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HISTORICAL AND LEGAL APPROACH TO THE INTERRELATION BETWEEN LAW AND INFORMATION AND COMMUNICATION TECHNOLOGIES. THE CASE OF FUNDAMENTAL RIGHTS

Fecha de recepción: 9 de mayo 2018 / Fecha de aceptación: 11 junio 2018

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Abstract: The emergence of the new Information and Communication Technologies has brought a multitude of advantages in the economic, cultural and political aspects of modern society, however, there have also been a multitude of conflicts and legal problems that pose a challenge for the Law. A historical-legal approach is taken to study the interrelation between Law and Information and Communication Technologies. The evolution of the Law and the peculiar relationship between Law and technology are discussed. Information and Communications Technologies are what, to a large extent, drive history. From this point of view, the current revolution of the new "Digital Era" is compared with the characteristics of other important technological revolutions. The fundamental rights of the personality are one of the most relevant concerns related to the Information and Communications Technologies since their use have serious implications regarding the delimitation of the right to honor, privacy, one's own image or freedom of expression. With the regulation of the fundamental rights of personality, new legal figures have emerged that are typical of the use of the Internet such as hate speech, digital censorship or the right to be forgotten. The Law is configured as the regulatory instrument that should fit these new figures and rights in today's society and also those that will emerge in the future, therefore the Law must adapt to new technologies and changes that will happen.

Keywords: legal evolution; Internet; fundamental rights; Information and Communication Technologies.

Resumen: El surgimiento de las nuevas Tecnologías de la Información y de las Comunicaciones ha conllevado multitud de ventajas en los aspectos económicos, culturales y políticos de la sociedad moderna, sin embargo, también han surgido multitud de conflictos y problemas jurídicos que suponen un desafío para el Derecho. Se realiza una aproximación histórico-jurídica a la interrelación entre Derecho y Tecnologías de la Información y de las Comunicaciones. Se discute la evolución del Derecho y la peculiar relación entre Derecho y tecnología. Las Tecnologías de la Información y de las Comunicaciones son las que, en gran medida, impulsan la historia. Bajo este punto de vista, se compara la revolución actual de la nueva “Era Digital” con las características de otras revoluciones tecnológicas importantes. Uno de los impactos

más relevantes que tiene la Red es el que afecta a los derechos fundamentales de la personalidad, pues el uso de las nuevas tecnologías tiene serias implicaciones respecto a la delimitación del derecho al honor, a la intimidad, a la propia imagen o a la libertad de expresión. Con la regulación de los derechos fundamentales de la personalidad han ido surgiendo nuevas figuras jurídicas que son típicas del uso de Internet como el hate speech, la censura digital o el derecho al olvido. El Derecho se configura como el instrumento regulador que debe encajar estas nuevas figuras y derechos en la sociedad actual y también de las que irán surgiendo en un futuro, por ello el Derecho debe adaptarse a las nuevas tecnologías y a los cambios que se irán sucediendo.

Palabras clave: evolución del Derecho; Internet; derechos fundamentales; Tecnologías de la Información y de las Comunicaciones.

1. INTRODUCCION

Innovations in technology have a wide range of effects on many areas of society and policy-makers act on questions that include different spheres such as economic productivity, intellectual property rights, protection of privacy and the availability and access to information.

Jurists and legal institutions often face technological changes, so a technology popularly conceived as emerging is bound to be channelled, regulated or prohibited by Law. This vast history of public records that reflect the constant concern for the technological change suggest that there is a detailed academic reflection on the relationship between Law and technology.

Most studies on Law and new technologies show a basic framework of how both of them would be considered under a positivist background and orientation, i.e. it can be considered that cultural concerns that surround certain technologies are channelled towards legal domains when jurists identify gaps within the jurisdictions.

However, there are two aspects of Law and Information and Communication Technologies that have been ignored: one of them is that the positivist approach to the future impacts of new technologies has produced a restriction on technology in general; and the other aspect is related to the historical perspective.

