

Excerpt from *CyberEthics: Morality and Law in Cyberspace*

(Sudbury, MA: Jones & Bartlett, 2000). Concluding Section of Chapter Two: "Governing and Regulating the Internet"
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Internet Governance

While the World Wide Web and the Internet have created many opportunities for data sharing and electronic commerce, they have also posed some formidable problems for lawmakers of national governments. The Internet has traditionally been decentralized and self-governing, and it has so far evaded strict or systemic regulations. However, although the Internet has always been an anarchic technology there will always be a need for some type of stability imposed from above. At a minimum, there must be a central body to manage Internet domain name distribution and to handle trademark disputes. But what exactly is the right mix of top-down regulations and bottoms up control? In order to address this question we should first consider the basic possibilities for Internet regulation.

There are at least three basic top-down models that have some plausibility and are worth a cursory review:

- **Direct State Intervention:** the existing laws of each nation can govern the Internet; thus the state can amend or extend its current laws so that they apply to pertinent activities in cyberspace (the U.S.' recent Communications Decency Act legislation is an example of this approach).

- **Coordinated International Intervention:** a new intergovernmental organization composed of representatives from countries that use the Internet can establish new rules and regulations for cyberspace that will have international jurisdiction.

- **Self-Governance:** the 'Net will develop its own semi-official political structure; it will be governed by charters established by non-profit organizations representing the Internet's stakeholders.

Let us briefly enumerate some of the costs and benefits associated with adopting each of these three models. The premise underlying the first model is that the Internet is not a distinctive place that needs its own set of laws. The Internet is just another communications media, and so a state's traditional legal structure may need some modification but is still applicable. Although this model has the benefit of simplicity since it does not require collaboration with other governments, there is the major problem of enforcement. National borders simply do not have the same force and mean-

ing when it comes to digitized information. In a complex digital world it is often too difficult and time consuming to track down and punish violators. Also, the state's laws can usually be easily evaded. For instance, we mentioned earlier Saudi Arabia's efforts to filter out objectionable international Web sites that violate its laws against pornography which certainly extend to cyberspace. But an astute Saudi user can call upon a server outside that country and print material via a country in Europe. In addition, regulation can often backfire by leading to "regulatory arbitrage." This occurs when companies or online vendors faced with stringent regulatory barriers at home shop around to find a more hospitable environment off shore.

The second model conceives of cyberspace as a unique and separate place with its own rules, established and enforced by a cooperative international organization not connected in any way to a territorial government such as the United States. It would most likely have responsibility for mundane tasks such as domain name assignments but also have the power to enforce international regulations such as restrictions on forbidden forms of speech. An international organization of this nature, analogous in some respects to the United Nations, with jurisdiction over the Internet would certainly overcome some of the obstacles of the first model. Its authority would transcend geographical boundaries, and this would tend to curtail regulatory arbitrage and other evasive techniques.

But this model too has some flaws. Johnson and Post raise a critical question about this mode of governance: "how could such a non-governmental organization impose its rules on the Net as a whole?" Also, by what authority could this organization successfully govern the Net? Further, there is no guarantee that this organization would not be captured by factions pushing an agenda based on their own vested interests. Thus, although this is an attractive alternative, the implementation problems and the attendant bureaucracy might render it a feckless and ineffectual solution in the long run.

Finally, according to the third model, the Net would be self-governed by its own political and social structure suited for the unique problems posed in cyberspace. One possibility is to have activities on the Net loosely controlled or coordinated by nonprofit international groups with specific charters. One charter might be developed to lay down some common ground rules about electronic commerce and an-

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University of Detroit Mercy Law Review ,2004 **Cyberethics** James J. Lynch, 1996

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