

The background of the slide features a dynamic, abstract pattern of bright blue light trails and streaks that curve and swirl across the frame, creating a sense of motion and digital energy. The colors range from deep navy blue to bright, almost white highlights.

THE ALLENS HUB FOR TECHNOLOGY, LAW & INNOVATION

**“Regulating Technology” as a category error
and the real work of the Allens Hub for
Technology, Law and Innovation
(@UNSWAllensHub)**

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The Metaphor

- “Law, marching with medicine but in the rear and limping a little”
- “The hare of science and technology lurches ahead. The tortoise of law ambles slowly behind”
- “Rapid technological change unsettles the law quite as much as it unsettles people”
- “I have seen the fields of law and technology thrown against each other, necessarily but often antagonistically”
- “The law, however, generally develops at a much slower pace than technology”

Orientation: Broad and narrow questions

- Some specific law applied to some specific technology
- “Technological law” (the law of technical standards)
- Law applied to a category of technology (“cyberlaw”, “nanolaw”)
- Technology as “law” (Lessig’s proposition that code is law)
- Understanding law’s impact on innovation and technology diffusion

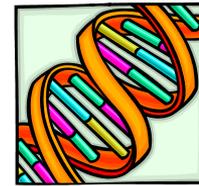
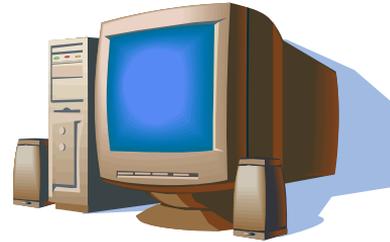
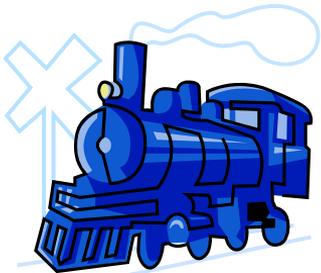
- Technology regulation (What? How? When?)
- Legal dilemmas resulting from technological change

Is there a “cyberlaw” – Lessig vs Easterbrook



What is “technology” and technological change?

- Donald Schön, *Technology and Change* (1967)
 - “any tool or technique, any product or process, any physical equipment or method of doing or making, by which human capability is extended.”



“Regulation” by Julia Black

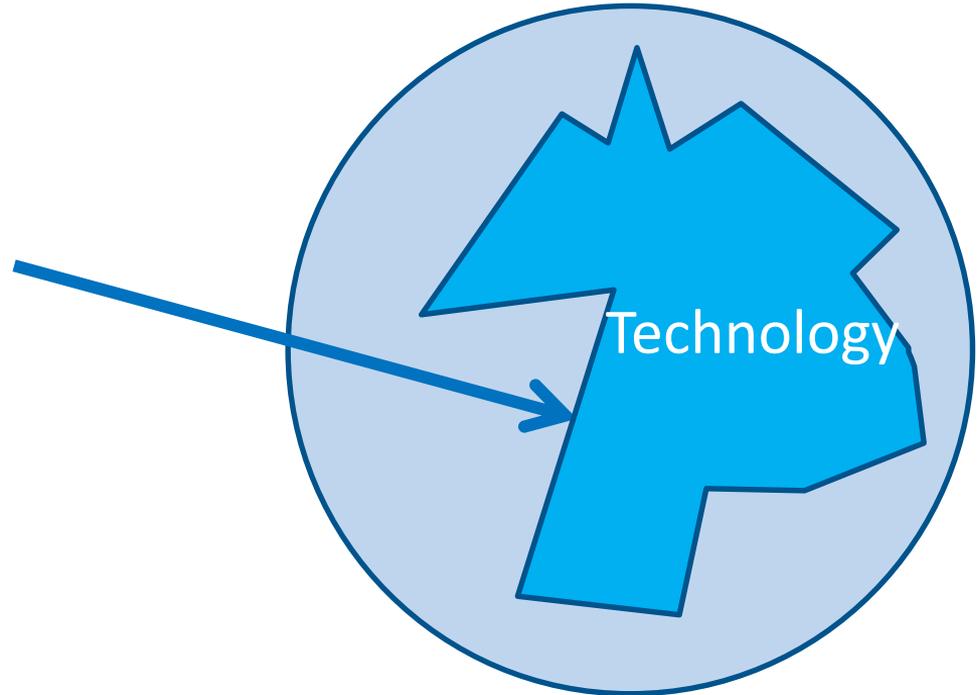
- The sustained and focused attempt to alter the behaviour of others according to standards or goals with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard-setting, information-gathering and behaviour-modification.