Concerning this historical perspective of Law and technologies, there are two important questions that are very often ignored, one is the understanding of how Law has evolved over time and what factors contribute to legal change. The other question refers to the past of the relationship between Law and Information and Communication Technologies, because often jurists write about technology with a speculative vision focused in the future. The thing which is not considered is that Law has a long past, which is deep and complex, especially concerning new technologies.

The issues and concerns that the previous generations have considered are now rediscovered and presented as something new, but many concerns and expectation about the Internet in the first legal norms are similar to the ones written about telegraph after its invention. However, the lessons learned in the process for legalising the telegraph were not considered by jurists in their discussions on the judicialisation of the cyberspace.

It is perceived that the regulation of new technologies and their effects on society and Law is an idea whose time has come. This paper presents a general overview of this environment.

2. Evolution of Law

In order to build a general theoretical framework that explains the stability and the change in Law, it is required the use of the perspective of the history of Law and comparative Law, a general analysis of society and a detailed knowledge about the nature and progress of legal norms.

The social approach to the evolution of Law is characterised by the statement that Law is not an autonomous system, but an integral part of the social life of a community. In this way, as society itself, its language, its culture, its political systems and its economic structure, Law also evolves[1].

[1] Cf. Schwartz, R. D. & Miller, J. C., «Legal Evolution and Societal Complexity», en *American Journal of Sociology* 70 (1964), p. 160.

The orthodox legal thinking in the United States inherited the social concept of evolution of Law and it transformed it into what was called "doctrinal" approach, which affirms that evolution takes place not only at the level of societies, but also at the much more detailed level of the specific statements of legal principles and rules that jurists call legal doctrines[2].

The economic approach to the evolution of Law applies from a methodological point of view the entire conceptual apparatus and the empirical methods of economics to the study of Law. Although it is recognised that the economic approach to Law as independent field of research is the result of studies carried out in the United States, particularly in the Chicago School, most precursors are in Europe, including the works of Adam Smith on the economic effects of legislation[3].

In customary Law, legal changes carried out by judges are unintended by-products of the ordinary administration of justice by the courts, and in order to be binding on the entire jurisdiction they must first spread through the hierarchical system of courts[4].

Nevertheless, innovations in statutory Law are the result of a collective problem-solving process and, once they have been approved by laws, they are immediately binding on the entire jurisdiction. Political theories on the evolution of Law as a process of innovation derive from two main approaches: the approach to the public policy choice and the evolutionary and cognitive approach to the policy-making[5].

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[2] Cf. ELLIOT, E. D., «The Evolutionary Tradition in Jurisprudence», en Columbia Law Review 85 (1985), p. 50.
[3] Cf. GOODMAN, J. C., «An Economic theory of the Evolution of Common Law», en *The Journal of Legal Studies* 7 (1978), p. 393.
[4] Cf. TERREBONNE, R. P., «A Strictly Evolutionary Model of Common Law», en *The Journal of Legal Studies* 10 (1981), p. 397.
[5] Cf. BECKER, G. S., «A Theory of Competition Among Pressure Groups for Political Influence», en *The Quarterly Journal of Economics* 98 (1983), p. 371; Cf. SLEMBECK, T., «Ideologies, Beliefs and Economic Advice – A Cognitive – Evolutionary View on Economic Policy–Making», en *Public Economics* 12 (2000), pp. 15-17.

Theories that apply the conclusions of the socio-biology to Law believe that evolution is the causal process that justifies the existence of Law and, to some extent, the form and content of Law. Sociobiological theories are characterised not by affirming that Law evolves, but rather by claiming that Law has evolved, that is, Law itself is the result of the evolution[6].

In recent decades, the application of evolutionary analyses to cultural objects has resurfaced, revitalising their use in Law and making explicit affirmations based on the "memetics" and complex theories of evolution[7].

