Index

Amazon Music 124, 134
Apple Music 124, 134
Ashby, W. Ross 154, 155
authority 77–9, 163, 231
acceptance of 14, 15
legal norms 135–7
claims by nation-states 4, 16
need for limitations on 16
coercive power 59
competing claims 170, 233
LICRA v Yahoo! Inc 11–12, 60–61
contingent 75–7, 232–3
degrees of 35
denial of 14–15
as illegitimate 15
as not having jurisdiction 16
as unjustifiable 16
illegitimate exercise of 72
internet standards see internet, standards
lawmaking see lawmaking authority
legal 9
competing claims to 27, 175, 233
legitimate 176
needling political power 32
rejecting 233
transnational 20
see also authority; legitimacy
/legitimacy linkage 20–21
legitimating 18
see also legitimacy
liquid 35, 36
nation-state laws
not absolute 78
not only source of authority 78
of non-state actors 34
rule-systems 78–9
see also rule-systems
normative force 59
in cyberspace 59–63
see also normative force
not absolute in cyberspace 137
partial 22–3
practical 47
in private international law 33–4
solid 34–5
sources of 60, 78, 170, 176, 234
Weberian charismatic 43

Bingham, T. 194–5, 202, 213, 224
eight principles of rule of law 203
BitTorrent 124

child sexual abuse
online sharing 121
rise in 121–2
rise in 122
choice architects 133
ISPs as 134
platforms as 134
CNIL Restricted Committee (France)
210–11
code 29
Apple Fairplay 96–7
-based arms races 96
central to Cyberpaternalism 144
Content Scrambling System 95
DeCSS 96, 97
as control mechanism 86–8,
100–101, 102
copyright 100
lack of influence 88
limits of 92–4, 96, 100–101
regulating in ex-ante fashion 87,
94
regulating without discourse 87,
94
social norms as powerful counter
to 97, 99, 101
strength of 87
see also control
digital rights management systems 96–7, 99
encryption technology 96
Facebook Beacon 97–8
lawmakers’ ability to compel 151
plasticity of 94–5
self-executing nature of 86–7
as source of social norms 101
spam 95, 96, 99–100
standardisations failing 164–5
subversion of 95–6
viruses 95
worms 95
YouTube content ID system 100
command
compliance see compliance
/controld link 152
disobedience to 152
obedience to 152
possible responses to 152
communication
failure 177–9, 180–81
see also reception theory
communities of choice 1, 20, 70–71,
74, 164
all online communities being 71–2
community 59, 164
authority 59–63
normative 60
chosen see communities of choice
dynamic 24
found 70
imagined 112–13
legitimacy of national 53–4
legitimating 24, 60–62, 63
open 39
power of 102
rights 196–7
rules of recognition see rules of
recognition
transnational 54
rules 54
community standards documents 110
complexity 152
modeling 153–5
compliance 158–9
in Cyberpaternalism 158–9
in Network Communitarianism 158,
159
constitutional theory
pluralist/strict debate 32–3
contingent authority 75–7, 168, 232
contractualisation 46–7
breach of contract 51
see also rule-systems
control 80, 81
beyond 101–2
code as control mechanism see
code
/controld link 152
deterrent effect 84–5
differing modalities of 87
interplay of modalities of regulation
89, 90–91
collective regulatory pressure 91
intercommunication 91
law as system of 81–6
coercive power 81–3
criminal law 83–4
via normative force 85
legal 149
Lessig model 86, 87–8
criticism of 89–90, 91
and rational decision-making 83
see also command
control-systems, three elements of
139–40
cookies 90
copyright 100
infringement see copyright
infringement
not entrenched as social norm
127–8
offline community of 73–4
and online communities 74–5
pre-cyberspace 72–3
public perception of 73
copyright infringement
CBS Songs Ltd v. Amstrad
Consumer Electronics plc
123–4, 125
file sharing 123–5
Index

