IS INTERNET AN EMBRYO OF A NEW LEGAL CULTURE?

ONDŘEJ ANTOŠ

Faculty of Law, Masaryk University, Czech Republic

Abstract in original language
May internet be a new developing legal culture? This article is focused on basic principles defining legal cultures and is established on the work of a media theorist Marshall McLuhan, who's considered to be one of the most influential media theorist ever. In my article, legal culture as a social phenomenon is explored through three main aspects. Those are economic, social and religious. All three aspects are separately critically analyzed through the work of distinguished comparative lawyers Hein Kötz and Konrad Zweigert.

Key words in original language
Internet, legal culture, Marshall McLuhan, media, substance.

Abstract
May internet be a new developing legal culture? This article is focused on basic principles defining legal cultures and is established on the work of a media theorist Marshall McLuhan, who's considered to be one of the most influential media theorist ever. In my article, legal culture as a social phenomenon is explored through three main aspects. Those are economic, social and religious. All three aspects are separately critically analyzed through the work of distinguished comparative lawyers Hein Kötz and Konrad Zweigert.

Key words
Internet, legal culture, Marshall McLuhan, media, substance.

"But often the comparatist must go beyond the purely legal devices, for he finds that the function performed in his own system by a rule of law is performed in a foreign system not by a legal rule at all, but an extralegal phenomenon."[1]

---

[1] Kötz, H., Zweigert, K., 1998, An Introduction to Comparative Law, Third Edition, Oxford UP,

Oxford. P. 63.

1. Introduction

Internet in its various forms like websites, apps, readers, hypertext and ebooks is getting more and more involved in our daily operations. The complexity of services and transactions which are possible to conduct through internet as a single medium is unprecedented in the history of human kind. On the other hand, internet rises more questions than it answers. Are there new standards of human behaviour developing on the internet? Are there never-before-seen economic opportunities? Does the religion changes itself through the internet? May there be a such thing as a belief in the internet itself?

I intend to examine these questions in this paper. This article should be understood as a quick introduction to a very complicated field of study and, under no circumstances, should it be taken as a thorough examination of all socio-legal aspects of internet.

2. Marshall McLuhan and the media

When talking about internet as a medium, we ought to try to define it's basis. Since one of my great sources of inspiration for this article is the work of a Canadian media theorist Marshall McLuhan, I am going to work with a very wide definition of media. McLuhan understands that medium as anything which somehow enhances human senses and capabilities.[2] For example, simple wheel should be viewed as a medium, because it enables

---

[2] McLuhan, M. 2000, Člověk, média a elektronická kultura: výbor z díla, Jota, Brno. P. 415.

human beings to achieve tasks which he wouldn't be able to do without it, or at least not on such a vast scale.

Crucial idea in McLuhan's work is the distinction between *"hot"* and *"cool"* media. McLuhan created a distinction to differentiate between media that need a lot of participation from the user and those which do not.[3]

Hot media require a very low amount of participation. Because of the nature of hot media, they supply the user with a *"high definition image"* which does not leave much space for the user to fill in the gaps. That is because the gaps are very small or the information is presented in a way which does not display gaps in presented information to the final user. Hot media are always taking advantage of a single human sense. As an obvious example, book is focused just on sight or radio is focused on hearing. McLuhan believes that hot media, especially books, enabled by the invention of letterpress printing by Johannes Guttenberg in about 1440 AD created western civilization as we know it. McLuhan calls the western civilization a visual culture because of the dominance of human sight.[4]

On contrary, *"cool"* media allow the user to fill in the information which are presented, because they are *"low definition"* and therefore leave the user with a considerable amount of space to be filled in. McLuhan understands television as a cool medium, he refers to the invention of television as a start of a new era of approach to information. Inevitably, McLuhan made some predictions which are today seen as preposterous, but he was correct in

---

[3] McLuhan, M. 2000, Člověk, média a elektronická kultura: výbor z díla, Jota, Brno. P. 415.

[4] McLuhan, M. 2000, Člověk, média a elektronická kultura: výbor z díla, Jota, Brno. P. 415.

predicting that we have a different approach to information than we had before the television became widespread. In the days before television came, people were used to gather information only from hot media. During the spread of television, people had to find a balance between different approaches to hot and cool media. The idea of adopting different approaches to different media is even more obvious in the case of internet. Today's internet environment incorporates many media at the same time. A nice example are news websites which usually supply the user with a written text (using hypertext), video, audio podcast (reminiscence of radio) and sometimes some form of interactive layer as well. All media involved must be approached differently by the user to achieve maximum understanding of the information.

