The critical role of technical and social principles and values in encryption regulation

Michael Dizon, PhD

Encryption

a technology that transforms information or data into ciphers or code for purposes of ensuring its confidentiality, integrity and authenticity

Regulatory challenges

Complex and enigmatic technology

Many proposed regulations

Debate about encryption regulation continues unabated

Prevailing mindsets

Legal centralism – “law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions” (Griffiths)

Instrumentalism – “technology is a simple tool - an instrument of the social, political, or economic group or individual that chooses to develop or use a certain technology” (Cockfield and Pridmore)

Legal centralist and instrumentalist

"The laws of Australia prevail in Australia, I can assure you of that. The laws of mathematics are very commendable, but the only law that applies in Australia is the law of Australia" – former Australian Prime Minister Turnbull

Technical and social dimensions

Non-legal factors and considerations

Pluralist and interdisciplinary approach

Attendant technical principles and social values

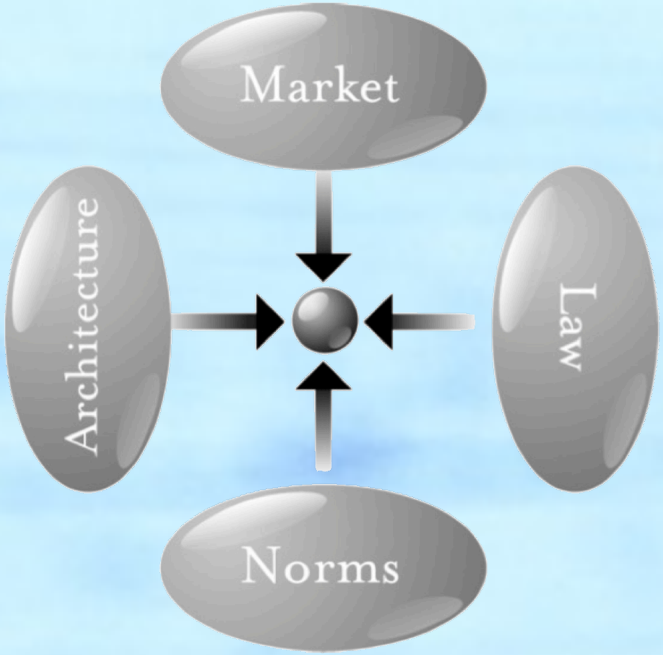
Legal pluralism

"as that state of affairs, for any social field, in which behaviour pursuant to more than one legal order occurs" (Griffiths)

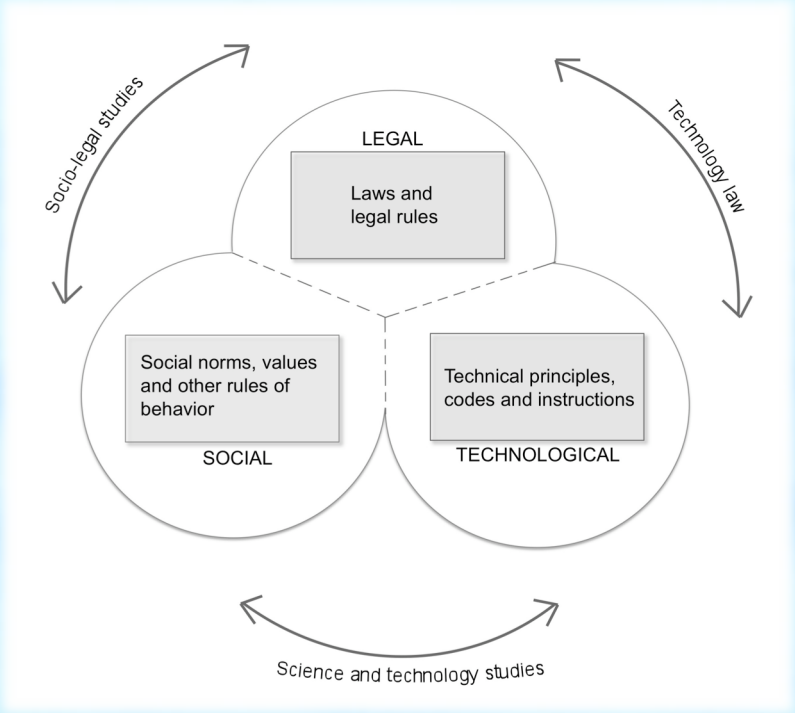
Recognition of the existence of plural normative orders

Normative – What persons ought to do or else

Lessig's theory of the four modalities of regulation



Interdisciplinary approach



Technical principles

Primacy of encryption keys

Adversarial nature
(code making and code breaking)

Social values

Privacy, data protection and information security considered most important

Importance of trust

Technology laws and policies

Legal, technical and social dimensions

Pluralist and interdisciplinary approach

Fundamental principles and values

Questions and comments

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