Digital Golems and Peer-to-Peer Law

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The myth of the golem

- An uncontrollable creature
- Applying the orders of the master who designed it
- Can turn out to be dangerous
- Even for their masters...

Encoding rules into binary, uncontrollable creatures

- DRMs: books, streaming
- drones
- 3D printing
- algorithmic governance
- internet of things
- "smart" cities or homes

Same risks of encoding rules
Into technical norms of a data-driven society

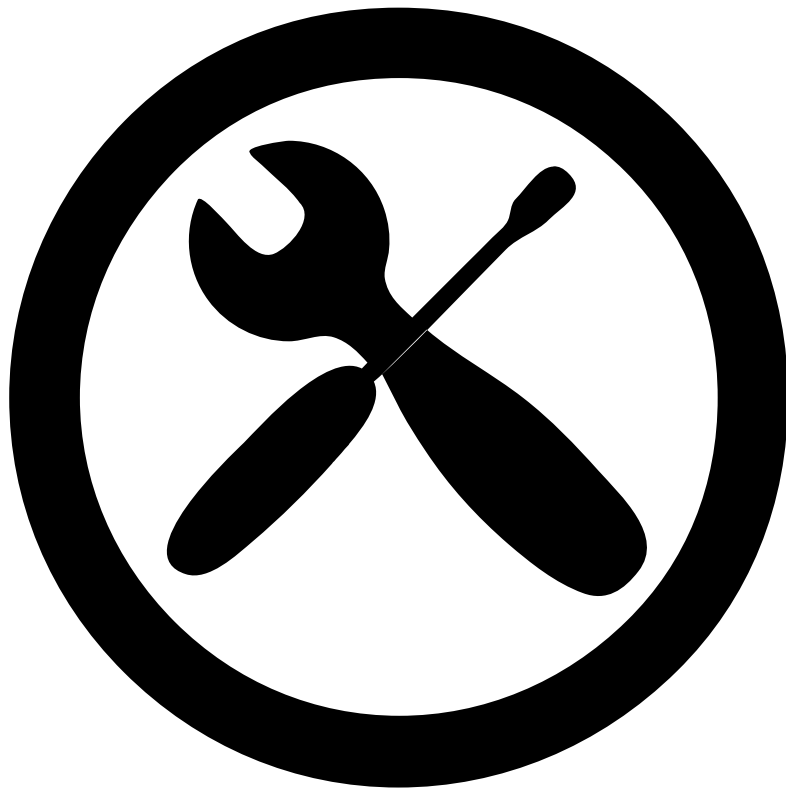applying the orders

of the master

who designed it

a powerful person or an hegemonic company

can become invisible

master can decide to deactivate it once a week for Sabbath

Blind enforcement

automate decisions

without distinguishing legitimate from illegitimate usages

greater dangers

impossibility to access and remix culture and science

3D print drugs, dangerous, life-saving, patented?

Different modes of relationship between law and technology

1. Digital golems

tech tries to dominate law

developed by right holders

to protect their interests

without accountability

nor control by society

domination of corporations

lobbying tech-clueless governments

towards stronger protection of their interests

regardless of massive infringement of our personal freedoms

2. Cyberlaw & Lex electronica

Regulation of code &

Regulation by code embedding legal values

Instead of blind domination

Attempt of cooperation between legal & tech orders

3. Peer-to-Peer Law

a hybrid model of regulation

integrating the two sorts of code

Similarly to
techno-legal   rights   information
expressing users' rights

The law could infect code,

carrying its values,

but code could also infect the law
and export its design features

Applying the model of distributed architectures to the law itself

p2p computing principe & design

distributed & federated architecture vs centralised

= subsidiarity

Community mesh networks
p2p & alternative internets

"Mesh networks are an especially resilient tool because there's no easy way for a government to shut them down. They can't just block cell reception or a site address. Mesh networks are like Voldemort after he split his soul into horcruxes (only not evil).