2. The Substance

One of the key ideas of this work is the concept of substance,[5] which is the element legal cultures or families are based upon. Substance is essentially a circle of common values which the legitimacy of a legal culture or legal family is derived from.[6] This means that there has to be a set of common values – a substance – to justify internet as a new legal culture. Those values are discussed further in the article.

---

[5] Kötz, H., Zweigert, K., 1998, An Introduction to Comparative Law, Third Edition, Oxford UP,

Oxford. P. 63.

[6] Kötz, H., Zweigert, K., 1998, An Introduction to Comparative Law, Third Edition, Oxford UP,

Oxford. P. 63.

3. Internet Culture Test – 3 main components

In the research of various legal cultures I have decided to create a simple test which would allow me to specify the key features of a possible new legal culture.

Since all the legal cultures I have examined are defined by three major substances: social, religious and economic, the test is be based on those substances. Basic criteria is whether the usage of internet-based services in the three substance circles is substantially different compared to the ones in the *"real world"*. I admit that this simple distinction of three basic components may be too general and that some institutes or interactions will be very difficult to add to any particular of those three categories. However, I believe it to be sufficient for the purposes of this short article. Considering the fact that the term *"social"* is very wide, I am using it in this work in the following meaning: *"fashion of human interaction leaving out purely economic or religious aspects"*.

The result must be based on the degree of difference to the *"real world"* behaviour. In other words, particular intensity of difference to the existing standards of behaviour is to be very strong to prove a possible existence of a new legal culture. Such result would render existing legal norms across world's jurisdictions obsolete for the internet environment.

The state of being obsolete may also mean some definitions and understanding of legal institutes are so different to the *"real world"* that even if the rules could be applied to such behaviour, the law formally and materially does not acknowledge those objects in legal sense. This could very possibly be the case of *"virtual ownership"* which is examined later in the article.

Religious component seems to be simple to be met. The religious component is included in my test mostly for the purpose of synthesis with the other two components. Religion plays a very important role and partially determines the legal culture itself. I believe every legal culture must recognize the idea of a human belief as something immaterial. Legal culture must be able to work with such a concept and must acknowledge it. The basis for existing religions in cyberspace is for it to be transmitted through it. However, there could be another point of view on this matter, which is the idea of believing in the internet as entity. This will be examined in a separate article.

The last of the test components is the economic value and economic possibilities to offer. This criteria are difficult to be defined precisely, mostly because it varies from country to country. For example, in technology friendly countries like the USA, Japan or the United Kingdom, economic strength of the internet is significant and is on the rise even during the world's economic slowdown. Recently, a study showed that just the online business alone is worth around 100 billion Pounds a year in the UK alone. That is around 7 % of annual GDP of Great Britain.[7] This number may look insignificant compared to the fact that almost 50% of the UK tax income is generated by the banks and other financial institutions from London's City district, but we have to consider that a lot of this trade is

---

[7] Simon, E. (2010). *Does hi-tech mean high returns for investors?*. Available: http://www.telegraph.co.uk/finance/personalfinance/investing/8112252/Does-hi-tech-mean-highreturns-

for-investors.html. Last accessed 29th Nov 2010.

enabled by the existence of the Internet as a technology.[8] In a recent article written by Chris Anderson and Michael Wolff *"The Web Is Dead. Long Live The Internet"*, the authors expressed an opinion that the World Wide Web as a tool to access internet is in decline. They made a strong statement that the days in which *the Internet* and World Wide Web were the same thing are over. In my view this means that we can also include the international financial markets in the Internet as well, because internet is no longer tied to a specific technology, but it rendered the free electronic exchange of information independent.[9]

4. Is internet a medium?

In order to ensure multi-spectral analysis, we must analyze internet as a medium. As stated above, internet is a medium for sharing information. Since it is something we cannot compare to any other medium existing, we should examine internet through McLuhan's optics. Is internet cool or hot medium? Bearing in mind the famous quotation *"the medium is the message"*[10] , we must conclude that internet is an exceptionally cool medium. Using internet requires filling in information by the user. Even the information which are considered to be hot presented by their original transmission technology are cool in the internet environment. The reason for this phenomenon is the way that internet technology displays data to the final user. User is required to actively participate when searching for information. Internet and all cyber-means of transporting information are

---

[8] Anderson, G (2009). *Cityboy - Beer and Loathing In The Square Mile*. London: Headline. p 432.