deranged response 129–30
IFPI Digital Music Report 2015 124
marked increase in 124
piracy 74, 134
P2P 129
 *R v Alan Ellis* (*Oinks Pink Palace*) 220
 *R v David Michael Rock and David Paul Overton* (*TV Links*) 220
section 97A blocking orders 124–5
*The Government of the United States of America v Richard O’Dwyer* 220–22
UK Intellectual Property Office Online Copyright Infringement Tracker 124
warning letters 133–4
and YouTube communities 125–6
see also UK, Copyright Designs and Patents Act (1988)
Cotterrell, R. 17, 20, 36–7
cyber-collectivism 144
Cyberlibertarianism 8, 144–5
challenged by Cyberpaternalist School 148–50
Electronic Frontier Foundation 145–6
see also EFF
ethos 145–6
manifesto 145
cybernetics 153
Cyberpaternalism 37, 142–3, 144, 164
borders within 148
challenging Cyberlibertarianism 148–50
and compliance 158, 159
*Lex Informatica* 148–9
/network communitarianism distinction 155, 158–9
regulatory control in 148–9
second movement 161–2
cyberspace effectively ungovernable 5–7
argument against 8–9
key lawmakers 1
lawmaking authority in 1
challenging 2
decentring see decentring and foreign residents 2
see also lawmaking authority
no borders 6–7
not unitary whole 38
as ‘other’ 192
as set of emergent phenomena 38
uniquely noisy 137
see also internet
data protection 178–9
and communications failure 180
conflicting with social norms 185, 186
content/metadata distinction in UK law 188
data intelligence sharing 188
Google Spain SL and Google Inc v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González 208–9
personal data
bulk data interception 188
data retention 187
export controls 184–5
sensitive data 185–6
right to be forgotten 208–10
delisting data 210–12
decentred governance 143–4
integration with ANT/STS theory 144
decentring 143–4, 151
emergent law 7–8, 10
defamation
*Dow Jones v Gutnick* 215
*Richardson v Schwarzenegger* 215
*Twentieth Century Fox Film Corp v iCrave TV* 215
determinism 117, 165
hard 117, 142
soft 117–18, 142
Dicey, A. 200, 200–201
rule of law pillars 200, 201
Digital Rights Ireland 196
disruptive events 152–3
due process
International Shoe Co v Washington 13

eBay 9, 34, 48–50
contractual structure 50
dispute resolution 49–50
not requiring access to external legal systems 51
Money Back Guarantee 49
original intention of 48
representation of members 53
rule-systems see rule-systems
e-commerce 24
avoidance of the provisions of foreign law in 57
data collection in 90
and lawmaking authority 21–3
EFF 145–8
border between cyber- and real space 147
cyberlibertarian ethos of 146
founding 145
self-government 147–8
see also Cyberlibertarianism
effects doctrine 3–4, 12, 215
extradition requests 215, 219
The Government of the United Arab Emirates v Yasir Afsar 215–19
The Government of the United States of America v Richard O’Dwyer 219–22
enforcement
cross-border 67
deterrent effect 130
mechanisms
non-state 44, 51
power 9, 60, 85
eBay 50, 52
ICANN 47, 52
limited 2
non-state 58, 111
state 58, 59, 63, 77, 232
weak in cyberspace 170
role of gatekeepers 161
threats 91
equivalence 190–91
of application 193
in defamation law 193
of form 191
functional 191–2
making normative statement 192–3
needing new formulations of rules 193–4
EU
Article 6 right to fair trial 218, 219
bright line tests 13
Council of Europe Convention for the Protection of Individuals with regard to automatic Processing of Personal Data (1981) 179
Council of Europe Convention on Cybercrime 121
Data Protection Directive 178–9
Art. 12(b) 208–9
Art. 14(a) 208–9
Article 29 Working Party 179, 209–10
jurisdictional reach 209
right to be forgotten 208–10
Directive 2002/58/EC (cookies) 90
Directive 2006/24/EC (data retention) 187
Directive 2009/136/EC, Art. 5(3) 90
Eighth Data Protection Principle 185
failure of e-signature regime 56
General Data Protection Regulation (2018) 180
Right to be Forgotten cases 172, 208–10
EverQuest II User Agreement 110
evolutionary arms race 95–6
external perspective 66–7, 76
contingent authority 75–7
cost-benefit analysis in 67
direct costs 67
rational/irrational decision-making 67–9
and rules of recognition 69–70
extraterritorial application 4
limiting 12

