

Law: The Universe & Everything?
The Regulation of the Web

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Structure of Lecture

- Purpose: introduction to the conceptual and practical interactions of the Web and Law;
- Structure:
 - What is Law?;
 - Exploring the relationship between Law and Technology, and;
 - The role of contract law and intellectual property law in regulating the Web.

What is Law?

“A rule or set of rules, enforceable by the courts...”

“A rule of conduct ... [etiquette].....”

“One of a set of rules governing a particular activity...”

The Collins English Dictionary

“A rule or set of rules, enforceable by the courts...”

Does ‘Law’ have to be legally enforceable?

“A rule of conduct ...[etiquette].....”

**Can (and should) norms or best practice
relating to the Web constitute ‘Law’?**

“One of a set of rules governing a particular activity...”

Can (and should) the regulation of Web-based activities be separate from other law?

Law and Web Science

- Governance;
- Security, and;
- Standards.

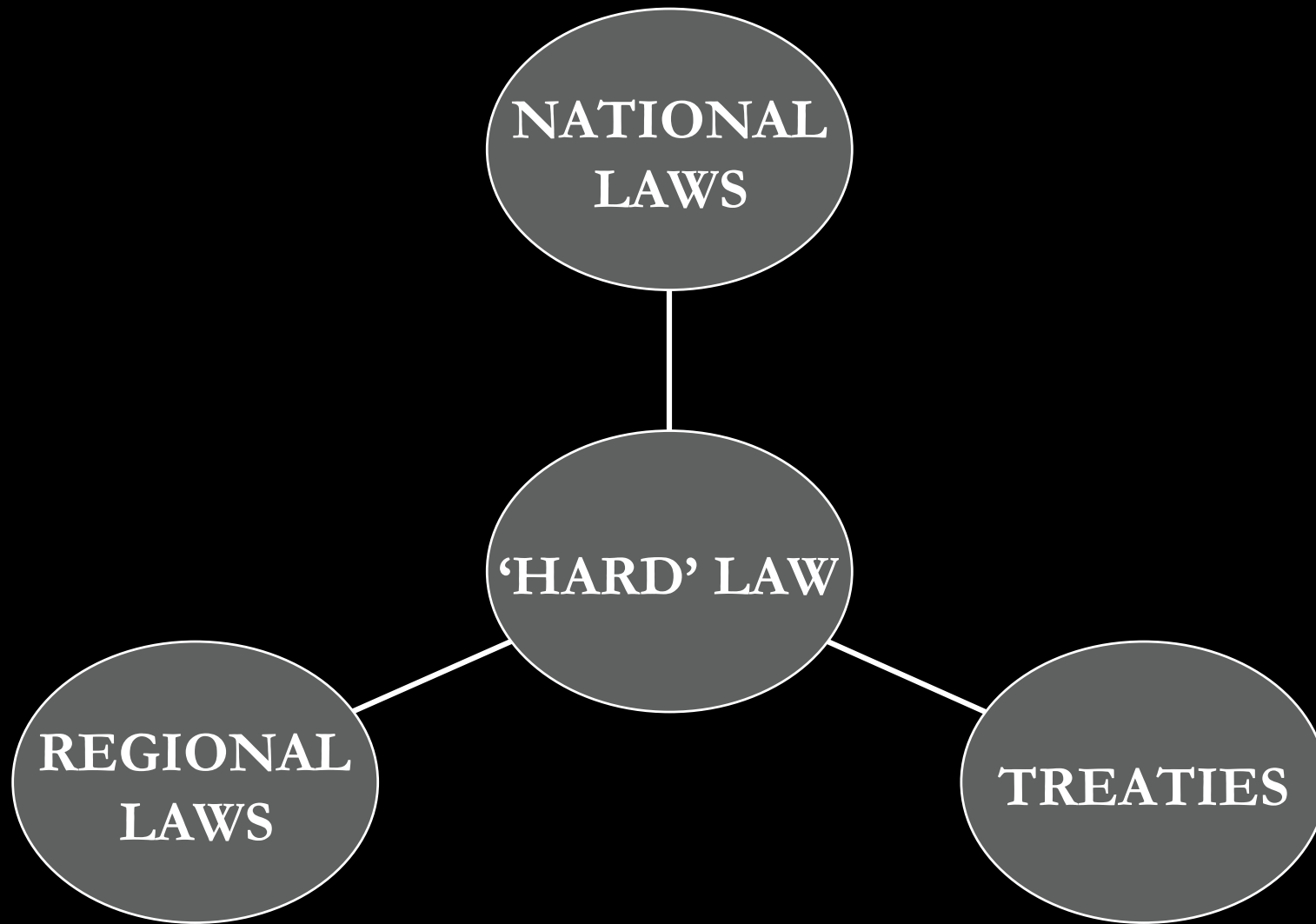
Berners-Lee, T., Hall, W., Hendler, J. A., O'Hara, K., Shadbolt, N. and Weitzner, D. J. (2006)

