Chapter 27

Saviours and Barbarians at the Gate:
Dilemmas of Regulatory Policies for New Media

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ABSTRACT

This chapter is based on the Keynote Speech at International Workshop on Regulatory Policies for New Media at Leipzig on 23-25 September 2009. It addresses the tensions between the inevitable need for some kind of regulation of the new media and the essentially uncontrollable nature of the architecture and the function of the media. State-regulation, self-regulation, and co-regulation have each its own strengths and weaknesses as a regime, and there is no magic bullet for keeping the new media under control. Ultimately, self-control of the end user seems more critical to the outcome than externally imposed control regimes.

INTRODUCTION

A good starting point for discussions of the regulatory framework of new media could be found in the deliberations of the Internet Content Summit held in Munich in 1999. It is the first sentence of the speech made at the Summit by Ira Magaziner, once the presidential advisor on internet policy development in America. This is what he said: "The one thing that we know for sure – and it is the only thing we know for sure about what our policies should be for the Internet – is that we do not know for sure what they should be!"[1] At the

time of this writing ten years have passed since that statement. Are we any wiser? Are we any surer?

This essay is a response to those questions. It is divided into four parts, each of which would cover one fundamental framework in providing the answer to the quest for the right regulatory framework for the new media. Each part highlights just one or two salient aspects that are particularly contentious in the discussions over the regulation of new media.

The first part will discuss State-Regulation as a policy framework, the second part, Self-Regulation, the third part, Co-regulation, a kind of hybrid system, and the final part, No Regulation – the fond hope of the pioneering generation of internet evangelists.

State Regulation

State-regulation or what some scholars would term as legal regulation has been the most widely engaged site in the continuing debate about regulating and liberating the new media. And it is understandable because historically the state has been the most powerful agent in conceiving, imposing and ensuring compliance with a regulatory regime. Though non-state actors such as private corporations are increasingly becoming powerful in imposing restrictions and conducting surveillance, the state remains the most effective regulator. This is especially so in the maintenance of inter-state regulatory regimes which have become an imperative in dealing with the new media which is essentially a global media.

Twenty years ago when the internet first came into common use, there was a messianic sense of a new media that was not only unprecedented but also, by its very nature, untamable by any kind of shackles. The Internet world was resonating with the voices of Nicholas Negroponte[2], John Perry Barlow[3] and others of the same ilk. The way the internet was developed and how it functioned gave both philosophical and practical demonstrations of a control-free media. However, within a short

time, precisely because of the phenomenal growth of the internet from a network of nerds to the most global of communication channels, governments, corporations and civil society groups began to pay closer attention to the new medium of communication and came to very different conclusions. That is when some saw saviours at the gate and others saw barbarians.

Many governments, though not all, sensed that this technology was both a boon and a bane: boon because it could help in their economic development but a bane because it could unravel their political arrangements and social norms. Thus began a series of actions as well as contentions that brought the state squarely into the internet world. There is some irony in that it was a government – the US Government -- that originally seeded the birth of the internet and yet once the child could stand on its own feet, the one thing that many people did not want it to submit itself to is 'parental' control.

The internet is now a global medium and no government or commercial corporation owns it or runs it. Still, the fact that the US is its native home, the trend that its spiritual leaders are mostly American and the reality that no other country uses the internet more innovatively, together make the American response to internet issues as a standard bearer. Everyone watches what happens in America. On the other hand, China, already the home of the biggest number of internet users on this planet – more than 300 million at the time of writing -- and with the ability to build its own version of internet, coupled with tremendous economic and political power, does have its own special place at the high table of internet rule makers. However, as it happens, the two countries – their governments in particular – have such different attitudes and approaches to the internet and the new media that it would be difficult to put them both in the same frame of state-regulation.

The following two examples illustrate the differences in state intervention between America and China and are also indicative of the wide range of

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