Facebook
Beacon 97–8
Community Standards document 110
Messenger 165
policy changes and user pressure 98–9
Privacy Foundation 98
real names policy 102
share 120
Fuller, L. 155, 213, 222
eight principles 202
on stability 222
gatekeepers 159–62, 233
authority 160
as chokepoints 161
Content Regulatory Agents (CRAs) 161
Facebook 233
see also Facebook
Google, 233
see also Google
Internet Information Gatekeepers 160–61
ISPs 160
loss of strength 166–7
macrointermediaries 160, 162
micro level 160
platform providers 160
search information providers 160
taking on coercive role 161
unique position of 160
Google 10, 171
delisting data 209–11
as gatekeeper 233
governance 140
rules/legal rules divide 163
grundnorm 33, 36
enhancing internal legitimacy 17
legitimating authority 16–17
harm doctrine 3
Hart, H.L.A. 16, 18, 64, 66, 69, 85

rule of recognition 15, 64–5, 69–70
see also rules of recognition

ICANN 34
accountability 48
contractual structure 50
deferring to courts of competent jurisdiction 47
establishment 45
licensing domain name registrars 46, 47
representation of members 53
rule-systems see rule-systems
sphere of operation 45
UDRP 45–6, 47
not requiring access to national law 47, 51
para. 3(b) 47
para. 4(a) 46
para. 4(k) 47
popularity of 47–8
impact theory 117
Instagram 165
internal perspective 64, 66–7, 72, 78
internet
a-territorial nature of 7
standards
as constraints on lawmaking 43–4
development 43
normative authority of 42–3
practical authority of 42
see also cyberspace
Internet Architecture Board (IAB)
Request for Comments (RFC)
process 40
supervisory capacity 40
Internet Council for Assigned Names and Numbers see ICANN
Internet Engineering Steering Group (IESG) 38, 40
supervision of 40
Internet Engineering Task Force (IETF) 38, 39–40
IAB 38, 40
supervision of 40
working groups 39
Internet Protocol 42
Rethinking the jurisprudence of cyberspace

Internet Research Task Force (IRTF) 38
Internet Society (ISOC) 38–9
   Chapters 39
   internal management 39
   pillars 38
   rule making process relationships 41
Internet Watch Foundation Annual Report 2016 121
ISP coveted 196
   Scarlet 196
   Johnson, D. 5–8, 10, 82, 146, 147–8, 207
jurisdiction
   bright line tests 13
   competent 47
   and defamation law 15
   effects test 4
   see also effects doctrine
   minimum contacts doctrine 13
   nation-state 2–3
   see also lawmaking authority
jurisprudence
   positivist 27
   US 12–13
   King, E. 196
Laidlaw, E. 160–61
laundry list 203, 205, 234
   clear law 212–13
   and effects doctrine 215
   see also effects doctrine
   general law 212–13
   law applied to everyone according to its terms 224–5
   prospective law 208–12
   delisting data 210–12
   right to be forgotten 208–9
   public 212–14
   stable and certain law 222–4
   thin 206, 225–6
   law 101–2
   as command 144, 151–2, 232
   and environment 183
equivalence in see equivalence
   exercising control 151
   /governance divide 163
   hard 35
   need for offline/online equivalence 190
   need to make technologically neutral 189–90
   soft 35
   as source of social norms 101
   technology affecting responses to 184
lawmaking 85–6
   authority see lawmaking authority
   complexity of maintaining current awareness 223–4
   rapid changes in 223
   as utilitarian enterprise 195
lawmaking authority 2–4, 25
   acceptance
   and community identity 18
   partial 22–4
   all-or-nothing 5
   beyond territorial borders 18–19, 20, 23
   beyond territorial boundaries 172
   Google Inc v Equustek Solutions Inc 171
   Google Spain SL v Agencia Española de Protección de Datos and Mario Costeja González 171
   boundaries of legitimacy 6
   command see command
   competing claims 6, 10, 11–12, 14, 22, 30
   comprehensive 5, 6, 9–10
   limiting to legitimate claims 10–11
   and e-commerce 21–2
   global law 9–10
   of governments 151
   impossibility of individual state supremacy 10
   of individual rules 13, 14–18
   interlegality 14
   legitimacy see legitimacy
   legitimating 60
Index

