

Foreword

The global debate on internet regulation has evolved from the question of whether Internet regulation is desirable to questions with answers that depend on the context and geographic location where they are asked; what areas of law require regulation of activities on the Internet; what type of regulation is preferable and effective, and for what purposes.

Latin American countries have taken a few timid steps toward Internet regulation. Initiatives have looked to the United States and Europe, where more Internet regulation exists. Legislative and public debates reflect international discussions governed by the—sometimes conflicting—interests of users, companies operating on the Internet, and policymakers. The debates also reflect the history, principles, and cultural values underlying legislation in Latin American countries.

What policies should be adopted in the region to promote Internet access? To what extent should Internet service providers be responsible for monitoring and avoiding illegal acts committed on the Internet? How should intellectual property rights and related rights respond to new practices of publication and access to online content? How should criminal law be adjusted to certain behaviors on the Internet? How do public and private policies originating in other countries affect Internet access, online privacy, and economic development in Latin America?

In recent years, Latin American countries have begun to formulate some answers to these questions. Laws have been adopted and bills have been introduced in the region in the areas of child protection; discrimination; intellectual property; telecommunications; defamation; protection of personal data; Internet neutrality; regulation of content on the Internet; regulation of Internet access; and liability of Internet service providers, among others.

At the Center for Studies on Freedom of Expression and Access to Information (CELE) at the University of Palermo, Argentina, we have asked ourselves various questions: In what way do these policies affect the exercise of freedom of expression on the Internet? What is the connection between the responsibility of Internet service providers and freedom of expression? What incentives are created for users and companies—in relation to the full exercise of freedom of expression—by the adoption of one system of civil and legal responsibility versus another? How are the protection of personal data and the right to privacy linked to freedom of expression? In which cases should filtering of certain types of online expression be permitted by governments or private companies and is this activity equatable with prior censorship prohibited by article 13 of the American Convention on Human Rights? What criteria should be adopted by courts on territorial jurisdiction in cases of defamation involving online content?

The papers in this publication raise some of these questions, not with the intention of arriving at solutions, but with the idea of posing some of the legal questions involved in these topics and contemplating the effect that possible policies could have on freedom of expression. This book aims to be a guide to assist academics, professionals and policymakers as they consider these questions.

This book is the result of CELE's project on Freedom of Expression and the Internet, carried out during 2011 with the objective of exploring the impact of legislation, case law and Internet policies on freedom of speech in some Latin American countries in relation to the proposed topics.

Since 2010, CELE has studied issues related to freedom of expression and the Internet. In October, 2010, the University of Palermo was the site of the "Latin America Experts' Meeting on Freedom of Expression and the Internet", organized by Frank La Rue, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. The questions debated on this occasion indicated the need for a more thorough study of these subjects in the region. Our 2011 project was guided by the aim to gain more knowledge in these areas, which we have strived to achieve by consulting experts, building closer ties with local and international organizations dedicated to these issues, and participating in regional and international conferences.

The papers included in this publication were elaborated by prominent academics from within the Latin American region and beyond, including contributors from Brazil, Colombia, Chile, Argentina, Puerto Rico, and the United States. Among them are legal experts specializing in legal aspects of new technologies, Internet law, telecommunications, criminal law, intellectual property law, and freedom of expression law.

To complement the research developed in the framework of the project, CELE organized the regional workshop "Freedom of Expression and the Internet: Regulatory Aspects in Latin America", held on September 12 and 13, 2011 at the University of Palermo. Some of the papers published here were presented at the workshop and the conclusions CELE compiled from workshop discussions are included in this publication. This workshop was possible with the support of Google Inc.

Finally, CELE would like to express our gratitude for the support of Open Society Foundations for the realization of this project. We would also like to thank those who contributed papers for this publication and the staff and interns at our Center for their valuable contributions to this project.

We hope that this debate will be as enlightening for readers as it has been for us.

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