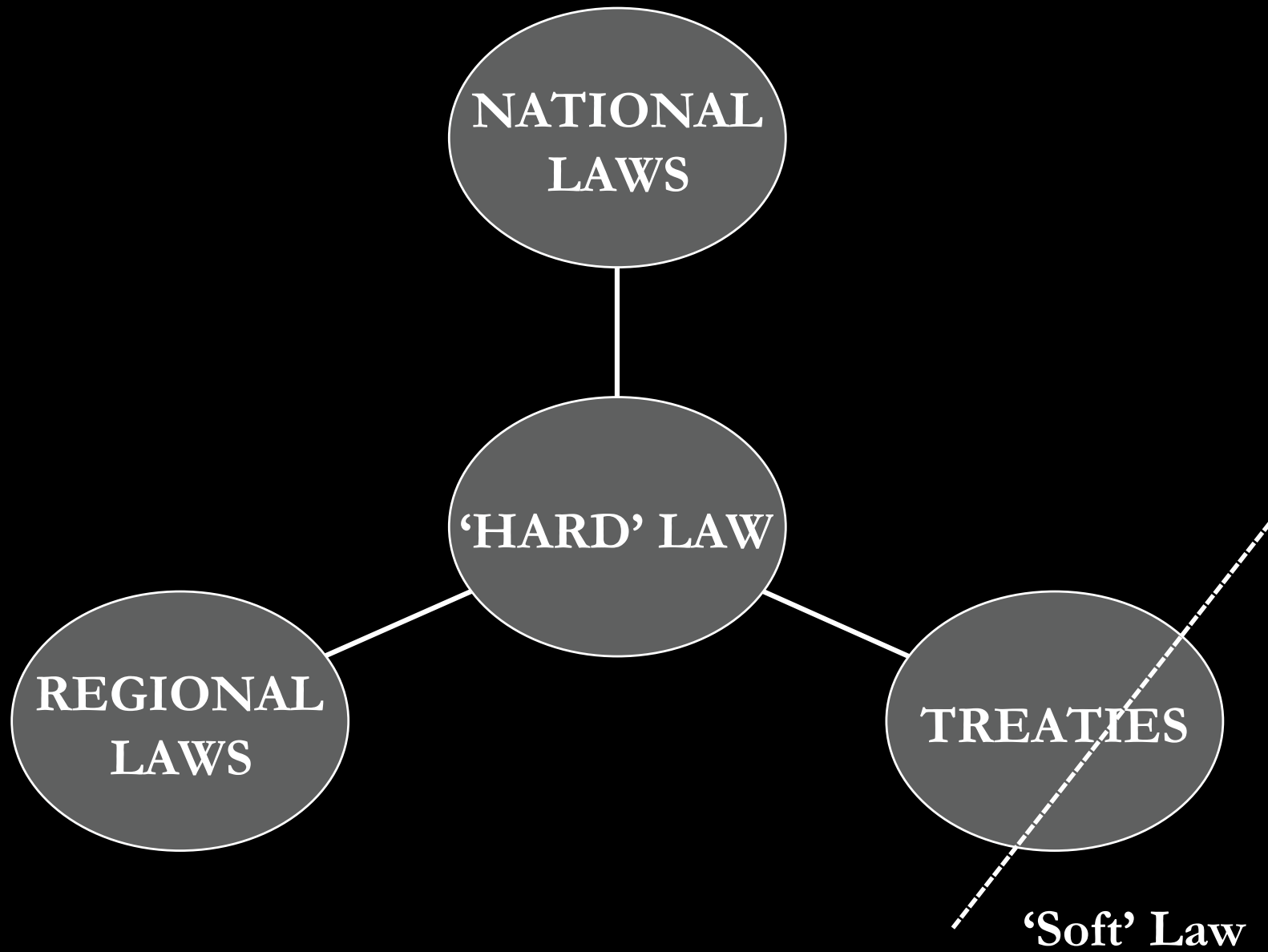
What is Law?