<table>
<thead>
<tr>
<th>Natural Law</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>In natural law</td>
<td>19–20</td>
</tr>
<tr>
<td>No longer tied to borders</td>
<td>8</td>
</tr>
<tr>
<td>No state having over cyberspace</td>
<td>5–7</td>
</tr>
<tr>
<td>Normativity of claims</td>
<td>9</td>
</tr>
<tr>
<td>Partial</td>
<td>22–4</td>
</tr>
<tr>
<td>In sociology of law</td>
<td>20–21</td>
</tr>
<tr>
<td>Sources of state</td>
<td>60</td>
</tr>
<tr>
<td>States limiting</td>
<td>12</td>
</tr>
<tr>
<td>System/individual level distinction</td>
<td>5</td>
</tr>
<tr>
<td>See also Authority</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Law-System Quality Test</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evasion levels</td>
<td>57</td>
</tr>
<tr>
<td>Net outflow</td>
<td>56–7</td>
</tr>
<tr>
<td>Opposition levels</td>
<td>57</td>
</tr>
<tr>
<td>Positive net inflow</td>
<td>56, 57</td>
</tr>
<tr>
<td>Legal Authority</td>
<td>see authority</td>
</tr>
<tr>
<td>Legal norms</td>
<td>26, 29, 186</td>
</tr>
<tr>
<td>And acceptance</td>
<td>135–7</td>
</tr>
<tr>
<td>And content sharing</td>
<td>120–21</td>
</tr>
<tr>
<td>Copyright</td>
<td>123</td>
</tr>
<tr>
<td>And cyberspace</td>
<td>120</td>
</tr>
<tr>
<td>Online intermediaries’ immunity from liability</td>
<td>136–7</td>
</tr>
<tr>
<td>Social norms gap</td>
<td>128–9</td>
</tr>
<tr>
<td>Reducing</td>
<td>129</td>
</tr>
<tr>
<td>Weaker than sharing norm</td>
<td>123</td>
</tr>
<tr>
<td>Legal pluralism</td>
<td>see pluralism</td>
</tr>
<tr>
<td>Legal Theory/Regulatory Theory</td>
<td>differentiation</td>
</tr>
<tr>
<td>Legitimacy</td>
<td>9, 25, 62, 197–9, 233–4</td>
</tr>
<tr>
<td>Authority Distinction</td>
<td>170</td>
</tr>
<tr>
<td>Authority Linkage</td>
<td>20–21</td>
</tr>
<tr>
<td>Offline</td>
<td>169–70</td>
</tr>
<tr>
<td>Online</td>
<td>170</td>
</tr>
<tr>
<td>Of charismatic authority</td>
<td>173</td>
</tr>
<tr>
<td>And communication failure</td>
<td>177–9, 180–81</td>
</tr>
<tr>
<td>See also Communication;</td>
<td></td>
</tr>
<tr>
<td>Reception theory</td>
<td></td>
</tr>
<tr>
<td>As conferred state</td>
<td>17</td>
</tr>
<tr>
<td>Constitutional</td>
<td>173–4, 175</td>
</tr>
<tr>
<td>Contradictory National Laws</td>
<td>10</td>
</tr>
<tr>
<td>Weakening</td>
<td></td>
</tr>
<tr>
<td>And cyberspace actors</td>
<td>62–3, 175</td>
</tr>
<tr>
<td>Defining</td>
<td>17, 169</td>
</tr>
<tr>
<td>And environment</td>
<td>183–4</td>
</tr>
<tr>
<td>Grundnorms enhancing internal 17</td>
<td></td>
</tr>
<tr>
<td>Of individual claims</td>
<td>174, 175</td>
</tr>
<tr>
<td>Input</td>
<td>174</td>
</tr>
<tr>
<td>Of IP laws</td>
<td>72–3</td>
</tr>
<tr>
<td>Legal/political link</td>
<td>172</td>
</tr>
<tr>
<td>National</td>
<td>53–4</td>
</tr>
<tr>
<td>Normative force originating in</td>
<td>55</td>
</tr>
<tr>
<td>Not absolute concept</td>
<td>171, 175–7</td>
</tr>
<tr>
<td>Not necessarily conferring authority</td>
<td>170–71</td>
</tr>
<tr>
<td>Online as reflection of physical world</td>