[9] Anderson, C., Wolff, M.. (2010). *The Web Is Dead. Long Live the Internet.* Available: http://www.wired.com/magazine/2010/08/ff_webrip/. Last accessed 29th Nov 2010

[10] McLuhan, M. 2000, Člověk, média a elektronická kultura: výbor z díla, Jota, Brno. P. 415.

bringing us a new challenge. Should the parts of user interface which are specifically designed to navigate the user to the substantive information be considered technology or information? In my opinion they are a sort of intersection. This element gives internet its special nature which lies in the fact that the technology cannot be separated from the media and therefore from the information which is carrying.

A nice illustration is an example of a written text. Such text can be accessed through various technologies. It can be printed on a paper, it can be viewed using a computer, e-reader, tablet, smartphone, it can be written on a wall, etc. However if you remove the user interface, internet and information stored on the internet will not be accessible. Some may object that information stored on the internet are accessible through various technology as well, for example text on the internet can be printed on paper, video can be transmitted through television and audio podcasts can be streamed through traditional radio. That is all true, however the uniqueness of internet is to be found in the mixture of all kinds of media with a very high rate of interactivity on the top which is not to be seen in other media.

This mixture is very difficult to be precisely understood through the known media theory. What makes it difficult is the interactivity present in current internet access technology. In layman terms, does the interactivity of internet constitute a new medium or is it just a new use of old media and only the new layer of interaction should be considered a new medium? I believe network theories or complexity theories can offer an answer, which will be examined further in the article. During the work on this article, I have drafted three possible understandings of internet as a medium.

1. Internet should be understood as a new medium only on the scale of the new technology constituting a different use of information. It is possible to separate the old media in its original condition.

2. The quotation *"the medium is the message"* is invalid because old media are able to exist and *"live"* in a completely new technological environment without changing themselves. Is it possible to divide technological interaction and media from the usage of the medium itself?

3. Original media developed through the presence of a new technology to a new media. Therefore, what seems to be old media accessible through new technology is new media functioning within the internet.

Ad. I.

If we consider the first thesis to be valid, the terminology is ought to be cleared. The first modification is to understand the difference between *"use"* of a medium and its *"operation"*.

The Oxford dictionary defines the word use as *"to do something with a machine, a method, an object, etc. for a particular purpose"*.[11] Operation as a term is defined: *"working, being used or having an effect"*.[12] The clear distinction is in the purpose of this action. It is thoroughly important to state a difference between these two terms. As mentioned before, internet gathers

---

[11] Ashby, M., Wehmeier, S. (2000). *Oxford Advanced Learner's Dictionary of Current English*. Oxford:

Oxford UP.

[12] Ashby, M., Wehmeier, S. (2000). *Oxford Advanced Learner's Dictionary of Current English*. Oxford:

Oxford UP.

old and new media at the same time using new technological means compared to the original technologies, media were based on. To keep the quotation *"the medium is the message"* valid, we have to presume the existence of old media up to their original extent through a new technology.

If we differentiate the use of new and old media within the internet, we would be able to find that the use of the media has not changed. Internet and its new features enabled a new interaction around already existing media. There are simple extensions of the old media like allowing users to post comments next to articles on newspaper websites and elaborate ones, for example Pandora internet radio service which allows its users to connect it with Facebook account and based on information given to Facebook about your musical tastes and other information,[13] algorithm creates a selection of music to user's liking and lets the user stream that selection directly to any device which can run (understand) Pandora protocols. However, if we strip down the novelty of the execution, it is only an equivalent to calling to a radio station and listener's demand to play particular song. Therefore the medium is still the same, only the operation and the scale of use of a medium is different.

Ad 2.

Concerning this thesis we should argue what constitutes for a change in this context. In my view,

---

[13] Pandora, Inc.. (2010). *How do I use my Facebook account to personalize Pandora?* . Available:

http://blog.pandora.com/faq/contents/10010.html. Last accessed 29th Nov 2010.

a change must be interpreted as a change in behaviour of the user towards a particular medium. The nature of a medium should then remain unchanged concerning itself and the extension of such medium provided by different technology is to be regarded as a part of a new medium and not in connection or a particle of the original medium.

