

BOOK REVIEW

SELF-REGULATION IN CYBERSPACE

By Jeanne Pia Mifsud Bonnici

The Hague: TMC Asser Press, 2008, 238 pp. (incl. index), £40,

ISBN 978-90-6704-267-3

How has internet self-regulation developed? Where does it currently stand? Where is it going? These are the questions Jeanne Pia Mifsud Bonnici sets out to answer in this book, which provides a detailed examination of the theory of self-regulation and its application in four areas of internet activity with the aim of determining the “actual function” of self-regulation in the regulation of internet activities.

The book is certainly timely: self-regulation has achieved a central role in any discussion of internet governance, to the point where it has been described as a presumptive starting point for the regulation of internet behaviour.¹ The current debate in the United Kingdom on the control of internet content provides a good example – from the Byron Review² recommendations, to the establishment³ of the UK Council on Child Internet Safety, to proposals to block access to suicide information websites⁴ – in each case the proposed changes presuppose self-regulation as an essential component. Even where public authorities are sceptical of the effectiveness of self-regulation – as in the recent Report of the Select Committee on Culture, Media and Sport on Harmful Content on the Internet – the response is generally to seek to improve standards of self-regulation rather than to displace it.⁵ Can this work assist us in assessing these proposals?

At the outset, the author takes a wide approach to the definition of her subject, identifying it as including three distinctive features: “(a) a flexible type of regulation model; (b) a set of rules developed and accepted by those who are taking part in an activity; and (c) a regulatory process” (p. 23). One notable exclusion, however, is self-

¹ B Koops et al., “Should Self-Regulation be the Starting Point?” in B Koops et al. (eds), *Starting Points for ICT Regulation: Deconstructing Prevalent Policy One-Liners* (The Hague: TMC Asser Press, 2006).

² T Byron, *Safer Children in a Digital World: The Report of the Byron Review* (London: Department for Children, Schools and Families and Department for Culture, Media and Sport, 2008).

³ H Siddique, “Britain sets up online child safety watchdog” *The Guardian*, 29 September 2008.

⁴ Ministry of Justice, “Suicide and the internet - updating the law,” (2008) available at <http://www.justice.gov.uk/news/newsrelease170908a.htm> (accessed 13 February 2009).

⁵ Culture, Media and Sport Select Committee, *Harmful Content on the Internet and in Video Games*, 22 July 2008, HC 353-I, 2007-08, available at <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcomeds/353/35302.htm> (accessed 13 February 2009).

regulation of behaviour within on-line communities – instead the study is limited to describing “‘formal’ arrangements of self-regulation rather than the ‘informal’ norms of behaviour ... used between members in on-line communities” (p. 5). This limitation, though it is common within the literature, is perhaps too restrictive given the rapid growth and increasing significance of sites such as Wikipedia which successfully combine both dimensions – “formal” arrangements of self-regulation (including rule-making) and “informal” norms of behaviour – in a way which may have lessons for other systems.⁶

The author then sets out her core thesis, asserting that three main views have held sway as to the purpose of self-regulation – which she describes as substitution, co-regulation and hybrid – and that each is at best a partial picture of how self-regulation actually works on the internet. Instead, the author argues for a wider understanding of internet self-regulation based on theories of legal pluralism and mesh (or network) regulation (pp. 20-22).

What does the author mean by each of the three views she identifies? In an interesting discussion she suggests that there are systematic differences between European and United States perspectives on self-regulation, so that US commentators tend to portray self-regulation as a form of *substitution* for state regulation – something which is often adopted to ward off state involvement and which is essentially autonomous so long as it achieves the desired regulatory outcomes. Conversely European commentators tend, it is argued, to characterise self-regulation as a form of *co-regulation*, with greater state involvement – so that self-regulation is viewed as involving either the state delegating authority to regulate or maintaining a degree of control over the operation of the self-regulatory process. Finally, in between those extremes the author suggests that the third main view has been one of self-regulation as a *hybrid arrangement* – that is to say, something which combines elements of both state and self-regulation to achieve a particular goal which neither individually could reach (pp. 14-19).

The author, however, claims that each of these views is based on “limited and non-representative knowledge of how self-regulation actually works on the Internet” so that these are “hypothetical prescriptive positions ... and not descriptions of what self-regulation actually ‘is’” (p. 20). For example, she characterises the work of Price and Verhulst⁷ as being too focused on industry self-regulation in relation to the control of content, in a way which makes it impossible to draw conclusions relating to self-regulation by other types of actors in other areas (p. 5). Instead, the author sets out to examine a representative sample of self-regulation in four areas of internet activity (content control, the domain name system, technical standards and resolution of online disputes) and to identify factors which are common to each.