The concept of "juridical transplant" or "legal transplant"is interpreted as the phenomenon of transferring a norm from one country to another, or from one people to another, being one of the most frequent ways of legal change. There are some factors that shape the internal strengths of the legal systems, and a legal change will take place when the strength of the factors that support the change is greater than the force of the factors that are opposed to it, being the nature of the change determined by the balance and the relative weight of these factors[8].

These complex evolutionary processes are the result of the contribution of several systems and cultures. This analysis of transplants as a general aspect of Law takes the form of a chronology. A vision of Law is achieved by evolving through a continuous process of events of different type, each of them is prone to subsequent

[6] Cf. SEGERSTRALE, U., «Colleagues in conflict: An "in vivo" analysis of the sociobiology controversy», en Biology and Philosophy 1 (1986), p. 54.
[7] Cf. DEAKIN, S., «Evolution for Our Time: A Theory of Legal Memetics», en *Current Legal Problems* 55 (2002), p. 2; Cf. JONES, O. D. & GOLDSMITH, T. H., «Law and Behavioral Biology», en *Columbia Law review* 105 (2005), p. 466.
[8] Cf. CAIRNS, J. W., «Watson, Walton and the History of Legal Transplants», en Georgia Journal of International and Comparative Law 41 (2013), p. 638; WATSON, A., «Society's Choice and Legal Change», en Hofstra Law Review 9 (1981), pp. 1477-1481.

changes and is influenced by previous and concurrent events. They are the result of the contribution of many actors and forces, which are also in a constant state of flux[9].

3. Interrelation between Law and Information and Communication Technologies

Technological innovations are among the most important factors that have influence in the evolution of Law and in the changes that take place in legal norms. For a long time, technologies were specific to their context, that is, the use of devices and techniques of these technologies was reserved exclusively for some specialists. The evolution of technologies produced legal norms that defined the standards of conduct of specialists who controlled those specific technologies. These legal norms were specific to their context and they focused on the correct or incorrect application of a certain technology and the consequences they had on those who controlled that technology[10].

Regulators, in situations of extreme uncertainty, should strive to maintain a responsible and rational approach and employ a form of precautionary reasoning. This principle of action may involve the introduction of a prohibition or a moratorium that would operate in the context of a precautionary or preventive intervention to avoid damage[11].

The regulatory environment must support the development, the application and the exploitation of technological innovations that may contribute to improve human social existence, and to be well targeted towards risk management and benefit-sharing. The regulation that constitutes the regulatory environment can come from different sources, governmental and non-governmental, public and private, official and

[9] Cf. Cohn, M., «Legal Transplant Chronicles: The Evolution of Unreasonableness and Proportionality Review of the Administration in the United Kingdom», en *American Journal of Comparative Law* 58 (2010), pp. 585-588.
[10] Cf. Brenner, S. W., *Law in an Era of "Smart" Technology*, New York 2007, p. 19.
[11] Cf. Beyleveld, D. & Brownsword, R., «Emerging Technologies, Extreme Uncertainty, and the Principle of Rational Precautionary Reasoning», en *Law, Innovation and Technology* 4 (2012), pp. 36-37.

unofficial and more or less formal. But the public authorities must always guarantee citizens' rights and ensure security, order and the rule of law[12].

Differences between customary and statutory Law are important in any context, but in the case of their use as instruments to adapt legal rules to technological developments, these differences are mainly focused on those that make statutory Law less flexible than customary Law, since flexibility is crucial when it comes to dealing with continuing technological innovations[13].

Technology has always had a certain normative character; it is never neutral. But with the arrival of new Information and Communication Technologies and the Internet, technology is increasingly being intentionally used as a tool to regulate human behaviour. The concept of "code is law" means that, nowadays, technology is being intentionally used as an instrument to influence people's behaviour, supplemented by the law as a regulatory instrument. It is a key difference between the "code" and the Law the fact that normative technology, both in its role of enforcing the rules and in its role of setting these norms, has an influence on how people can behave, while the law influences how people should behave[14].

The self-executing nature of the techno-regulation has raised a number of concerns, some of them focused on its effectiveness and effects, others on its potential to put at risk important values. Techno-regulation, in order to reach its goals, leads to a total dependence over reliability and precision of "norms" of the design adopted.