Law is about regulating *relationships*:

- Between persons (Private Law);
- Between persons and government (Public Law), and;
- Between countries (International Law, i.e. Public International Law).

N.B. Private International Law (Conflicts of laws) and establishing jurisdiction.





But....

- Self regulation (including regulation by technology);
- ‘Soft’ law, and;
- Code as Law (*Lessig 2006*).

Web Regulatory Models

- Regulating technology by law;
- Regulating technology by technology;
- Trust-based regulation;
- ‘Hard’ law and ‘Soft’ law;
- Hybrid models, and;
- Regulatory competition.

Saxby and Wilson (2007)

Exploring the Relationship between Law and Technology

The Technology/Law Relationship

- *Why* is there a need for legal regulation of the Web?;
- *Can* the Web be governed by Law?;
- Does the Web require *global* regulation?

The Law/Technology Relationship

- Do lawyers understand the Web?;
- Is Law proactive or reactive?;
- What is the role for 'soft law' in regulation of the Web?

The Role of Contract law in regulating the Web

E.g.:

- End User License Agreements (EULA) and Terms of Use Agreements (TOUs) – e.g. see [Apple iTunes](#);
- Disclaimers (e.g. those in the Microsoft Vista [TOU](#)), and;
- Online Dispute Resolution (ODR).

But problems of unequal bargaining power and privatising justice (see, e.g. re. ODR *Edwards and Wilson (2007)*).

The Role of Intellectual Property (IP) law in regulating the Web

E.g.:

- Copyright law;
- DRM (copyright + contract);
- The *sui generis* database right (EU only), and;
- Patents.

IP rights (IPRs) allow the proprietor to delineate and protect, on a territorial basis, his creative or technical endeavour. But there are problems.

But..... Contract + IP = Free?

E.g.:

- Creative Commons;
- The GNU General Public License (GPL).

Web Science: Some General Challenges for Law

Questions for you

- Does Law have to be legally enforceable?;
- Can Web norms constitute Law?;
- Can (and should) the regulation of Web-based activities be separate from other law?;
- Why is there a need for legal regulation of the Web?;
- Can the Web be governed by Law?;
- Does the Web require global regulation?

Questions for you

- Do lawyers understand the Web?;
- Is Law proactive or reactive in regulating the Web?;
- What is the role for 'soft law' in regulation of the Web?;
- How can current Law (in the widest sense) be best used to regulate the Web, and;
- What direction should any legal reforms take?



References

- Berners-Lee, T., Hall, W., Hendler, J. A., O'Hara, K., Shadbolt, N. and Weitzner, D. J. (2006) A Framework for Web Science. *Foundations and Trends in Web Science*, 1 (1). pp. 1-130 (at 97-107).
- Edwards, L. and Wilson, C. (2007) Redress and alternative dispute resolution in EU cross-border e-commerce transactions. *International Review of Law, Computers & Technology*, 21, (3), 315-333.
- The Collins English Dictionary
- Lessig L, (2006) *Code: And Other Laws of Cyberspace, Version 2.0*, Basic Books.
- Saxby, S. and Wilson, C. (2007) IT Law in Context: a critical overview. In, Heatherington, S. (ed.) *Halsbury's Laws of England Centenary Essays*. London, UK, LexisNexis Butterworths, 85-102.