In each of those four areas, the survey is wide-ranging and provides a comprehensive review of the literature – at the expense, however, of being necessarily limited in the extent to which it can tease out the implications of the systems described. In relation to internet content, for example, it is convincingly argued that self-regulation does not

⁶ On Wikipedia see e.g. C Shirky, *Here Comes Everybody: The Power of Organising Without Organisations* (London: Penguin, 2008).

⁷ M Price and S Verhulst, *Self-Regulation and the Internet* (The Hague: Kluwer Law International, 2005).

merely substitute for or co-exist with public rules – that it is a dynamic process which interacts with state action in the creation, application and enforcement of rules (p. 72). However, the issues of legitimacy and accountability presented by self-regulation in this area (while they are flagged) are dealt with in a relatively brief manner. For example, the author discusses the role of states in providing funding to encourage self-regulatory schemes, and suggests that this might promote legitimacy and accountability in respect of these schemes (pp. 70-71) – but there is no discussion of whether this might equally enable states to secure regulatory outcomes which would otherwise be precluded by constitutional or other public law norms⁸ or to establish forms of censorship which evade judicial oversight.⁹

Having examined each of these four areas, the author concludes by arguing that self-regulation on the internet can in part be understood as a form of legal pluralism,¹⁰ insofar as it involves the creation of binding rules by various groups outside the hierarchical structure of the state, but that it might better be understood as involving the creation of a regulatory mesh, in which “self-regulation and state regulation intertwine and reciprocally complement each other” so that they “go beyond mere co-existence and simple interaction” and instead are “interdependent in the creation, adoption, application, implementation and enforcement of regulation” (pp. 199-200).¹¹ She then argues that this understanding can be used to help guide the process of “darning the gaps in the mesh” so that states should proceed by building on existing successes within self-regulation (pp. 209-213).

To what extent, then, does the book achieve the author’s aim of determining “the actual function” of internet regulation? It certainly succeeds in giving a clear, concise and insightful analysis of the history and theory of self-regulation in relation to the internet, and in setting down a detailed overview of self-regulation as it applies to content, domain names, technical standards and online dispute resolution.

For this reviewer, however, the exclusion of online communities from the scope of this work undermines its broader claim to consider a representative sample of self-regulatory activities. The focus of this book is very much on the interaction between states and self-regulatory bodies, so that the role played by the user is limited – resembling the “pathetic dot” described by Lessig.¹² However, as Murray points out, users are not merely passive recipients of regulation – they may act themselves to devise and enforce social controls or they may organise to resist or circumvent regulations imposed on them.¹³ By excluding ways in which users might themselves

⁸ See e.g. J Boyle, “Foucault in Cyberspace: Surveillance, Sovereignty and Hardwired Censors” (1997) 66 *University of Cincinnati Law Review* 186.

⁹ Compare the more detailed treatment in D Tambini, D Leonardi, and C Marsden, *Codifying Cyberspace: Communications Self-Regulation in the Age of Internet Convergence* (London: Routledge, 2008), at ch 11.

¹⁰ Relying on e.g. J Griffiths, “What is Legal Pluralism?” (1986) 24 *Journal of Legal Pluralism and Unofficial Law* 1.

¹¹ This develops the author’s work in J Cannataci and J Mifsud Bonnici, “Weaving the mesh: Finding remedies in Cyberspace” (2007) 21(1) *International Review of Law, Computers and Technology* 59.

¹² L Lessig, *Code: And Other Laws of Cyberspace* (New York, N.Y: Basic Books, 1999), at 86.

¹³ A Murray, *The Regulation of Cyberspace: Control in the Online Environment* (Abingdon: GlassHouse, 2007), at ch 5.

play a part the author may neglect the possibilities presented by the “not so pathetic dot” for enhancing the legitimacy and effectiveness of self-regulatory schemes.¹⁴

That quibble aside, this book is a worthy contribution to the literature and can confidently be recommended to anyone interested in internet governance.

T. J. McIntyre

Lecturer in Law, University College Dublin
Dublin, Ireland

DOI: 10.2966/scrip.060109.184



© T. J. McIntyre 2009. This work is licensed under a [Creative Commons Licence](#). Please click on the link to read the terms and conditions.

¹⁴ See e.g. A Murray, “Symbiotic Regulation” (2008) available at http://works.bepress.com/andrew_murray/1/ (accessed 13 February 2009).