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THE LIMITS TO GOVERNMENT REGULATIONS: THE CASE OF THE NEW (DIGITAL) MEDIA SERVICES

By

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The limits to government regulations: The case of the New (Digital) Media Services

by

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My paper will focus on the New digital media communication and attempt to address the technological, social, cultural and economic challenges posed by the globalisation of the communications network and the convergence of the hitherto discrete forms of mass or broadcast communication. I will also attempt a global rather than country specific look at these issues.

As we hurtle toward the 21st Century we are now seeing the emergence of new media technologies. In effect, this is the result of the convergence of many diverse and discrete forms of media with the advent of faster information processing technologies and
computer-based media production technologies in a global environment. So far such technologies have already revolutionised private communications such as the email, business communications such as Internet or Web advertising and retail, educational and training information such as digital libraries and encyclopaedias and use of audio and visual means of purveying information and news such as digital newspapers and real audio or Internet radio. In other words, postal and telecommunications services have merged with print and audio visual media. This has led to the convergence of private, corporate and public communications.

The convergence of such diverse media in societies where computer-based communications are ubiquitous is posing challenges to regulatory bodies which are presently the purveyors of Codes of Practices for more discrete and disparate broadcast and mass communications technologies. Such push technologies with more centralised sources of production are different from the newer pull technologies where the lines of production and consumption are more blurred and where production and audiences are more decentralised.

The new communications technologies have posed great challenges to regulatory bodies throughout the world. Because the converged and digitally based media are so new, most regulatory bodies have had to adopt existing structures more suited to the mass
dissemination modes and more centrally produced communications networks of broadcast or print media. With the decentralisation of production and of audiences and consumers through the new digital technologies, the new media has both remorphed or reshaped information and entertainment. It is a change from a 'push' to a 'pull' technology whereby consumers can tailor the information and entertainment produced by broadcasters to suit their own interests, pulling what is relevant to them rather than consuming what is presented to them, ie a decentred mode of consumption. As films has harnessed the change from cinema exhibition to television and video display, so too must what are now televisual and audio broadcast products change their modes of transmission and ways of receptions.

The objectives of government regulations vis-a-vis the media have been in most countries to delimit information or media products for public interest or order and national harmony or security as well as to set controls over what may be offensive to decent citizens or what is against social moral values whatever they may be in a specific culture and society. In most countries radio and television broadcasting services have been regulated for decades. Rationales for the regulation of broadcasting services include the following:

Firstly, radio frequency spectrum necessary for traditional broadcasting services is a limited resource and should be managed in a way that maximises the public benefits offered by this medium.
Secondly, some television and radio broadcasting services are considered to have the potential to significantly influence public attitudes and behaviour. Consequently, different levels of regulatory control are applied across the range of broadcasting services according to the degree of influence that different types of broadcasting services are able to shape community views.

Thirdly, the ease of access to television and radio broadcasting services raises the risk that children may be exposed to material which may be unsuitable for them.

With regard to the new media some content available via on-line services will be similar to that offered by the traditional broadcasting services. However, it is important to consider whether the rationales for regulating traditional broadcasting services apply to these new digital services. The network of computers which make up the Internet is not subject to the same resource constraints that apply to traditional broadcasting services. Moreover, the Internet presents very low barriers to entry and these barriers are identical for both producers and audiences. Consequently, vastly diverse content is available in digital form and the Internet gives significant access to all who wish to present information in the medium and creates a relative parity among those who do. Potentially, then, there are as many
sources of content as there are on-line users. Thus the provision of on-line services do not give any one participant in the on-line community the level of influence that traditional broadcasting may give to a broadcasting service provider or producer. The means of delivery of digital or on-line services is a series of interconnected communications networks with no central control or ownership.

Although the risk that children may be exposed to material which may be unsuitable for them also applies to the new digital services, the method of dealing with this should take into account the very different way in which content is delivered in the digital environment. That is, content is not mass broadcast but is located on information sites which have to be searched and access. Filtering and rating mechanisms can be used to screen out content not suitable for children.

The on-line environment is borderless and for regulation to be effective globally it must be developed in consultation with other countries and with the knowledge of other countries' regulatory frameworks. Different governments have responded with a range of regulatory measures extending from strict government control and censorship (as in China) to minimum regulations as in the United States. Most Asian nations fall somewhere in between although towards the more controled end than to the other end. Nevertheless,
each country may have its own cultural and social values which bear upon such regulatory frameworks.

This brings me to the social and cultural factors which constitute the other dimensions of challenges to regulatory bodies which oversee the new digital media services.

The global audiences, global content production sources and services of the new digital media present social and cultural challenges to each different country's government. Some Asian countries distinguish civil and moral values from those of "Western" countries. With the globalisation of information and entertainment services easily available on-line the spillover effects such as those in satellite broadcasting is even more widespread here. Some countries prioritise social responsibility and order while others privilege individual rights and civil liberties.

Multiracial and multi-religious societies stress ethnic and religious sensitivities and tolerance. Other countries that privilege civil liberties and individual rights may allow content and information on-line which in other societal contexts may be construed as insensitive at best and racial incitement at worst. One case in point is the Australian publication on-line of Pauline Hanson's racial and racist speech against Asian immigrants in Australia.
Hate speeches, pornographic and violent material present challenges to countries privileging individual rights to freedom of speech in terms of regulatory control. Though these may be banned in other countries which do not privilege civil liberties above civil order, such material may be easily available on-line. Although sanctions may be in place, regulations may not be easily or comprehensively policed given the vast amount of information and number of sites available on-line which originate outside the country concerned.

Presently three stages of content control seem to be in force. In some countries there is the first stage of more interventionist sanctions such as censorship and banning. In some countries this has passed on to the second stage of self-regulatory mechanisms such as rating and filtering technologies which allow the service providers and consumers to rate and filter unwanted material. Some filtering mechanisms available include PICS, etc. Yet other countries have gone on to the third stage of content control such as international cooperation in policing to remove content from the Internet. Currently a number of countries are involved in an international battle against child pornography. Countries such as UK, US, Finland and Australia have fined and jailed offenders. Singapore has also enacted severe sanctions against pornographic material on the Internet.

Nevertheless, notwithstanding the controversial issue of cultural and social differences influencing regulations for the new media services,
business and economic opportunities also present challenges to regulatory bodies. With infrastructure in place for greater access for commercial exchanges on-line, governments are wary of stifling business growth with onerous regulations. In most countries the view is that there would be greater liberalisation of regulations for access to information dissemination networks relating to business and research.

At the same time, protection of intellectual property such as in copyright laws also pose special challenges since these laws may be formulated with either the print and/or audio-visual material in mind. For example how should royalties for content on the Internet be charged and how can payment be secured? A combination of self-regulations (imposed by the service providers, producers and users) and government regulatory controls is seen to be more realistic in encouraging economic opportunities.

Thus given the wide variety of digital services available now and in the future any regulatory framework developed will need to be sufficiently flexible to cope with these developments. There is concern that care be taken so that regulations introduced are not so onerous as to stifle the on-line or digital services industry which has emerged or to discourage its further growth.
To sum up then, the new digital media present government regulatory bodies with both technologically, socially and culturally challenging concerns in terms of sanctions and policing of regulations. At the same time, the promise of the vast commercial potential of the new media services on-line makes regulatory bodies wary of its limits in controlling content and services. Thus the latter may act as a check in balancing regulations which need to be flexible rather than onerous.

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