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### Can Self-Regulation satisfy the transnational requisite of successful Internet regulation?

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**Abstract:** For primarily technological, economic and political reasons, self-regulation has been put forth as a suitable regulatory system of "on-line" realities. In this paper the authors, after reviewing a number of self-regulation initiatives on the Internet, identify a number of current limitations and restrictions of effective self-regulation. These include, *inter alia*, the claims that the current initiatives are: in essence, bound by national boundaries, that is they regulate behaviour of participants coming from a particular territory only; or are lacking in efficient sanctions, public accountability and actual monitoring and reviewing systems. The authors argue that self-regulation systems are capable of going beyond the current set of limitations. Essentially self-regulation initiatives need to prove that they are capable of overcoming the transnational limitation of regulation introduced by the digital world. This the authors suggest can be achieved in the regulation of some areas of activity, especially where the market requires regulation but states have no incentive to intervene.

#### Internet Regulation: Self-regulation in context

Self-regulation as a method of regulation of human behaviour is not a new concept brought about by the presence of Internet in society. Self-regulation has existed and has been sustained in society as one of a number of methods of regulation of behaviour. Self-regulation has co-existed with command and control state regulation, with moral codes, with religious and other social controls of behaviour. However, as Haufler points out "the trend toward self-regulation went relatively unnoticed until recently. This may be in part because the phenomenon itself is difficult to see."<sup>[1]</sup> There is a tendency to assume that regulation is an activity of governments, ignoring other varieties of regulation.

Indeed, in the on-line debate self-regulation is often discussed as an alternative method of regulation to state dominated regulation. Initially, self-regulation was supported with the claim that if activity in cyberspace really needed to be regulated then this should only be done through self-regulation, a lesser and freer method of regulation, and definitely not by governments. Self-regulation thus seemed in the minds of a number of proponents to be able to plug the demand for regulation without being too invasive.

The increase in access to the Internet and the increase of activities on-line have moved the debate on Internet regulation further. It is now no longer an issue that behaviour in cyberspace needs to be regulated. Regulation of the Internet is no longer in dispute. Internet is being regulated. The discussion now has moved to at least two other issues: (A) how is on-line behaviour being regulated?

(B) how successful is this regulation? Stuart Biegel in *Beyond our Control?*<sup>[2]</sup> discusses at length three forms of regulation going on in cyberspace namely: national legislation, international agreements and co-operation and regulation through technology. Biegel dismisses self-regulation very rapidly (in two lines) claiming that self-regulation is not a successful method of regulation. Other authors<sup>[3]</sup> have however reflected on the contribution of self-regulation to the regulation of behaviour in cyberspace.

No one form of regulation can successfully regulate all the various types of behaviour and activities going on on-line. This is similar to what happens in the off-line world where different forms of regulation need to co-exist. The underlying assumption in this paper is that self-regulation is not the only form of regulation and should be thought of in the context of the co-existence with other methods of regulation. As Sinclair<sup>[4]</sup> points out, self-regulation should be viewed within the continuum of regulation and not as the opposite or alternative to state command and control regulation or other methods of regulation.

### Regulation in the digital world

The challenges in regulation of on-line behaviour are very often linked to the very nature of the digital space and constant advances in technology.

Most regulatory systems are accustomed to regulate behaviour or activities in a defined space - the jurisdiction of a state and its regulatory system often is limited by national boundaries or extended to other international spaces if the system of regulation is dictated by agreed international rules. The digital world presents an important exception to this definition of space in a number of manners:

(a) there is no one cyberspace but rather a number of cyberspaces according to the activity one is participating in.<sup>[5]</sup> Lessig<sup>[6]</sup> defines cyberspace as being "not a place. It is many places. The character of these many places is not identical. They instead differ in ways that are fundamental. These differences come in part from differences in the people who populate these places. But demographics alone won't explain the variance. Something more is going on." Furthermore, Lessig claims "These natures are not given, they are made. They are set (in part at least) by the architectures that constitute these different spaces. These architectures are themselves not given; these architectures of code are set by the architects of cyberspace - code writers."

(b) there is no one collection of people coming from the same state origin to whom to attribute nationality or citizenship and in turn expect law-abiding behaviour. Netizens as it were are not bound by nationality but rather by activity or often by multiple activities. Often the person participating in an activity may opt to act "anonymously" or rather chooses to take on a different identity to his/her identity in the off-line world.

(c) activities do not necessarily take place in one geographical location but rather are very often transnational;

(d) activities take place with a speed that has been up to now unknown;

(e) new technologies enable new relationships.

While one can argue successfully that the mentioned situations may, and in fact exist, in the off-line world what makes the situation different in the on-line context is the speed and ease with which activities take place.