I believe this thesis should be dismissed as untrue. In the previously mentioned case of internet based radio - Pandora it is the user's behaviour towards the original media in new technological environment that is changing. The thesis would be true if the behaviour was towards the new parts of a medium. However, they cannot be towards the new parts because then it would not carry any benefit for the user, his operation of the medium would not result in the use of the medium. The operations undertaken by the user must ultimately result in the use of a medium to be considered as being *"towards"* the medium. Therefore *"the medium is the message"* must be valid and the original thesis should be regarded as untrue.

Ad. 3.

I believe the above mentioned premise to be premature for the current state of internet. There are signs in some particular cases which support the thesis but are not in my opinion carried out to sufficient extent that would constitute them new media. A nice example is the popular video-on-demand service Youtube where available videos are accompanied with meta-data, advertisements and elaborate algorithm offering the user other videos he or she might be interested in. On the other hand, meta-data are a way towards embodied virtuality as observed by Katherine Hayles and therefore a way to

become a new medium as well.[14] In Hayles' thesis, the embodied virtuality is: *"If you cannot tell the intelligent machine from the intelligent human"*. It may be seen as an off topic discussing embodied virtuality, but in my opinion it sets the standard which would have to be achieved to consider the original media present through internet to be new.

5. Internet and information

Today's internet environment has a special social value that doesn't exist in other existing means of communication. The uniqueness may be found in the complexity of the system. The complexity of internet lays in the extra added value to the information which are submitted to the system created by the technology and nature of internet itself. We shall explore this idea through an example. If we compare a telephone system and the internet, it is clear that there is no new information developing in the system of telephones. It is only a medium which gives us the opportunity to transfer information. In layman terms, the value of information on input does not change on the output.

On contrary, internet creates, develops and adds new pieces of information to those which were inserted in the system. The first case is the already described scenario, where users modify some information, e.g. a news article, with their own thoughts and remarks posted next to that article. The recipient then gathers more than just the information itself, but due to the effect of complexity[15] receives an additional amount of information with the act of perceiving primary information. Concerning the second case, it is

---

[14] Hayles, N. K. (1999). *How We Became Posthuman: Virtual Bodies in Cybernetics, Literature and Informatics*. Chicago: The University of Chicago Press. P. 11.

[15] *Geyer, R., 2003, Europeanisation, Complexity, and the British Welfare State* Available: http://aei.pitt.edu/1719/01/Geyer.pdf Last accessed 29th Nov 2010.

recognised that inside the system of a medium there are many applications containing algorithms, which create new quantity and quality of information based on primary information inserted (uploaded) in the system. This information is then included in the system itself and may be exported. These information are processed again by various algorithms (by algorithms I also mean manipulation directly achieved by human element) and create even more new, partly artificial, information.

6. The substance of internet

The first substance could be derived from a well known document *"A Declaration of the Independence of Cyberspace"* by John Perry Barlow of Electronic Frontier Foundation.[16]

This, partially anarchistic, document contains a very thorough concept of Civilization of the Mind in Cyberspace. If we treat this term as a possible substance, we should be able to characterize its components – common values.

One of unquestionable common values is dematerialization because matter is not present in cyberspace, information are not dependent on a substance. Since this system is exclusively based on dematerialized information, it does not use the logic of law and other normative systems. Legal norm is based on three aspects which are hypothesis, disposition and sanction. Legal norm is a rule of behaviour which should be followed and if not followed, a sanction is imposed on the breacher.[17]

---

[16] Barlow, J.P.. (1996). *A Declaration of the Independence of Cyberspace* . Available: https://projects.eff.org/~barlow/Declaration-Final.html. Last accessed 29th Nov 2010.

[17] KNAPP, V. (1995) Teorie práva. 1. vyd. Praha : C.H. Beck, 1995. P. 247.

The logic of information systems is similar to the laws of physics/nature with an inevitable flaw. Primary system created by humans cannot be perfect. Kurt Gödel proved this by the Incompleteness Theorems where he states that any primary system shall never be perfect due to imperfectness of the natural language which is used to describe such system.[18] The imperfectness of a system renders human-made systems as opposed to laws of nature circumventable. Therefore a law with the ambition to be applied in cyberspace is challenged by the lack of known and existing subjects and objects which is based on in the *"real world"*. A solution, at least a short term one, may be the use of analogy in the scope of what we may identify as private law on the internet. However with the development of more and more sophisticated technology, such analogy is more difficult to be correctly applied because of the different values internet's social institutions are based upon.

