

Regulating The Global Information Society

Edited by Christopher T. Marsden
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The technological advances of the early 90's, and particularly the emergence of the Internet, have obviously had an unquantifiable impact on the manner in which human beings interact. Inherent in this impact, but perhaps not as obvious, is the globalizing effect that these advances have had. It is this globalization and its concomitant societal, economic, and political implications that Christopher T. Marsden and a host of other scholars endeavor to illuminate in *Regulating The Global Information Society*.

The book is a collaboration of efforts by a veritable who's who in the areas of global economics, politics, sociology, law, and technology.¹ The overall tenor of the book is a discussion of issues related to regulation in an increasingly global society. Although the Internet is obviously a key component of globalization the book does not focus merely on Internet regulation, but instead remains broad in scope raising issues that apply to regulation of any medium that has global implications. A general description of some of the issues discussed are the possibilities of Internet regulation, antitrust law in light of the Internet, the limits of telecommunications regulation, the role of self regulation on a global level, and the application and limitations of government in global regulation.

¹ Contributions made by Jonathan D. Aronson, Fod Barnes, Martin Cave, Richard Collins, William J. Drake, A. Michael Froomkin, Nicholas Garnham, Thomas Gibbons, Mark Gould, Perry Keller, Mark Lemley, David McGowan, Christopher T. Marsden, Paul Nihoul, Monroe E. Price, Pamela Samuelson, Ad van Loon, Stefaan G. Verhulst, and Dimitri Ypsilanti.

Before delving into any specific area of discussion contained within this book it is critical for the reader to have an understanding of the underlying thesis that pervades much of the discussion within this book. Simply put, the sometimes hidden message of this book is that any attempt at global communications regulation will need to look at traditional regulatory factors in an independent and entirely unconventional way. The book applies this message to basically any attempt at global communications regulation, whether it be self-regulation, market regulation, or actions by nation-states. For a brief example of how this thesis applies, simply look at how jurisdictional regulatory factors have changed because of globalization. Clearly, the days of determining jurisdiction and regulatory concerns on the basis of geographical borders are gone, but is this because of technological advancement or because of new and interdependent regulatory factors arising out of the globalization that the technology spawned?² This book decidedly favors the latter, consistently holding that the short-sighted view is ineffective and regulation can only be achieved by looking at a global level and all the factors that global regulation entails.

With the above thesis in mind one can then start to pick up on some of the finer points of the book. A corollary to the underlying thesis is that merely viewing regulation factors on a global level is not enough, those factors must also be viewed in a non-traditional manner. A particularly interesting issue addressed by the book that falls within this corollary thesis is “standard setting” and how it effects traditional regulation.³ At the

² See Generally Joel P. Trachtman, *Cyberspace, Sovereignty, Jurisdiction, and Modernism*, 5 Ind. J. Global Legal Stud. 561 (1998). “Because the technology is so exhilarating, there is a tendency to claim that the changes we do observe in sovereignty, the state, jurisdiction, and law all are caused by cyberspace. Surely the end of the cold war, the rise of economic interdependence, other technological changes, and a host of historical causes must be considered alongside cyberspace.... It is not the state that has died, but the long-moribund theory of absolute territorial sovereignty.” *Id.*

³ Discussed in Part IV, Standard setting and competition policy, pg 233.

risk of grossly oversimplifying a complex point, “standard setting” affects competition, which affects economics, which is huge factor when making regulatory determinations on any scale, let alone globally. However, to truly understand this idea, and much of what this book tries to accomplish, a more comprehensive discussion of “standard setting” should be used as an illustration.

A key factor behind virtually all regulatory decisions is the economic effect that the regulation will have. Within this economic factor is the general assumption that competition is economically desirable. It is at this point in traditional regulatory analysis, however, that global communications regulation infuses a conundrum because of “standard setting”. “Standard setting” can most easily be described as a way to ensure interoperability and interconnection, something that is clearly a goal of global communications. A perfect example of “standard setting” is the MS-DOS operating system used on a typical computer. The fact that MS-DOS is the standard operating system around the world undeniably furthers interoperability and interconnection. However, anyone that has heard of *United States v. Microsoft*⁴ realizes that the “standard setting” of MS-DOS probably didn’t do anything to foster competition. Thus, “standard setting” is a perfect example of how traditional regulatory factors can be dissonant when applied to global communications.

Obviously, the book takes these ideas to a whole other level of complexity, but what this brief discussion of “standard setting” illustrates is the underlying theme of the book. Namely, that traditional ideas concerning regulation cannot be blindly applied to the global information society. If regulators concerned themselves only with competition,

⁴ 97 F. Supp. 2d 59 (D.D.C. 2000), *appeal denied*, 530 U.S. 1301 (2000), *aff’d in part, rev’d in part*, 253 F.3d 34 (D.C. Cir. 2001), *petition for cert. filed*, 70 U.S.L.W. 3107 (2001).

a benchmark of regulation, then there would be interoperability and interconnection problems. Likewise if regulators focus too much on “standard setting”, another cornerstone of regulation, we may see monopolies on behalf of those that set the standard. This example is the theme of the book in a microcosm; regulation of the global information society is complex and must be attempted in a new way that looks at all factors together.

The book takes this general theme and expands it into many different areas of the law. One theme that I found particularly interesting expanded the standard setting problem into Intellectual Property (IP). The book raises at least part of this issue by noting that computer software is generally the basis of IP. This computer software then has the capability of becoming the functional basis of communications, i.e. part of the Internet. This applies to “standard setting” in that granting IP rights are effectively a state monopoly. This is not a problem when the monopoly has limited application or it’s same ends can be accomplished in another way, however it becomes a huge problem when the state monopoly becomes the standard. This is a particularly precarious problem in computer software where even after the competitive advantage of IP rights are gone there tends to be an economic advantage from the sunk costs of consumers familiarity with the software. Thus, something to consider when regulating IP rights in software is whether granting IP rights will create a monopoly that may quickly become the standard which will in turn create a monopoly in an entire form of communication.

The book delves far more into this interesting issue, but again one can see the underlying theme of the book. The granting of IP rights in global communications should not be done without looking at new factors in new ways. It is actually a fairly obvious

concept when one thinks about it in the arena of IP rights. These IP rights no longer only apply to one nation-state because of the global nature of the communications for which they are used. Thus, the traditional single nation-state regulation factors for granting IP are largely useless when applied to IP that will be used in global communications.

As mentioned in the preceding paragraphs the general theme of this book is important to keep in mind as one is reading. The broad theme is what gives rise to interesting discussions like the role of governments and Multi-National Corporations in regulating global communications, the public and private interests in global communication, and the issues briefly discussed above. However, at the same time the broad theme may be one of the drawbacks to this book. The sheer girth of subject matter that this book attempts to tackle makes it a rather difficult read. Furthermore, the interconnectedness of the subject matter, which is again part of the underlying theme, tends to make the book esoteric at times. In that vein, the book seldom draws concrete conclusions which can make it simply unbearable for the non-academic reader.

Overall *Regulating The Global Information Society* raises some fascinating issues. In fact, one would be hard pressed to find a more thorough discussion of the issues related to regulating global communications. The book is by no means written for the general public, but it should be both useful and interesting for academics and those interested in the field.