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Horizontal vs. vertical regulations

The session tackled some of the most crucial and most intensively discussed issues of IT-law from a fundamental and international perspective: Given the fact that social relationships and business transactions become more and more complex and need less and less direct face-to-face contact, basic principles of law are nowadays at stake. In a machine-driven network society even human interactions become more and more obsolete and therefore new regulatory approaches are essential.

Olav Torvund (“Regulating the information society”) convincingly argued that the increasing ambiguity in basic legal concepts (“liability”, “contract”, etc.) in a technical and international era asks for new concepts: less ad hoc regulation, more interest for the transaction system as such and not so much for the individual being who is only minor part of the huge system are possible consequences. More research in the possible reshape of the law “de lege ferenda” instead of heavy analysis about the current legal situation should be considered as well.

Viveca Still (“How to deal with intellectual property in user-generated content”) supported Torvund’s arguments by showing the audience important disturbances and interferences between the law on the one side and social behavior and technical developments on the other side in the field of user-generated content. In a world where 13 hours of movie-content are uploaded every minute on YouTube and the fact that (possible) copyright holders simply can’t keep an approximate overview about possible violations of their rights, the question of new regulatory approaches needs to be asked. Copyright, regulating relationships and interests between authors, service providers and rights holders, needs to be rethought. User-generated content (published content needing creative effort on the user’s side and generally created outside of professional routines and practices) challenges, as Still argued, fundamental principles of copyright – starting with the very idea that copyright is needed in order to give incentives for content production and dissemination. One of the consequences Still sees is that the importance of soft-law instruments to settle conflicts might increase. This point of view was – from different perspectives - also in the center of interest of the two remaining speakers.

Henrik Bengtsson (“Governing recommendations and negotiated agreements”) gave a set of reasons why soft law regulations emerged in the net (hard law is often insufficient; companies avoid harder restrictions via softlaw and in international relationships national law has its limits). He then evaluated strengths and weaknesses of soft law approaches, inter alia, that soft law can only become fully effective if basic principles of the rule of law are accepted and may therefore degenerate as a result of inconsistent practice. He also argued that soft law may serve as a good starting point for the later development of hard law.

Patricia Shaughnessy (“Alternative Dispute Resolution: A Method for Resolving Disputes in a Globalised World or Globalising the World through Resolving Disputes?”) started her presentation by a very thoughtful discussion of the term “ADR” itself. It might, so she argued, be an abbreviation for

assistant, alternative, appropriate or agreed (and some other forms of) dispute resolution. She then identified reasons why ADR becomes increasingly important - not only because of the breakdown of some national court systems, but also because of positive developments in the ADR-systems themselves such as better enforcement, regulation and therefore predictability of the decisions taken. She identified further usage of IT and the internet as one of the key drivers to strengthen the usage of ADR worldwide.