<td>172</td>
</tr>
<tr>
<td>Online factors involved in</td>
<td>177</td>
</tr>
<tr>
<td>Output</td>
<td>see output legitimacy</td>
</tr>
<tr>
<td>Preliminary role of</td>
<td>170</td>
</tr>
<tr>
<td>Requiring embedded commitment to respect rights</td>
<td>197</td>
</tr>
<tr>
<td>And respect</td>
<td>176</td>
</tr>
<tr>
<td>And rule of law</td>
<td>168</td>
</tr>
<tr>
<td>Sources of</td>
<td>17–18, 25, 53, 60</td>
</tr>
<tr>
<td>Standards of behaviour</td>
<td>192</td>
</tr>
<tr>
<td>Throughput</td>
<td>174</td>
</tr>
<tr>
<td>Transnational</td>
<td>54</td>
</tr>
<tr>
<td>Voluntary element of</td>
<td>176–7</td>
</tr>
<tr>
<td>Weberian</td>
<td>172–3, 176</td>
</tr>
<tr>
<td>See also Lawmaking Authority</td>
<td></td>
</tr>
<tr>
<td>Legitimate Authority</td>
<td>see legitimacy</td>
</tr>
<tr>
<td>Lessig, L.</td>
<td>82, 83, 86, 87–8, 149–51</td>
</tr>
<tr>
<td>Code and Other Laws of Cyberspace</td>
<td>149</td>
</tr>
<tr>
<td>‘Code is law’</td>
<td>29</td>
</tr>
<tr>
<td>Modalities of regulation</td>
<td>87, 150</td>
</tr>
<tr>
<td>On regulability</td>
<td>151</td>
</tr>
<tr>
<td>Lex Informatica</td>
<td>148–9</td>
</tr>
<tr>
<td>Lex Mercatoria</td>
<td>148</td>
</tr>
<tr>
<td>Libel Tourism</td>
<td>3</td>
</tr>
<tr>
<td>Libertarian paternalism</td>
<td>131–3, 141</td>
</tr>
<tr>
<td>Choice architects</td>
<td>133</td>
</tr>
<tr>
<td>Definition</td>
<td>133</td>
</tr>
<tr>
<td>Gradualist approach to Social norms in</td>
<td>131</td>
</tr>
<tr>
<td>Nudge</td>
<td>132–3, 134–5, 233</td>
</tr>
<tr>
<td>Legal streaming services</td>
<td></td>
</tr>
<tr>
<td>As</td>
<td>134–5</td>
</tr>
<tr>
<td>Loi favorisant la diffusion et la protection de la création sur Internet</td>
<td></td>
</tr>
<tr>
<td>Loi No 2009-669 du 12 juin 2009</td>
<td>129</td>
</tr>
<tr>
<td>(HADOPI law)</td>
<td></td>
</tr>
<tr>
<td>Three-strikes system</td>
<td>130–31</td>
</tr>
<tr>
<td>Lotus</td>
<td>1–2–3</td>
</tr>
</tbody>
</table>
authority of 30
regulating cyberspace 28–9
*see also norms
not requiring access to external legal systems 51
rule systems 30–31
*see also rule systems
technical rule making 38–40
Internet Society (ISOC) 38–9
management by consensus 41–2
near-absolute authority of 42
process relationships 41
*see also individual Internet bodies
transnational legal institutions 31
allocating authority to 34
and constitutional theory 32–3
as legal personalities 34
role of 31–2
source of authority 32
normative authority
source of 59
normative competition 103, 107, 109, 137–8
social normative compliance
complementarity of theories 107
*see also social normative compliance
normative force 55–6, 60
basis of 59
control through 85
normative landscape 185
and law 184
social norms in 186
normative rules *see norms
normative statements 192–3
normative strength
of authority claim 175
of US First Amendment 137
norms 9, 108
community 112–16
authority 115–16
cyberbullying 115
demand led 114
evolving 112–13
trolling 114–15
competing 128, 137, 227
cyberspace 108