This paper will only look at the transnational characteristic of on-line activities and the challenges this brings to effective regulation. The term transnational is being taken to mean "going across national boundaries" and therefore may be subject to a plurality of national jurisdictions. This is not

a new concept. Long-distance trade has long established this reality. The characteristic for effective regulation in such circumstances requires some form of consensus for the regulation. There are various ways through which consensus can be achieved.

### Why is "transnationality" a problem for each type of on-line regulation?

It is not difficult to see that national legislation regulating behaviour on the Internet while theoretically effective in that jurisdiction is in practice very limited. The US Digital Millennium Copyright Act 2000 is in theory very effective to limit breaches of copyright in the US but has been unsuccessful to control the breaches of copyright in East Asia. The US (as a state) needs to resort to political mechanisms to attempt to achieve some form of following of the Act outside its jurisdiction. Similarly the rules of defamation in for example France can in theory be effectively enforced or applied in France but are quite ineffective for activity originating outside France[7]

Different legal systems and different legal cultures imply that different values may be at play too. This can be clearly seen in the on-going debate on freedom of speech on the Internet - where the US is on one extreme of the divide and European countries on the opposite end of the same divide. Could there be consensus on such issues where the differences seem to be so colossal?

There should, in theory, be no transnational problem in the case of international law. The problems in international law are different ones. The process of achieving consensus on an international level is a slow process. The WIPO treaty on copyright in the Internet took over six years of discussions. The WIPO agreement is a clear example, as is the Convention on Cybercrime[8], of important instances where self-regulation was not considered to be up to the task of adequately regulating a particular sphere of activity or economic interest. Time is a key factor in digital activities, with the developments in technology happening so fast the international regulation is sometimes almost outdated before it comes into effect. Furthermore the challenge of achieving consensus has often reduced the eventual regulation to a much water-down version of the regulation effectively needed [9].

The situation in self-regulation relates predominantly to the very definition of self-regulation and the identification of the "self" in self-regulation. In order to be able to discuss the issue of transnationality in self-regulation we will very briefly look into the definition of self-regulation. We will then discuss some examples of self-regulation in the on-line world. We will then look at the transnational gap and the conditions necessary for the bridging of this gap by self-regulation.

### Defining self-regulation

As Price and Verhulst point out "the initial problem of every approach to self-regulation pertains to definition and semantics. There is no single definition of self-regulation that is entirely satisfactory, nor should there be." [10]

For the purposes of this paper "Self-regulation occurs when those regulated design and enforce the rules themselves." [11] This does not mean, however, that the State may not in fact have a role in the regulation. Many forms of self-regulation have involved the State either as an initiator of the self-regulatory exercise, or as a participant in the exercise or as ultimate guardian of the rights of citizens or ironically to "pre-empt government regulation" [12]. It has often been claimed that self-regulation is most successful when there is some form of State participation. [13] As Julia Black argues a definition of self-regulation needs to address primarily three issues: the notion of "self", "regulation" and role of the state. [14]

The term "self" has been taken to refer to any collective that does not include the State in its membership. It can be used to refer to an individual or as a collective. [15] It requires that this group shares a number of similar or common interests and goals and that they accept to be regulated by this

process and structure they are participating in.[16]

The "self" can include professional groupings, occupational groupings, industry groupings, business communities or a combination of different groupings involved in a common activity bridging their differences.[17]

It is important to point out at this stage of our discussion that the term "regulation" is being taken to include (as Price and Verhulst point out) all or some of the following elements: "(1) policy-making, i.e. enunciating principles that should govern enterprises; (2) legislation, i.e. defining appropriate rules; (3) enforcement, i.e. initiating actions against violators; and (4) adjudication, i.e. deciding whether a violation has taken place and imposing an appropriate sanction." [18]

### Internet Service Providers as an example

Perhaps the most important self-regulation example in cyberspace is the example of Internet Service Providers (ISPs). At the time of writing one has been able to note the existence of at least twenty national organisations or associations of ISPs[19], and four regional organisations.[20] The nature of these organisations and the reasons for their establishment differ as does the extent of self-regulation and role played by each organisation. However, suffice it to point out at this stage that ISPs internationally have felt the need to regulate their activities through self-regulation.

### The Self, regulation, and the State

The Self in this example is a collection of ISPs. Needless to point out that ISPs are important players in the digital world. ISPs provide the link between the on-line world and the off-line world for the majority of customers. In addition to offering physical connectivity, providers can also deliver services for applications, security, management and storage.[21]

When considering forms of regulation, it may be noted that the rules that ISPs voluntarily bind themselves to follow are very often incorporated in a code of practice. These codes of practice set rules on behaviour of ISPs in a number of circumstances; they establish a method of redress for customers against ISPs acting in breach of the code of practice.

