

## **Who Controls the Internet? Illusions of a Borderless World**

By Jack Goldsmith and Tim Wu

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In 1990, John Perry Barlow<sup>1</sup> described the Internet as the “electronic frontier”, a new world “unspoiled, self-governing and best left to inhabitants to run as they pleas[e].”<sup>2</sup> Utopian visions of the Internet, like Barlow’s, saw this new technology as a way to connect people like never before, and the potential to start new societies beyond the control of government and the confines of territorial borders. Others, with less noble visions, simply opportunities to exploit this seemingly unregulated new medium. In their new book, *Who Controls the Internet? Illusions of a Borderless World*, Jack Goldsmith and Tim Wu set out to debunk the myth that the Internet is beyond the control of traditional territorial governments. Using a variety of recent examples ranging from journalism in China to Napster, Grokster and illegal filesharing, the authors successfully achieve their goal. Goldsmith and Wu present a fascinating look at how promises of territorial governments demise are evaporating, and why this might not be such a bad thing.

The authors’ thesis is that the “new” Internet is not a borderless world, but rather “a bordered network where territorial law, government power and international relations matter as

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<sup>1</sup> Barlow co-founded the Electronic Frontier Foundation (EFF) in 1990. The EFF’s mission is to protect free speech rights and other civil rights online.

<sup>2</sup> JACK GOLDSMITH & TIM WU, WHO CONTROLS THE INTERNET? ILLUSIONS OF A BORDERLESS WORLD, 17 (2006).

much as technological invention.”<sup>3</sup> To set the stage, the authors begin with an excellent example of their thesis in action, describing the search engine and Internet portal Yahoo!’s battle with a French citizen over auction postings selling Nazi memorabilia. Yahoo! initially rejected any notion that the laws of France (banning the sale of Nazi memorabilia) could affect the California based company, and argued there was no way to customize their site to follow the laws of all nations. Goldsmith and Wu show how early notions of a geography-blind Internet prompted Yahoo!’s incredulous reaction to the suit. However, during the course of the litigation, new technologies emerged that allowed websites to generally identify the location of their users.<sup>4</sup> This new technology, combined with a French judge’s threat to seize assets Yahoo! held in France, eventually led Yahoo! to pull the pages of Nazi merchandise. The authors show how the Internet began to account for geography and to respect the laws of traditional nation-states in a few short years.

Goldsmith and Wu craft each chapter to both answer questions and pose new ones. For instance, the story about Yahoo! leaves the reader wondering, what if Yahoo! didn’t have assets in France and existed somewhere beyond the reach of censorship? A later chapter answers this question with the story of Sealand. Sealand is an abandoned concrete platform six miles off the coast of the United Kingdom. It was taken over in the 1960’s by a retired British Major who declared the platform an independent state (and himself Prince).<sup>5</sup> Improbable as it sounds, Sealand proved an ideal place to put theories about the borderless Internet to the test. Without territorial laws of its own, a man named Ryan Lackey set out to create on Sealand a place for certain undesirable (or desirable, depending on who you ask) websites to exist. The authors

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<sup>3</sup> GOLDSMITH & WU, *supra* note 2, at vii.

<sup>4</sup> GOLDSMITH & WU, *supra* note 2, at 7. This new technology was originally developed by an American firm called Infospit and was designed to help advertisers better target users in specific geographic areas. This type of geo-location technology factors into the authors thesis as an example of the continued importance of geography, even online.

<sup>5</sup> GOLDSMITH & WU, *supra* note 2, at 65.

show that even though Sealand provided a seemingly perfect venue for avoiding territorial laws the experiment proved to be a failure in the end.

Goldsmith and Wu show that although servers can be positioned beyond the reach of governments, the websites Lackey was attempting to host still needed to reach customers, prefacing an informative discussion of “local intermediaries”.<sup>6</sup> Using the example of internationally manufactured counterfeit Gucci handbags sold on the streets of New York’s Chinatown, the authors explain how the government deals with illegal activity originating beyond its borders. Like Sealand’s servers, the counterfeit manufacturers lie beyond the reach of law enforcement. To deal with the illegal counterfeit bags, the government passes laws to prevent retailers (like Sears or Macy’s) from selling these goods to customers. The authors concede that this doesn’t solve the problem completely, but certainly limits access to these products. Turning back to Sealand, early theories about the Internet assumed that cyberspace eliminated intermediaries, allowing illegal websites (providing gambling, pornography, tax evasion schemes, etc.) to operate from safe havens like Sealand and connect directly with customers. These early theories believed the government’s only option would be to target its laws at customers, a daunting and nearly impossible task.

This, however, the authors show, was not the case and they further describe how numerous intermediaries actually exist between providers of illegal content and their customers. Among the most effective intermediaries are banks and credit card companies. Goldsmith and Wu show how governments can create penalties for these financial intermediaries if they are

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<sup>6</sup> GOLDSMITH & WU, *supra* note 2, at 68-77 (discussing several types of intermediaries and ways the government may exert its control over them to control the flow of information, goods and services online).

willing to do business with illegal websites – without credit card access to pay for services, customers are effectively barred from access.<sup>7</sup>

Goldsmith and Wu's book will appeal to a wide audience. The range of topics will keep readers with a legal or technology background engaged, however, those without a background in law or high tech will certainly not find the book beyond their grasp. The discussions are thorough but move along at a quick pace. Fans of Professor Lawrence Lessig's books, including *Code and Other Laws of Cyberspace* will find this book an excellent follow-up to some of the early discussions he began in the late 1990's and early twenty-first century.

In the end, Goldsmith and Wu make an excellent case for their thesis that the Internet experiences the same borders as the people who use it. Without arguing whether this is a good or bad development, they urge an awareness in order to avoid a "technological version of the cold war"<sup>8</sup> where different countries push their own ideas of what the Internet should be. A thought-provoking suggestion, from an equally thought-provoking book.

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<sup>7</sup> GOLDSMITH & WU, *supra* note 2, at 76-77 (explaining how the U.S. government ended online cigarette sales using this method).

<sup>8</sup> GOLDSMITH & WU, *supra* note 2, 184.