Destroying one part won't kill it unless you destroy each point of access; someone would have to turn off Bluetooth on every phone using FireChat to completely break the connection. This hard-to-break connection isn't super important for casual chats, but during tense political showdowns, it could be a lifeline."

http://www.npr.org/blogs/alltechconsidered/2014/09/

How does the law deal with p2p tort

Traditional application of law to tech disrupting the law

Actions and files fragmentation

+ local encryption

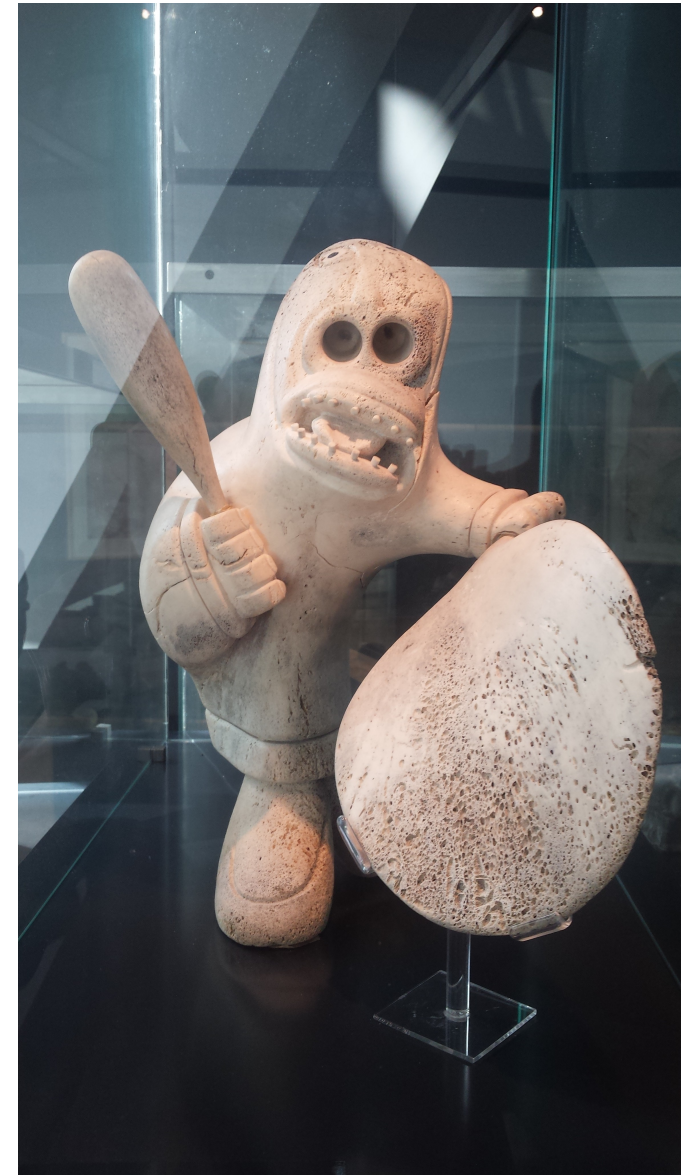Challenge liability, control, ownership and responsibility

Harder to al/locate responsibility on one agent

Chilling effect of cybercriminality regulation

Three strikes?

Monitoring?

Outlaw the tech?

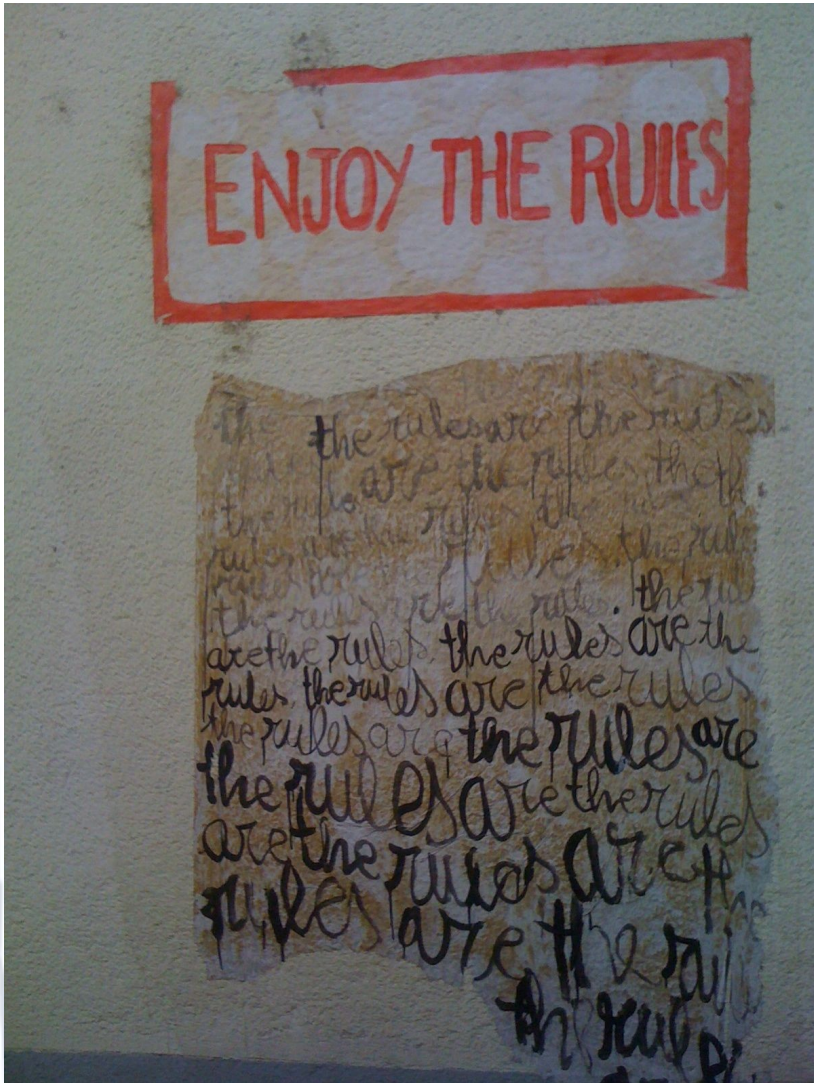# Instead of trying to apply the law to p2p...

