yahoo! twenty years earlier, Google did not claim it was subject only to American law, and it fully accepted that a local law applied to a virtual space, corresponding to the user's location. The determining factor was the location of the user, which it could easily identify. Accordingly, Google tailored its services to each user. It redrew the physical borders onto a virtual space. The CJEU, like the French court at the time, did not opt for an imperialist global view. As the CJEU respects other countries' legal choices, it limited its ruling to the European level. However, the additional comment left the door open for a local regulator or court to take the global option.

Conceptualized in Reidenberg's terms, we can say that the law won once again in its battle with technologists, as the CJEU insisted that the law, and not Google's virtual map drawing, determined the result.[161] Geolocation is

153. *See generally id.*
154. *See id.* ¶¶ 30–32.
155. *Id.* ¶ 56 ("The internet is a global network without borders . . . .").
156. *Id.* ¶ 57.
157. *Id.* ¶ 59.
158. *See id.* ¶¶ 64–65.
159. *See id.* ¶¶ 66–69.
160. *Id.* ¶ 72.
161. Sometimes, this linguistic metaphor of virtual map drawing becomes real. In its "Maps" service, regarding controversial borders, such as those between India and Pakistan, Google presents different political maps to different users, according to each user's location. *See* Greg Bensinger, *Google Redraws the Borders on Maps Depending on Who's Looking*,

an important tool in applying the legal decision, but it is only a tool at the service of the law. This decision, that each political unit (the EU, in this case) decides for itself the rules that apply in its space, reinforcing its legitimate power and being careful not to exceed its territory, appears congruent with Reidenberg's position. The decision also fits Goldsmith and Wu's argument.[162] Johnson and Post, even if reluctantly, should also acknowledge the legitimacy of the decision, as they justified geography-based law when there were attributes of power, effects, legitimacy, and notice.[163]

CODA: THE GLOCAL NET

Over the past twenty years, courts worldwide have ruled on numerous cases of extraterritorial laws involving cross-border internet jurisdiction disputes.[164] These cases have generated a lively scholarly conversation about the independence of cyberspace or its subordination to conventional territorial laws. This Essay discussed two focal points, one from 2000 and the other from 2019, in order to zoom out, with the help of Joel Reidenberg's innovative scholarship.

At present, the law has won over technologists, and no one seriously doubts that it applies online.[165] Local laws were imposed on virtual spaces, corresponding to physical territories, with IP addresses serving as virtual borders. The localization of the internet enables each country to apply its set of values rather than be subject to foreign laws, whether they set a higher or lower standard in terms of human rights, especially regarding free speech and privacy. Indeed, Goldsmith and Wu argued that "[a] bordered Internet is valuable precisely because it permits people of different value systems to coexist on the same planet."[166] Reidenberg would probably emphasize sovereignty. Whereas Barlow's declaration remains beautiful and perhaps inspiring, it is utopian and too libertarian for my taste.[167] In retrospect, we can ask who were the "we" on whose behalf Barlow spoke and who resisted governmental intervention? With over 3.8 billion people in the world who have access to the internet,[168] the only plausible way to act together is through the political arrangements we already have—namely, states with all the deficiencies they do indeed have. As a global consensus is unrealistic, we remain with the localized net.

WASH. POST (Feb. 14, 2020), https://www.washingtonpost.com/technology/2020/02/14/google-maps-political-borders/ [https://perma.cc/ZH2L-AHJ7].

162. *See supra* notes 125–27 and accompanying text.

163. *See supra* notes 32–36 and accompanying text.

164. See extensive discussion in PEDRO DE MIGUEL ASENSIO, CONFLICT OF LAWS AND THE INTERNET (2020).

165. Michael Geist observed this shift early in the day. *See* Michael Geist, *Cyberlaw 2.0*, 44 B.C. L. REV. 323, 332–35 (2003).

166. GOLDSMITH & WU, *supra* note 74, at 152.

167. *See generally* Netanel, *supra* note 14 (critiquing the idea that cyberspace should be a self-governing zone). In fact, Netanel argued that liberal principles support a democratic country's extraterritorial application of its laws. *Id.* at 496.

168. *See* FREEDOM HOUSE, *supra* note 57, at 2.

However, what are we missing? A fully localized internet would lose one of the most prominent and dominant features of the net: our ability to interact with other people in other places, to share views and experiences, to engage and converse. The global dimension of the internet enables us to learn and question our values and either adapt or reconfirm them. A fully globalized internet, on the other end, would erase our local traditions, values, and self-government.

The ideal could be to encompass both the local and global dimensions simultaneously. This is what happens when the global and the local meet: they produce something new, which is not quite either of them but incorporates features of both. This is the *glocal* situation, long recognized by sociologists. One sociologist defined "glocalization" as "the interpenetration of the global and the local resulting in unique outcomes in different geographic areas."[169] Elsewhere, I described glocalization as "a social space where an unstable, often unpredictable, dialectic relationship takes place between the global and the local."[170]

Rather than being merely a description of the state of affairs, the *glocal net* can serve as a vision. Translating it into practice is not easy. Still, by building on the metaphor of territorial borders imposed on a virtual space, perhaps we can adapt other mechanisms. For example, when citizens of one country visit other countries, they may need a visa, and border controls inform visitors that they are now in a foreign country and subject to its laws. Can we treat our virtual interactions similarly, like online tourism? An important factor that should not be forgotten here is asymmetries of power.[171] We can play more with this idea, trying to achieve the best of all possible worlds. Either way, Joel's scholarship will always be there to guide us in this choice.

169. GEORGE RITZER, THE GLOBALIZATION OF NOTHING 73 (2004).

170. Birnhack, *supra* note 128, at 504–05.

171. *See* Michael Birnhack, *Informational Services: Going Online, Global, and Local Again*, 108 AM. J. INT'L L. 562, 564 (2014) (reviewing ANUPAM CHANDER, THE ELECTRONIC SILK ROAD: HOW THE WEB BINDS THE WORLD TOGETHER IN COMMERCE (2013)).