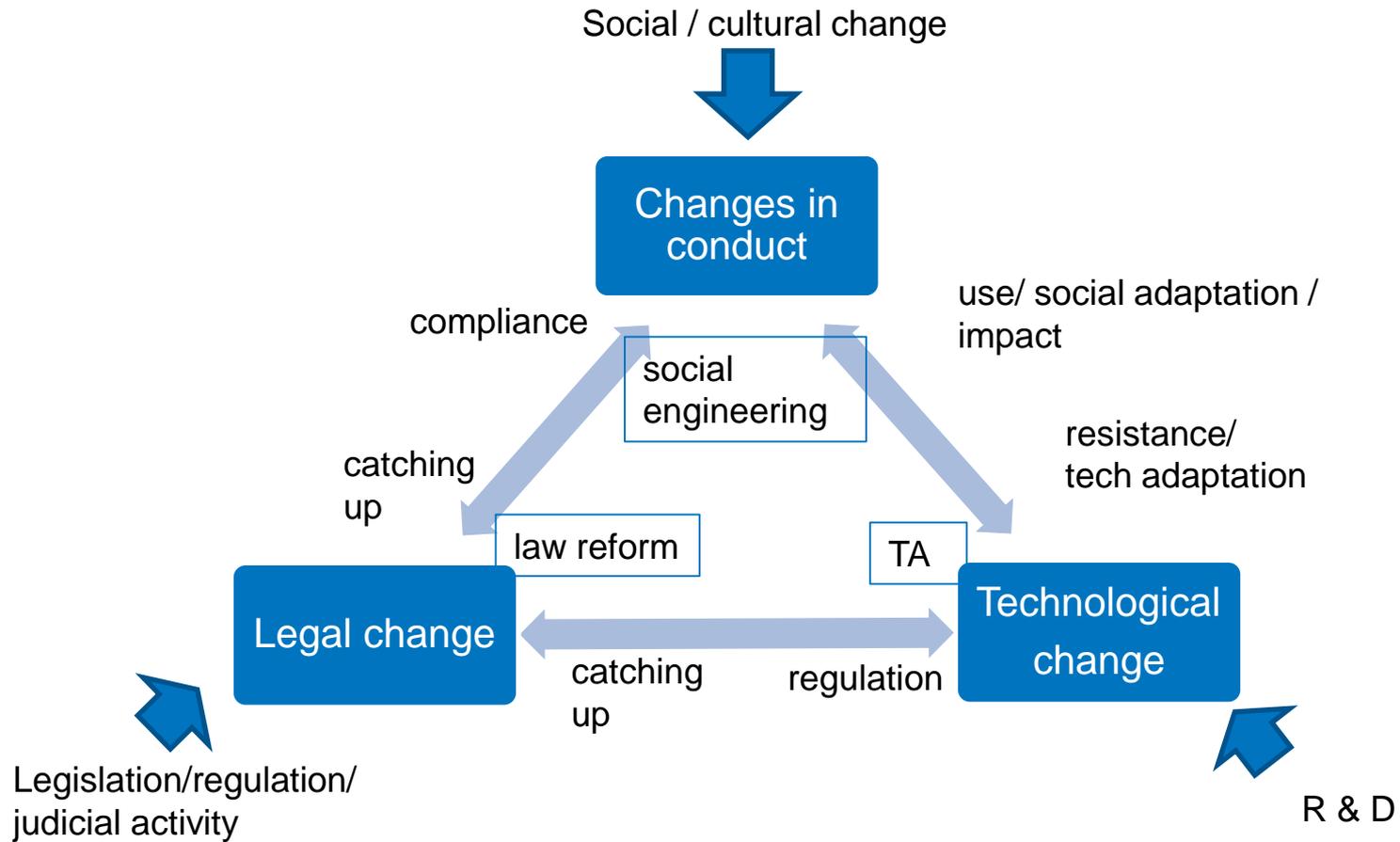
Thinking about technology regulation

- Brownsword: legitimacy, diversity of values systems, effectiveness, cosmopolitanism, connection, style, mode, pitch, phasing, range
- Koops: Dimensions of analysis being technology type, innovation, place, time, type of regulation, normative outlook, knowledge, discipline, problem, frame
- Murray: Understanding as dynamic system

But what does “technology regulation” mean?

Regulator





Types of legal problems resulting from technological change

- The need for special rules
- Uncertainty
- Over-inclusiveness and under-inclusiveness
- Obsolescence

How is this helpful?

- In what sense can legislation be “technology neutral” and what is the optimum balance between specificity and generality? Optimising legislative design for evolving technologies.
 - Do we need laws or regulations that deal specifically with certain technologies or technological categories (nanotechnology, AI, robots)?
- When should law reform “wait”?
- How should lawyers and law reformers approach law in an evolving technological context?
- How should judges approach interpretation where terms used were chosen in an earlier socio-technical context?

Categorising scholarship

- There is no FOR category that covers scholarship into these questions, although some will cover parts of it.
 - Proliferation of conferences, journals, scholarship
- Law and technology (and innovation) as an example of a cross-cutting category
- Category should be
 - Broad so as to include those looking broadly within one category of technology (eg cyberlaw) or at technology as regulation.
 - open to new (and different) ideas and
- Broader rethink of categories to cover other cross-cutting themes in research?

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