Techno-regulation can result in a loss of "moral responsibility". It seems that technology, rather than the moral character of the relevant individual, is the responsible for the visualisation of the virtue, and it fully affects the fundamental notions of respect

[12] Cf. BROWNSWORD, R. & SOMSEN, H., «Law, Innovation and Technology: Before We Fast Forward – A Forum for Debate», en *Law, Innovation and Technology* 1 (2009), p. 3.
[13] Cf. MOSES, L. B., «Adapting the Law to Technological Change: A Comparison of Common Law and Legislation», en *UNSW Law Journal* 26 (2003), pp. 394-395.
[14] Cf. KOOPS, B. J., «Criteria for Normative Technology: An Essay on the Acceptability of "Code as Law" in Light of Democratic and Constitutional Values», en *Regulating Technologies*, BROWNSWORD, R. & YEUNG, K. (Eds.), Oxford 2007, p. 157.

and responsibility, since they force the individuals to act in a manner dictated by the designs of the "code", and it suggests that techno-regulation threatens the basic foundations that enable the existence of a moral community[15].

4. HISTORICAL PERSPECTIVE

From the historical point of view, fundamental advances in technology are first applied to communication processes: the era of mechanics was introduced with the printing press and the era of electronics with the telegraph. The explanation for this historical fact derives from a conception of society based on a model of appropriate competition for the economy and extended to all social institutions.

All the innovations of Information and Communication Technologies are characterised by the fact that they take a long time to develop their potential, by initially imitating the oldest forms of communication, by undergoing attacks in their early stages and by producing far-reaching changes. And all these characteristics have been visualised throughout history[16].

The first historical milestone of Information and Communication Technologies was witting. Written Law is related to the ideas of justice and democracy and made it possible to control arbitrary judgements.

Written Law outsources legal norms and provides them with an independent existence. This allows durability in time and space, distancing from the author and creating a need for interpretation of its meaning. At the same time, it creates the need of a class of professionals, the jurists, who maintain the coherence and the historical continuity of Law, thus allowing the emergence of the modern state[17].

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[15] Cf. YEUNG, K., «Can We Employ Design-Based Regulation While Avoiding Brave New World?», en *Law, Innovation and Technology* 3 (2011), pp. 8-9.

[16] Cf. STEPHENS, M., «Which Communications Revolutions Is It, Anyway?», en *Journalism & Mas Communications Quarterly* 75 (1998), pp. 9-13.

[17] Cf. HILDEBRANDT, M., «A Vision of Ambient Law» en *Regulating Technologies. Legal Futures, Regulatory Frames and Technological Fixed*, BROWNSWORD, R., & YEUNG, K. (Eds.), Portland 2008, p. 184.

The second historical milestone of Information and Communication Technologies was the printing press. Its invention and the culture that it developed with the availability of the printed material had a very great influence on the beginning of the modern Europe. Printing press allowed the dissemination and distribution of information and the standardisation of the texts, and it also favoured their fixation and preservation. It played a decisive role in the changes that took place in its time.

Printing press was the condition that made it possible for written Law to be decisive for the modern national states, for democracy and for the rule of Law (providing the need of an autonomous class of jurists who interpret and support the intrasystemic coherence of Law)[18].

The proliferation of legal texts since the progress of printing press produced a potential chaos of interpretations, generating the need for systematisation and specialisation. This resulted in the professionalisation of legal practices over the last five centuries. The strength of printed law began to depend on both the coercive authority of the state and the work of the jurists[19].

The third milestone happened in the 19th century with the invention of the telegraph. Telegraph had an important impact on culture. It was the basis for the emergence of important technological innovations in telecommunication: the telephone was the successor to the telegraph, wireless telegraphy become apparent with the emergence of the radio, and when the wireless telephony emerged, it was used to begin the era of transmission, of words first, and then of images with the television.