One of the most important *"real world"* social and juridical institute is ownership. The idea of ownership arises from the limitation of goods available to people. Ownership is then derived from the basic economic need of a human being to own goods to satisfy its needs. The universal idea of ownership is enabled by the laws of physics which give every real world object universal interface. The value may vary greatly, but the possibility of transfer is present permanently. Legal institute of ownership means that there is a subjective right to a particular object and to this one right, there is an endless number of subjects who are sanctioned with a duty not to interfere with this one right. Previously mentioned phenomenon is referred to as *"erga omnes"* right.[19] This doctrine cannot be applied to virtual ownership. There are many reasons why it cannot be applied. The main

---

[18] Gödel, K (2003). *On Formally Undecidable Propositions of "Principia Mathematica" and Related Systems* . New York : Dover Publications. P. 80.

[19] *Fiala, J., Milan, K. (2009). Občanské právo hmotné. 2nd ed. Plzeň: Aleš Čeněk.*

reason is, in my view, the fact that in cyberspace, many different closed environment with their own proprietary standards are formed.

Let's use an obvious example with MMORPG[20] game of some kind. It is in the interest of the developers of such game to reach a critical mass of users (gamers) who will interact with each other. Inevitably, economic aspect is tightly tied to the gaming interactions, usually present in the form of trading of the in-game equipment between the users. Money used for these purchases are usually in-game money which are freely exchanged from *"real world"* money like US Dollars, British Pounds, Euros, etc.

However, subjective right to in-game equipment does not have similar attributes as a real world ownership. Firstly, there is only a certain amount of people who carry the duty of not to interfere with your right – the other gamers plus the developers and the administrators. All the same, the developers usually forbid in internal rules to trade with such equipment, unless it's the official marketplace, where the developers themselves sell the equipment. Those are only official

in-game rules that are there mostly for the limitation of the developers liability arising from problematic transactions. Unofficially, the developers usually embrace such behaviour and transactions because it makes a game more appealing to general public and not just to hardcore gamers.

To support this hypothesis, I will use the real world example of the last generation of gaming consoles. Nintendo was dying on its feet with almost no money to develop a powerful new hardware for the next generation console. Meanwhile Sony with the hugely anticipated

---

[20] MMORPG stands for Massive Multiplayer Online Role Playing Game

PlayStation 3 and Microsoft with its sequel to the original XBOX, the XBOX 360 were developing a consoles with a computing power of supercomputers. Nintendo came with a simple, much less powerful Wii, which became an absolute hit because of the shared social experience it gave. To this day, Wii sold almost twice as much units as the other two combined, precisely 75.9 million[21] compared to 44.6 million Xbox 360's[22] and 41.6 million PS 3's.[23] This was possible because Wii does not target the usual customers, but people who would otherwise find gaming boring because of the lack of social interaction. If we then focus our attention to the internet and its various services enabling some kind of social interaction, we often find ourselves to be a witness of a social interaction in such environment expressed through the transfer of various tokens and objects between avatars. I believe that this interaction is a completely new legal phenomenon, because the behaviour of other people is deeply altered by the environment qualities which are very different to those in the *"real world"*.

7. Avatars and social interaction

As stated above, the difference between real life human behaviour and behaviour of the same people online is intense.

---

[21] Nintendo.co.jp (2010). *Consolidated Sales Transition by Region.* Available: http://www.nintendo.co.jp/ir/library/historical_data/pdf/consolidated_sales_e1009.pdf. Last accessed

29th Nov 2010.

[22] Reilly, J. (2010). *Xbox 360 Sales Jump 38 Percent.* Available: http://xbox360.ign.com/articles/113/1131103p1.html. Last accessed 29th Nov 2010.

[23] Sony. (2010). *Playstation 3 Worldwide Hardware Unit Sales .* Available: http://www.scei.co.jp/corporate/data/bizdataps3_sale_e.html. Last accessed 29th Nov 2010.

When people are online, they have lowered *"defense mechanism"* in their personal space. Therefore, behaviour of other people in the internet environment could be more intrusive to the personal sphere of a person. However, the standards of online behaviour allow such intrusion and therefore the most members of *"online society"* find them socially acceptable.

