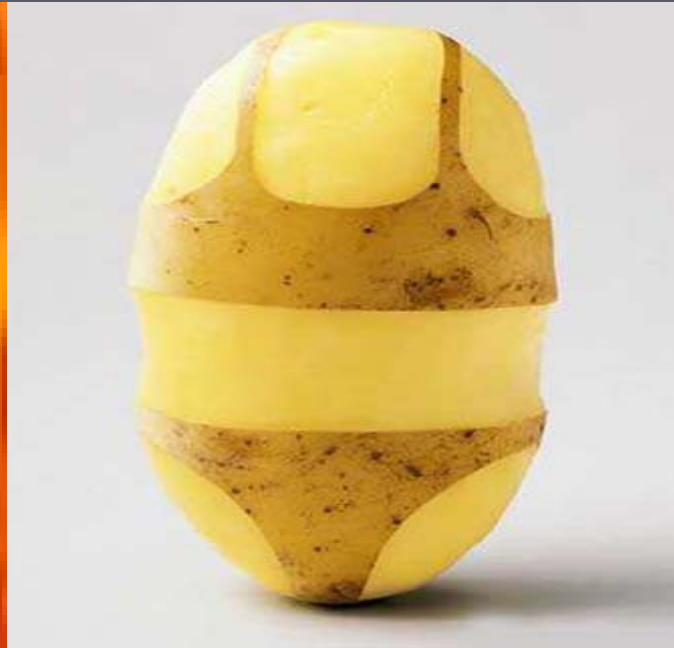


Evolving Role of ISPS

Political Hot Potato

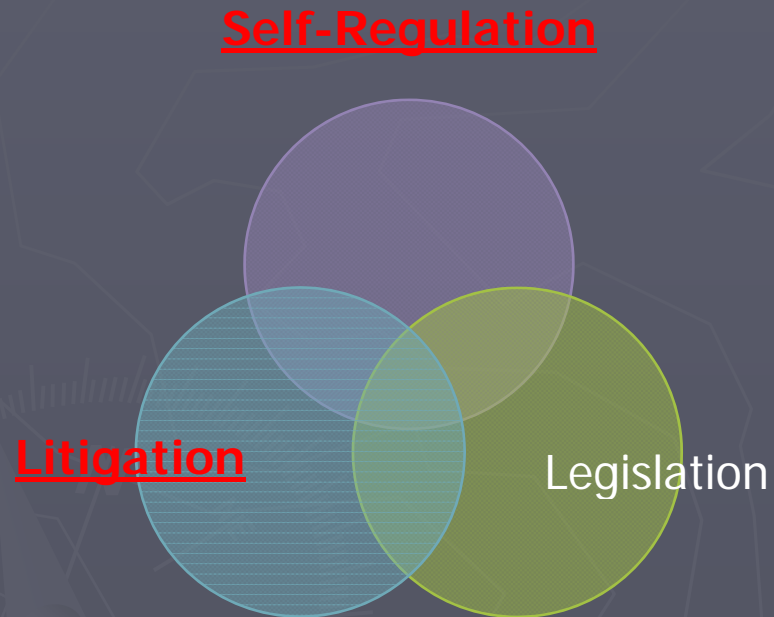


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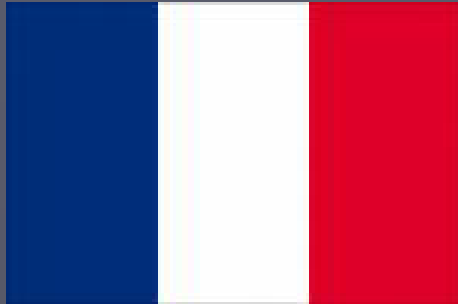
Faculty of Law, UNSW

Conduit to Gatekeeper

Disintermediation to Intermediary



Filtering Policy Through Litigation



Yahoo! required to block Nazi memorabilia from French (and later) German users

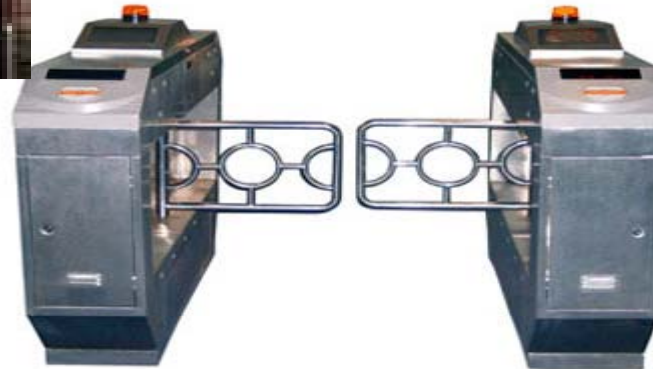
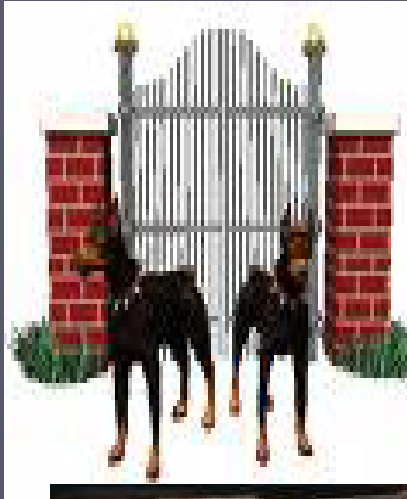


Pennsylvania court orders ISPs to block 400 child pornography sites (*Democracy & Technology v. Pappert*)



Turkish courts initially blocked controversial YouTube videos from Turkey, then later demanded that Google block all users in the world from such videos, then all Turkish ISPs were forced to block YouTube altogether

Self-Regulation Gates and Keepers



Separation of Powers

Sub-optimal Filtering & Monitoring?

- ▶ Lawmaker
- ▶ Judge
- ▶ Executive
- ▶ Editor
- ▶ Enabler (Google)

ISP

'Be everywhere, get arrested nowhere and thrive in as many places as possible.'

Role of the State

- ▶ **Abdication of the responsibility of the State**
- ▶ Externalization of cost
- ▶ Limited transparency in State regulation
- ▶ Self-regulation is non-transparent
- ▶ Evasion of Public Law Norms (outsourcing to avoid human rights obligations)
- ▶ Right to Fair Procedures
- ▶ Filtering technologies may be shielded from bi-partisan security testing
- ▶ No incentive to find sub-optimal filtering – either OVERblocking or UNDERblocking
- ▶ Function Creep (malware, P2P copyright, gambling, pornography)

Externalization

- ▶ Abdication of the responsibility of the State
- ▶ **Externalization of cost & discretion of policing is lost**
- ▶ Limited transparency in State regulation
- ▶ Self-regulation is non-transparent
- ▶ Evasion of Public Law Norms (outsourcing to avoid human rights obligations)
- ▶ Right to Fair Procedures (Transparency of Application)
- ▶ Filtering technologies may be shielded from bi-partisan security testing
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Transparency

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- ▶ **Self-regulation is non-transparent**
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No Such Thing as Sub-optimal Filtering

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Cyberspace Law and Policy Centre

What's Wrong
with the
Phone – 1
800 Google ?



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