Loyalty 1, 70–72, 107
*obligation distinction 75
to community 164, 207

Mayer-Schönberger, V. 88, 89, 164
McIntyre, T.J. 196
McLuhan, M. 117
determinist 117
*‘the medium is the message’ 117, 182
minimum contacts doctrine 13
*CompuServe v Patterson 13
modalities of regulation 87, 149–50
interplay between 89–92
collective regulatory pressure 91
intercommunication 91
moderators 112, 114
modifying behaviour 183–4

nation-states
and harm doctrine in informational torts 3
impossibility of individual state supremacy 10
jurisdiction over nationals 2–3
lawmaking authority 2
accepting some limitations on 12
limiting extraterritorial application 12
need to make cyber-law congruent with offline legal norms 189–90
network communications
lawmakers not immune to 166
plasticity of 166
Network Communitarianism 155
actors as communicative nodes 156
and compliance 158, 159
*Cyberpaternalism distinction 155, 158–9
reliance on communication 163
self-governing communities in 156
no opportunity for agency capture 42
nodal governance *see decentralised governance
non-state actors 26
as Austrian organisations 52
norms
Index

balkanisation of 108–9
sharing sexualised images 122–3
defining 91
grubnorms see grundnorms
hierarchy of 26
legal 26, 29
see also legal norms
naturally pluralistic 104
non-state 28–9
overriding of in cyberspace 26
in physical world 108
role of 91–2
service provider-originating 109–11
Community Standards documents 110
in gaming 110–11
Terms of Use 110
user agreements 110
sharing 123–6
as extension of physical world
sharing 126–7
social 26, 31, 85
see also social normative
compliance; social norms
technical 26, 117–20
design choices 119, 120
shaping behaviour 117, 118–19
technical determinism 117–18
variety of 26
NSPCC (UK),
Online child sexual abuse images: Doing more to tackle demand and supply (2016) 121–2
nudge 132–3, 134–5, 141, 233
legal streaming services as, 134–5
obligation 18
O’Dwyer, R. 9–10
online communications,
a-territorial nature of 61
output legitimacy 29, 174
and conflicting legislation 186–8
fairness and justice 194–7
compliance with rule of law 194–5
perception of fairness 195–7
and laws ignoring one-another 188–9
P2P file sharing 129-30
paternalism see Cyberpaternalism; see libertarian paternalism
platforms
big five 162, 165
concentration of power 162–3
no longer communities of choice 165–6
reaction tools on 119–20
reliance on community to self-monitor 118–19
see also individual platforms
pluralism
agnostic approach to 37
criticism of 29–30
genuine 37
legal 27–8
and non-state norms 28–9
monistic approach to, 37
statist approach to, 37
plural subject 106, 107
polycentric web 155
Post, D. 5–8, 10, 82, 146, 147–8, 207
Privacy International 196
private international law 12, 33–4
rational choice theory
and social normative compliance 104–5
rational decision-making 83
Raz, J. 5, 18–19, 169–70, 183, 198, 202
conception of legitimacy 176
rule of law principles 202–3
reader/response theory 182
reception theory 181–3
recognition 163–4
rule of see rules of recognition
regulation
command see command
definition 140
empirical 141
intermediary 161–2

libertarian paternalism see libertarian paternalism
modalities of see regulatory modalities
platform 162
through regulatory matrix 157–8 regulatory models
Actor-Network Theory 141–2 Science and Technology Studies 141, 142, 151 regulatory settlement see regulatory settlement regulatory theory/legal theory differentiation 140 responsive 141 risk-based 141 smart 141 symbiotic see symbiotic regulation
Regulatory Gravity 233 regulatory modalities 150 architecture 150 code see code laws 150 market, 150 norm, 150 settlement see regulatory settlement using to control 150–51 regulatory settlement 91 152 dynamism of 153 external flux 152–3 internal flux 152, 153 Reidenberg, J. 148–9 right to free speech, *ACLU v Reno* 196 rule of law 194, 200 cyberspace challenges 206–8, 234 interlegality 207–8 pluralism 207–8 defining 194 Bingham’s principles 203 Dicey’s pillars 200–201, 202 Fuller’s principles 202 Razian principles 202–3 thick/thin distinction 205 Waldron’s procedural characteristics 204–5 laundry list 203, 205–6 see also laundry list and legitimacy 168 see also legitimacy origins 201–2 rethinking for cyberspace 226–30 rules of recognition 63–4, 163–4 community 70 definition 65 external perspective 65–6, 72 see also external perspective internal perspective 64, 66–7, 72 justification for accepting 69–70 rule-systems 30–31, 44–5, 58, 63, 231–2 authority 50–51, 52, 55–6 legitimacy see sources of legitimacy below practical 52 transnational 54–5 breach of contract 51 choosing between 58 eBay 48–50 see also eBay exhibiting characteristics of state law 31 ICANN 45–6 see also ICANN influencing development of state law 30, 31 modifying 135–6 not requiring access to national law 51 producing technical norms 30 rule of recognition see rule of recognition sources of legitimacy 53 theoretical subordination of 51 voluntary membership of community 53 voluntary submission to rules 52–3, 54, 55 see also law-system quality test
Schrems, M. 196 Second Life Community Standards document 110 service providers 26 communication 187
Index