A new standard of social interaction is incorporated in the concept of an avatar. Avatar is basically alter ego of a person, which they use in various social and gaming online services. In my opinion, this concept justifies previously stated thoughts. People are intentionally acting as someone (something) else or under their name in a different way. This concept is strictly opposite to the real world, where everyone should present themselves as themselves and the law strictly prohibits impersonating someone else or to pretend that you are not who you really are. There is no common legal concept or rule which would be able to govern the concept of avatar. If we consider the legal institute of power (warrant), it is not possible to apply it in this situation. Because *de facto* avatar and the person who controls it are the same entity. Avatar is bound by the commands or instructions that are given to it. However if there is a wrong line of code, avatar's behaviour may result in causing damage. Who could be held liable? There are cases where the avatar is only partially governed by the user. In order to create more realistic experience, part of avatars behaviour is supplied by artificial intelligence. This is not to be understood as AI in general meaning, but a set of random codes which enable the avatar to behave more naturally. The questions arising include, how would we describe the relationship between avatar and its creator by the law? Is it some kind of ownership? Does it have the character of intellectual property? Is it a sui generis legal concept?

We are not simply able to answer these questions because it is something that human society has never encountered before.

8. Definiteness of the internet environment

Various online services on the internet have one thing in common. The possibility of adjustment of *"your"* online space on a scale that has never been enabled to us before. Of course, there are services which present themselves in more closed graphic environment (for example Facebook) and there are services with extensive possibility of modification (like Myspace). Nevertheless, all internet services allow some kind of adjustment, Google News allow you to define the sources and kinds of news you want, social services let you upload and share various content from photos and videos to interactive games, advertising is tailored to particular users by using algorithms that take in count what you are searching, what's your sex, your age, etc. The influential magazine Wired presented an article *"Design is Dead. Long Live Design!"* where the author Dylan Tweney argues that the design presentation of content in electronic devices is towards more simple. He observes that public was expecting the design of e.g. web pages to be getting more elaborate, but the opposite is true. The user is allowed to modify the content that is presented.[24] From simple modifications like changing the font and size of a text on your e-reader or iPad, through moderate changes like using

ad-blockers, readers, RSS readers and other browser plug-ins to creating your profile on Myspace.

The revolutionary aspect of this is that those adjustments are free or cost next to nothing. In all of human history the possibility to adjust and interfere

---

[24] Tweney, D.F. (2010). *Design Is Dead. Long Live Design!* . Available: http://www.wired.com/epicenter/2010/11/long-live-design/. Last accessed 29th Nov 2010.

with surrounding environment was reserved for rich people, and even most of them could not afford to change the environment to such extent.

9. Negative definition and delimitation

The question of a negative definition of internet being a new legal culture is a tricky one. It relies on the intensity because even though internet seems to establish a new way of social interaction, the fact of a matter is that internet was still created by humans and it still relies on human activity. This, I believe, means that there are always some analogies to the real world. Therefore internet cannot be 100% new and original compared to the real world. This means that if law applies itself to the real world, it would be, at least partially, applicable to internet and its institutes as well. As mentioned before, the difference must raise to considerable intensity.

In my view, it is more difficult to apply public law institutes. Because public law usually contains more powerful sanctions for a breach of its norms, the proceedings have to be based to protect the objective subject. Therefore, one of the aspects of public law proceedings is a long period for infringing behaviour to be conducted before the proceedings are finished. Other problems arise together with the fact of indirect regulation of the internet. That is becausem internet is mostly governed by something called *"the subjects of information society"*. Under this unorthodox term we can subsume internet providers, cloud computing services and providers of various services working on electronic information systems. This means that the governments cannot efficiently control internet directly, which is a completely new situation for them. And even when they are able to punish

the people who committed unlawful behaviour, governments are usually not able to abolish such behaviour or its results.[25]

In private law, the situation is more settled. I believe, we are able to recognize two groups of private law application in the environment of internet. The first contains all the problems which create internet in the scale of it being a new medium as discussed before, which are characteristic by its full virtualization. The second is mostly used as a tool used for the formation of real world contracts. While the first problems raises many questions and complications, the second one does not. Internet is understood and used only as a tool with its specifics and features. Nice example could be the act of buying something on an eshop. You find something you like, you buy it and then they deliver it. The extra regulation needed for this kind of situations is to regulate some protection of the consumer concerning specific nature of the particular electronic tool which he uses, e.g. PayPal, etc.

10. The Test

As I mentioned earlier, the results of the test are not based on absolute values – that

way the test would not have any meaning, because there are no absolute values involved.

---

[25] Polčák, R., (2010). *Regulační struktura internetu & Virtualizace jako právní fenomén.* [Lecture].