From the point of view of Law, the technology of the telegraph became the subject of context-specific legal rules, and they were addressed to their specialists. The circumscribed nature of the effects of telegraphy meant that it generated less concern

[18] Ivi, p. 185.
[19] Cf. HILDEBRANDT, M., «Legal and technological normativity: more (and less) tan twin sisters», en *Techné* 12 (2008), p. 171.

about the possible negative effects that might result from its implementation, compared to the printing press. Most of the first claims on telegraph technology were precisely related to the failures in the transmission of messages and their confidentiality[20].

The fourth historical milestone is the digital information and communication era in which we are immersed today. The history of the Internet is complex and involves many aspects: technology, organisation and community. Its influence extends beyond the technical areas of computer communication, and as we move forward with the increasing use of online tools for e-commerce, data acquisition and community operations, it affects the whole society.

Subsequently, the World Wide Web (WWW), better known as the web, which is superimposed on the Internet and incorporates its protocols, marked the beginning of the cohesion of three different innovation streams: personal computing, networking and connection programmes. This techno-social system for human interaction based on technological networks has undergone, in the last two decades, a great amount of progress in the web and its related technologies, some of which have culminated in the emergence of social networks[21].

The Internet of Things is the next evolution of the Internet. It means a giant step forward in its capacity to accumulate, analyse and distribute data that can be transformed into information, knowledge and ultimately wisdom. Since it was introduced, a series of intelligent objects "capable of connecting" with communication, sensory and action capacities have been implemented with many applications such as in the areas of health, intelligent buildings, social networks, environmental monitoring, transport and logistics, etc[22].

[20] Cf. BRENNER, S. W., *Law in an Era of "Smart" Technology…,* cit. pp. 58-59.
[21] Cf. AGHAEI, S., NEMATBAKHS, M. A., & FARSANI, H. K., «Evolution of the World Wide Web: from Web 1.0 to Web 4.0», en *International Journal of Web & Semantic Technology* 3 (2012), pp. 1-2.
[22] Cf. MULANI, T. T. & PINGLE, S. V., «Internet of Things», en *International Research Journal of Multidisciplinary Studies* 2 (2016), p. 1.

5. Information and Communication technologies and fundamental rights

The emergence of the Internet and all its developments has had a very relevant legal impact on the fundamental rights of citizens. Sometimes the Internet affects the privacy of users, sometimes conflicts are about the expression of ideas or opinions.

These rights are known as the fundamental personality rights, which are not only affected by the Internet, but sometimes also by new technologies that generate conflicts between them. These personality rights refer to those closely related to the personal sphere of the individual and relate to a range of both physical and moral attributes, such as human dignity.

All the definitions that have been made about these rights are based on the common premise that they cannot be understood without the person. These rights can be exercised against anyone, they are limited, non-transferable rights, very personal rights, susceptible to change and they include moral goods[23].

Personality rights, which are particularly relevant to Information and Communication Technologies, concern the personal freedom and those of social consideration. These rights are the most conflicting for Law in the Internet.

These rights are regulated in the Spanish Constitution of 1978 and they are constituted as fundamental rights of the utmost importance, so they enjoy wide protection by the Spanish legal system. This is why they are very complex, because the resulting conflicts will present a clash between these rights.

An example of these conflicts is the delimitation between the right to honour and the right to freedom of expression, the right to honour being the good consideration or reputation that a person has, which changes and is transformed by social and cultural

[23] Cf. De la Parra Trujillo, E., «Los Derechos de la personalidad: Teoría general y su distinción con los derechos humanos y las garantías individuales», en *Jurídica. Anuario del Departamento de Derecho de la Universidad Iberoamericana* 31 (2001), p. 139-140.

changes. Honour has a dual facet (objective and subjective) and it affects all persons (physical and juridical) who make up society.

Freedom of expression means the ability of all the persons to express their ideas or thoughts, especially today because the Internet is identified with total freedom of expression. However, the use of the Internet has other positive and negative aspects for the freedom of expression, due to the speed with which messages are transmitted.