How about applying p2p to the law?

To try to transform it

Apply architectural design principles based on decentralisation

– To influence legal thinking

– Towards the distribution of the law

(Dulong de Rosnay, *Journal of Peer Production*, 2015)

How to challenge
western, liberal, legalist categorisation
designed around individualism

Instead of coming up with a regime of limited responsibility for intermediaries or whatever individually identifiable entity

Towards the recognition of collectives of users as subjects of rights

Communities of user peers

- Non-stabilised, evolving, or non formalized groups

- Local communities

- Online communities

- Theoretical break from envisioning the individual person as unique point of reference

Precedents of law integrating the commons

Crowdsourced infringement monitoring

Distributed policing by the users

Local management: Commons Ostrom Institutional Design Principle #4

Bundle of rights as shared property

Commons-based property legal hacks: users- or collective-based?

In copyright, 'private ordering' (Elkin-Koren 2005) comforting 'an author-centric individualism' and 'implicit adoption of liberal legalism' (Barron, 2014)

Instead of defining rights and duties directly for collectives

Network theory
Law and artificial intelligence

- Need for a systemic way

- Epistemological transformation of the model where law assign rights to responsible individuals

- How other rights and duties may be assigned to collectives

- Rights of non-humans electronic agents (Teubner, 2006)

    - 'attribute contractual act to this socio-technical ensemble'

    - To make it the 'well-acquainted juridical person'

- Intentionality of software agents? (Sartor, 2009)

- It can work: collective insurances & commons-based mutualisation

Agency of collectives

- Problem is lack of decisional autonomy

- Concepts of actants and hybrids (Latour, 2004):

'In hybrids, the participating individual or collective actors are not acting for themselves but are acting for the hybrid as an emerging unit, the association between human and non-humans'.

So are user communities hybrids?

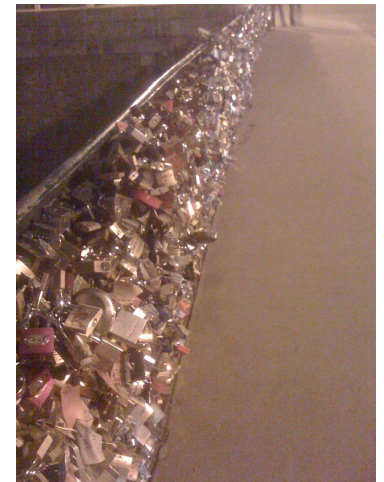If they don't know what they are carrying

there is no a common will or common action

so they do not form an association?

Joint collective action

- The 'we' of a cyber-community can be found in the Declaration of Independence of the Cyberspace (Barlow, 1996)

- not, however, as an aggregation of individuals

- but rather as a whole, as a collective that acts jointly' Lindahl (2013)

- 'we, each' and 'we, together' Margaret Gilbert 1996

- "pool of wills" condition of the plural subject

- **Does group intention (e.g. user generated wifi) leads to collective and distributed responsibility?**

- Fragmented contribution to the network will help a political dissident, a cybercriminal, a privacy-concerned individual or someone downloading music? **No way of knowing**

Collective/alternative thinking in the law

Define collective forms of ownership, responsibility or liability

- as examples of integration of p2p
- as a design principle for the law

Collective rights

- Cooperatives, social center law, anarcho-communism, autogestion
- Multitude, complexity, risk
- Buen vivir, pachamama, traditional knowledge and folklore, res communis, biodiversity

Sources of inspiration

- provide metaphores to conceptualise collective persons, rights and duties

thanks!

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