Normativní systémy v kyberprostoru. Masaryk University, Katedra právní teorie, PrF MU, 4.11.2010.

The test is based on intensity of variation compared to the real world institutes of

similar purpose or social value.

10.1. Social component

On the evidence presented in previous chapters, I certainly believe that the nature of social behaviour has changed enough to fulfill the criteria of a substance of a legal culture. I was mostly convinced with the different nature of disposal with information. This does not apply only to some groups of users but to most of them, from a student, who has more information in reach than ever before, to the banker in the City who has 100% real time market developments streamed directly into his office. The banker is now able to decide on the real time developments and behave very differently on the market, because he knows that all the other bankers have the same possibilities. The nature of information behaviour has also changed in the way we perceive them. It is very complicated to withhold some information from anyone, especially when the information are of significant value. We were able to observe this recently in the Wikileaks server case. Even the most powerful entities in the world – governments were (and are) not able to stop behaviour which is by their national laws considered to be infringing.

The social interaction itself changed as well. We are interacting in a new space with completely new techno-social institutions like avatars and social networks. The term *"friend"* has been devaluated and changed through the different social nature of a friendship on social networks like Facebook. It is a very interesting topic, recently there was a completely new social network introduced, called *"Path"*, which works only as an application for iOS

based devices (with support of more platforms coming) and allows the user to have up to fifty friends. The absolute number of friends is based on a work of R.I.M. Dunbar, an anthropologist, who proved, that human beings are not able to have more then fifty friends in the sense of *"true"* real world friends, he refers to them as *"close connections"*.[26]

10.2. Religious component

As mentioned before, the religious component does not have to meet the same high criteria of intensity of variation to the real world, but has to simply allow transmission of information with religious content. I believe that this criterium was met. I would like to add that when I mention religion, I use that term in strictly practical way. Therefore by religion, I mean current established churches, no matter of numbers of their followers. I am afraid that there is not enough space in this article for analysis of believing *"in the internet"*. My intentions are to examine this issue in a separate paper.

10.3. Economic component

Economic component is the most difficult one to conclude precisely because of the many aspects of this component. The biggest issue is in the distinction between the trade which is enabled by internet as a tool/medium

---

[26] Levy, S. (2010). *The 'Path' to Social Network Serenity Is Lined With 50 Friends.* Available:

http://www.wired.com/epicenter/2010/11/the-path-to-social-network-tranquility-is-lined-by-50-friends/. Last accessed 29th Nov 2010.

and the trade on a market created by the internet. Because letterpress print, telephone, radio, etc. also opened channels for new trade, new marketing, etc. and they do not have new legal cultures based upon them. Therefore, I believe that this could not be an aspect that would succeed as a part of substance of a new legal culture, never mind the intensity, unless, of course, it would be only a source of a trade. Even in that situation, I maintain the thought of applying recent legal institutes and norms. On the other hand, we are witnessing emergence of something I call *"virtual market place",* which is characteristic by transactions that stay in cyberspace, mostly internet based services like MMORPG's like the World of Warcraft and social services like Second Life and Facebook. The reason why I call it a marketplace is because there are two specific and partially antagonistic tendencies to be observed.

The first is the standardization and coalition of more platforms together (e.g. I found out that Scribd is now connected to Facebook and you can sign in using your Facebook account, the same happened with Pandora, etc.)[27] can also be understood as a monopolization of market because it is based on proprietary standards. This *"bridge"* brings me to the other trend, which is development and coexistence of many proprietary systems in a single common TCP/IP based environment. Since there are so many participants, it results in an entropy. What is interesting though, is that users seem to like that entropy. Most of us use different services that allow us to do the same things as the other ones, but in some ways suit us and our personalities more. Today, there is considerable variety in each of every internet based service. For example if I want to be a part of a social network, I can choose between Facebook, Twitter, Myspace, LinkedIn, Google Buzz, Path and in

---

[27] Jerry. (2010). *Support Desk: Info, FAQs, and Forums/FAQ: Facebook.* Available: http://support.scribd.com/forums/150084-faq-facebook. Last accessed 29th Nov 2010.

short time hopefully Diaspora as well. All of them are social networks, but every one of them is a bit different.

Based on the presented evidence, I believe that internet met the requirements of intensity I set for it. Since it created such a vast space for a completely new kinds of economically exploitable objects, services and ideas, it is a huge leap from what we have already seen since the letterpress printing.