When these two rights come into conflict, a series of parameters must be weighed to apply criteria that are reasonable and practical. Neither right is above the other, but each case must be examined to ensure a balance.

This conflict is particularly complex in the Internet, since messages can become viral very quickly and images are very easily exchanged. Legislation often does not know very well how to delimit these rights. The legislation of each country deals with this delimitation in a different way depending on its culture and history[24].

However, a misuse of freedom of expression can have a series of criminal implications in the form of penalties. The most common on the Internet are injuries and libels and both of them are delimited by a series of characteristics that must be examined in each case to determine whether the user is worthy of a penalty, as is the case of veracity or a public interest.

Privacy is another of the rights deeply affected by the use of new technologies. This corresponds to the very essence of the person, so the legislation takes good account of a proper protection of it. The Internet is a possible threat to privacy, since the storage and transmission of information can seriously damage privacy[25].

[24] Cf. GIL VALLILENGUA, L., «Los derechos al honor, a la intimidad y a la propia imagen en las redes sociales: la difusión no consentida de imágenes», en *REDUR* 14 (2016), pp. 163-164.
[25] Cf. CASTILLO JIMÉNEZ, C., «Protección del derecho a la intimidad y uso de las nuevas tecnologías de la información», en *Derecho y conocimiento: anuario jurídico sobre la sociedad de la información y del conocimiento* 1 (2001), p. 37.

This damage sometimes occurs due to the irresponsible use of the users themselves, as this always leaves a trace on the Internet, and personal information is constantly transmitted (even if this may be insignificant a priori). One of the most vulnerable groups on the Internet are precisely the ones who most use its software, applications and social network: minors.

Minors are affected by many dangers, which sometimes come from adult users and sometimes from other minors. The behaviour of these "digital natives" is very different from the one of other generations, as many of them assume that the loss of privacy is a natural and reasonable consequence of surfing the Internet[26].

One of the keys to protect privacy is the good protection of personal data. The difference between privacy and private life is one of the first concepts to be assumed for a good protection of both. Another factor favourable to the good protection of personal data is the proper use and prudence of the users, and also some legislative advances such as the adoption of the General Data Protection Regulation No 679/2016, which reforms the European landscape concerning personal data protection.

The last personality right, the right to self-image, has always been linked to the right to honour and the right to privacy, but it is an autonomous right itself. This protects the physical aspect of the individual, which is affected on the Internet by the rapid dissemination of images. In many occasions, images of the subject are used without his consent, and this may lead to many damages[27].

From all the conflicts resulting from the fundamental personality rights, a number of figures have emerged which are especially relevant to the Internet and to the legislation.

The first of them, the hate speech, involves expressions that are based on discrimination and intolerance. These expressions violate human dignity and are based

[26] Cf. OLIVA MARAÑÓN, C., «Redes sociales y jóvenes: una intimidad cuestionada en Internet», en *APOSTA. Revista de Ciencias Sociales* 54 (2012), pp. 1-2.
[27] Cf. MORÁN GARRIDO, T., «El derecho a la propia imagen», en *Revista FEFPI*, p. 18.

on the tools provided by the Internet, such as rapid interaction or anonymity.It is quite difficult to detect hate speech on the Internet, although it is currently very common. Hate speech usually appears on social networks in the form of racist insults or attacks on minorities and it incites hatred and attempts to be offensive to certain groups[28].

The hate speech is a negative consequence of the misuse of the right to freedom of expression. In the Internet, these expressions have proliferated and legislation has the challenge of limiting the right to freedom of expression on the Internet.

With this, censorship on the Internet emerges, because its nature makes it hard to regulate it. Censorship will be seen as a way of control. Digital censorship implies some actions such as closing websites, technical blocking and removal of searches. Censorship can come from the State itself, from the providers or even from the users themselves. The use of these mechanisms is not necessarily bad, but it can have serious implications, since many States take advantage of these mechanisms to carry out political control over the Internet[29].