nons
  Community Standards documents
    110
  in gaming 110–11
  rules and standards 109–11
  Terms of Use 110
  user agreements, 110
  not choice architects 134

social normative compliance 104,
  106–7
  and evolutionary theory 105–6,
   107–8
  fulfilled desire achieving 135
  and rational choice theory 104, 107
  convention 104–5
  game theory 105
  reducing risk of sanction 105
  and social rationality theory
    106 107
  see also normative competition;
   rational choice theory; social

norms
  social norms 186, 233
  as challenge to law 186
  compliance with 103
  copyright not entrenched as 127–8
  law and code as sources of 101
  /legal norms gap 128–9
  reducing 129–31
  technology driving 122–3
  sharing sexualised images 122,
   123
  social rationality theory 106, 107
  solid/liquid model of law 34–6
  liquid authority 35
  solid authority 34–5
  sovereignty 5, 34, 36
  citizen 150
  /control conflation 32
  and cyberspace 146
  legal 33
  Spotify 124, 134

standards
  Symbiotic Regulation 155, 157–8, 159
  uncertainties in 158
  systems theory 153–4
  Gardener’s Dilemma 153
  Good Regulator Theorem 154–5

Law of Requisite Variety 154

Tamanaha, B. 27, 78, 201, 205, 207,
   213
  rule systems 30–31
  technological determinism 117–18
  hard 117, 118
  soft 117–18
  technology affecting responses to law
    184
  technology neutrality 190
  territorility 34
  extra- 4
  throughput legitimacy 174, 198
  transnational law 32, 36
  autonomous 50
  constitutional 33
  Transport Control Protocol (TCP) 41
  trolling 114–15
  tweets 120

UAE Federal Law No 2 of 2006, art.
   16 217

UK
  Communications Act (2003), s. 127
   218, 219
  content/metadata distinction 188
  Copyright Designs and Patents Act
    (1988), s. 107(2A) 219, 220,
     221, 222
  Criminal Finances Act (2017) 223
  Criminal Justice Act 1988, s. 121
   160
  Criminal Justice and Courts Act
    (2015), s. 33 217
  Data Protection Act (2018) 223
  Data Retention and Investigatory
  Digital Economy Act (2010) 129,
   130
  Digital Economy Act (2017) 223
  Extradition Act (2003) 216, 228
  s. 78(4)(b) 220
  Financial Services and Markets Act
    (2000), s. 21(3) 12
  Fraud Act (2006) 192
licensed mobile network operators 188
Protection from Harassment Act (1997) 217, 219
s. 2A 218
s. 4A 219
Protection of Children Act (1978) 121
Road Traffic Regulation Act (1984) 181
Theft Act (1968) 217
Uniform Domain Name Dispute Resolution Policy see ICANN, UDRP
US Communications Decency Act (1996) 145
s. 230 195
Constitution
First Amendment 195–6
Fifth Amendment 12
Fourteenth Amendment 12
Digital Millennium Copyright Act (1998) take down notices 126
Waldron, J. 203–4, 205
laundry list 203
see also laundry list
procedural characteristics of rule of law 204–5
Weber, M.
charismatic authority 43
legal-rational authority 43
legitimate rule 172–3
extension of 176
WhatsApp 165
World of Warcraft Terms of Use 110
YouTube 118–19, 165
communities 125–6
Content ID system 100