10.4. Conclusion

If we are thinking in John Perry Barlow's terms, we distinguish between people who are natives in the dematerialized electronic world and who are immigrants.[28] I always thought it is a bit of

a stretch expressed in a romantic document. But about two weeks ago, I was walking with a friend of mine through the city centre and a very repulsive man entered the door of Moulin Rouge. My friend turned and told me: *"I simply cannot understand, why should the same rules apply to me and that man in front of us, who just went into Moulin Rouge, than to someone connected to the internet somewhere on the other side of the planet, when we have so much more in common".* I believe that this *"feeling"* is important, because many people simply feel better when they are in various rumples and corners of cyberspace. In my opinion, it could be the same feeling which resulted in the creation of national states in the 19th century. Those are now perceived as granted. And since some people are considered

---

[28] Barlow, J.P.. (1996). *A Declaration of the Independence of Cyberspace* . Available: https://projects.eff.org/~barlow/Declaration-Final.html. Last accessed 29th Nov 2010.

to be natives there, they consider it as their primary identity. It is still very soon for internet to be a legal culture on its own, but the days when it will actually be one are not that far away.

Literature:

Alex. (2005). *internet vs. Internet.* Available: http://www.achingbrain.net/alex/internet-vs-internet. Last accessed 29th Nov 2010.

Anderson, G (2009). *Cityboy - Beer and Loathing In The Square Mile*. London: Headline, P. 432.

Anderson, C., Wolff, M.. (2010). *The Web Is Dead. Long Live the Internet.* Available: http://www.wired.com/magazine/2010/08/ff_webrip/. Last accessed 29th Nov 2010

Ashby, M., Wehmeier, S. (2000). *Oxford Advanced Learner's Dictionary of Current English*. Oxford : Oxford UP, P. 1796.

Barlow, J.P.. (1996). *A Declaration of the Independence of Cyberspace* . Available: https://projects.eff.org/~barlow/Declaration-Final.html. Last accessed 29th Nov 2010.

Fiala, J., Milan, K. (2009). Občanské právo hmotné. 2nd ed. Plzeň : Aleš Čeněk.

Geyer, R., 2003, Europeanisation, Complexity, and the British Welfare State* Available: http://aei.pitt.edu/1719/01/Geyer.pdf Last accessed 29th Nov 2010.

Godel, K (2003). *On Formally Undecidable Propositions of "Principia Mathematica" and Related Systems* . New York: Dover Publications. P. 80.

Hayles, N. K. (1999). *How We Became Posthuman: Virtual Bodies in Cybernetics, Literature and Informatics*. Chicago: The University of Chicago Press. P. 364.

Jerry. (2010). *Support Desk: Info, FAQs, and Forums/FAQ: Facebook.* Available: http://support.scribd.com/forums/150084-faq-facebook. Last accessed 29th Nov 2010.

KNAPP, V. (1995) Teorie práva. 1. vyd. Praha : C.H. Beck, 1995. P. 247.

Kötz, H., Zweigert, K., 1998, An Introduction to Comparative Law, Third Edition, Oxford UP, Oxford. P. 744.

Levy, S. (2010). *The 'Path' to Social Network Serenity Is Lined With 50 Friends*. Available: http://www.wired.com/epicenter/2010/11/the-path-to-social-network-tranquility-is-lined-by-50-friends/. Last accessed 29th Nov 2010.

McLuhan, M. 2000, Člověk, média a elektronická kultura: výbor z díla, Jota, Brno, P. 415.

Pandora, Inc.. (2010). *How do I use my Facebook account to personalize Pandora?* . Available: http://blog.pandora.com/faq/contents/10010.html. Last accessed 29th Nov 2010.

Polčák, R., (2010). *Regulační struktura internetu & Virtualizace jako právní fenomén*. [Lecture]. Normativní systémy v kyberprostoru. Masaryk University, Katedra právní teorie, PrF MU, 4.11.2010.

Simon, E. (2010). *Does hi-tech mean high returns for investors?*. Available:

http://www.telegraph.co.uk/finance/personalfinance/investing/8112252/Does-hi-tech-mean-highreturns-for-investors.html. Last accessed 29th Nov 2010.

Tweney, D.F. (2010). *Design Is Dead. Long Live Design!* . Available:

http://www.wired.com/epicenter/2010/11/long-live-design/. Last accessed 29th Nov 2010.

Contact – email
o.antos@gmail.com