In the end, both censorship mechanisms and protection mechanisms against censorship have their own technological evolution and clash continuously over the years. But the recent history of the Internet has shown that in the end, in this struggle, total censorship is ineffective, because the nature of the Internet must be truly free.

Precisely, one of the great developments that the legislation has made without undermining the freedom of the Internet has been the configuration of the right to be forgotten. This right has its origin in the judgement delivered by the Court of Justice of the European Union on 13th May 2014, which recognised the ability of any Internet

[28] Cf. DÍAZ SOTO, J. M., «Una aproximación al concepto de discurso del odio», en *Revista Derecho del Estado* 34 (2015), pp. 78-79.
[29] Cf. ARANDA SERNA, F. J., «La delimitación de la libertad de expresión en Internet. La confrontación de derechos y la censura digital», en *Hacia una Justicia 2.0: actas del XX Congreso Iberoamericano de Derecho e Informática*, YAMEL MUNIVE, E. (Coord.), Salamanca 2016, pp. 21-22.

user to oppose the use of his personal data for a purpose other than that which the user himself has provided.

The right to be forgotten has been extended to search engines as famous as Google, which already incorporate their own form and the user is already able to remove the information he does not want to appear on the Internet[30].

Another challenge that the legislation must face is born with the configuration of the digital entity of the subject. The avatar is a representation of a physical person in the digital world. This has many implications, because the avatar can contain some data that may give information about the subject.

This in turn can configure this representation in various ways, since the construction of digital identity is one of the first steps in digital interaction. However, other problems may arise, such us usurpation or theft of this digital identity[31].

6. Concluding remarks

Information and Communication Technologies play the most important role in society. They condition the practice of communication in this society, the institutions and the socio-cultural agreements related to those practices and, through them, also the most general agreements between societies and cultural environments.

Law plays a fundamental role in fitting the technological devices and their social context. The new legal themes created by technological innovations are often quite challenging and present new variations that face current interpretations of Law.

This lower pace of Law must not be confused with a suspension of decisions waiting for the issues in question to mature, in order to accommodate these opposing

[30] Cf. Platero Alcón, A., «El derecho al olvido en internet. El fenómeno de los motores de búsqueda», en *Opinión Jurídica* 15 (2016), pp. 246-248.
[31] Cf. Belda Iniesta, J. & Aranda Serna, F. J., «El paradigma de la identidad: hacia una regulación del mundo digital», en *Revista Forense* 422 (2015), p. 185.

trends. Any regulation should retain both flexibility and capacity to respond, or even the anticipation of the future risks or activities that are constantly evolving.

Regulation will be ineffective or inappropriate if technology leaves the reference framework for this regulation behind. This connection implies that regulation needs to incorporate a degree of flexibility or openness, that it should, when possible, adopt technologically neutral strategies and it should be interpreted in an intentional way.

The legislative process is slow, while technology changes quickly. This gap between technological innovations and the change in Law may affect the legal uncertainty and provoke people to act in ambiguous environments where rights and responsibilities cannot be clearly recognised or predicted.

Therefore, although it would be very presumptuous to respond and give a solution to all the global problems that Law has with the Internet, it is possible to give some final guidelines that, if the legislation takes them as a basis, will lead to progress, regardless of the uncertainty of future technological advances:

Law must be flexible and changeable. The existence of rigid rules that do not adapt to technological changes will never be a solution to conflicts on the Internet.

Law cannot regulate the Internet unilaterally. It is necessary to involve all the actors who make up the Internet, especially with regard to Internet providers and to self-regulation rules, which are already a reality that laws cannot ignore.

Law should not be limited to delimiting, regulating and/or prohibiting. It should also raise awareness, educate and make known what the new Information and Communication Technologies are capable of.

The Internet was born as a truly free entity, where users are its fundamental nucleus. The development of the regulation of the Internet must not lose sight of how this origin was, so as not to pervert it in the future. The Internet is free and it will remain so, and its users must not lose this freedom of access and social interaction either.