The coming together or self-regulation of ISPs as a category has very often come about in one of three ways: (a) as a result of market needs and legal vacuum; (b) as a result of statutory law encouraging self-regulation of the major players in the market (c) in response to informal 'coercion' ("or else the Government shall intervene")

Most ISP associations[22] admit that they were partially established in response to a perceived threat to the independent market posed by national telecommunications monopolies or telecommunications cabling monopolies. Others were established partially as lobbying groups to lobby for market equity for the members.

At times the association was established to establish and control Internet exchange points that the members then have access to.

Most associations have been established and promote self-regulation, to promote the progress and expansion of the industry without unnecessary hindrance of government or state regulation.[23]

Some national broadcasting services legislation[24] and/or national telecommunications legislation give the option to industry players to organise compliance with the legislation either through self-regulation or through direct statutory or government action. Some ISP associations were created in response to this 'invitation'.

Although not often admitted publicly, some ISPs will readily confess to having acted in a self-regulatory manner in direct response to informal (but sometimes very strong) pressure from the authorities to take action in a particular set of circumstances. Thus, typically, when ISPs shut down certain sites about which they have received reports from consumers or the police, they do so in order to avoid direct state intervention (especially police search and seizure) which could have drastic consequences at an operational (and profit-making) level.

What issues are ISPs involved in? are there transnational aspects involved?

Being key intermediaries in the digital world ISPs have often been involved in *inter alia*, three sets of activities: (a) ensuring customer privacy; (b) issues relating to Internet content and (c) with situations of cybercrime.

### **Ensuring customer privacy**

The codes of practices of Internet Service Providers Associations (ISPAs) include rules on behaviour to ensure customer privacy. In a number of European countries this in fact means that ISPs need to abide with data protection legislation already present in their country. However the technical ways to ensure privacy, the limits of this protection and the remedies in case of breach are very often regulated by the ISPAs. It is interesting to note that certain international initiatives in this field took an approach which favours encouragement of self-regulation as opposed to state intervention. A classic example is the Council of Europe's Guidelines to the Protection of Privacy on the Internet which contains two sets of recommendations, one largely aimed at consumers and the other at ISPs [25]

*Issues relating to Internet content - how far should ISPs be responsible for material on the Internet?*  
We may here in turn look at three issues:

#### (i) Alleged breach of copyright

Should an ISP be responsible for alleged breach of copyright law of a site being hosted on the servers of the ISP? Some countries like the US have delimited the responsibility of ISPs in the case of alleged breach of copyright by setting up a mechanism (in US Digital Millennium Copyright Act) where the ISP when given notice that a site/sites "appear to constitute copyright infringement" [26] takes down the site without being liable to either the customer to whom the site belongs or to the copyright holder alleging breach. Where no such law in fact exists ISPs have been actively setting up similar structures to protect themselves. In Belgium, for example, ISPA Belgium has set up a protocol [27] in collaboration with the judicial police which member ISPs follow to deal with any complaints about copyright, defamation and other offences under the Belgian criminal code. [28] Other countries, like the UK are in the process of setting up similar structures. [29]

Furthermore, the EU Electronic Commerce Directive [30] which is in the process of being implemented (implementation deadline of 17<sup>th</sup> January 2002) in the national legislation of the different member states establishes a number of situations where ISPs have (or do not have) liability for activities taking place through their servers (in any of the following situations transmission, access provision, caching and hosting).

While these systems partly address the problem of breach of copyright, their effectiveness is limited to the jurisdiction where the ISPs or ISPA have such a structure. Breach on sites hosted in countries where no structures are currently in place still goes unregulated, as does the alleged liability of ISPs in that particular country.

*SPAM* (unsolicited junk mail)

In the case of SPAM, ISPs are very often acting as gatekeepers: blocking access to clients using their servers to SPAM others and by filtering incoming data to keep their customers email accounts as free as possible from unsolicited mail. Furthermore, most ISPs advise their clients on methods to minimise the receipt of such mail. Customers are, on the other hand, bound by the conditions in the terms of service of their ISP service contract not to send unsolicited mail from their accounts with the particular ISP.

### **Child pornography**

In the case of child pornography some ISP associations have set up either independently or in collaboration with other organisations (such as Internet Watch) or the Police authorities, hotlines that users can call reporting child pornography content in web pages hosted by the ISP. The ISPs then put down the site and cache.

### **Cybercrime**

In the case of Internet fraud cases, ISPs have as much interest in reducing Internet fraud as their own customers. As a result of this predominantly economic interest ISPs try to use various forms of technology (architecture) to limit breaches in security on their systems and in the links with their clients. Furthermore, this interest is further supplemented by "informal coercion" by the Police.

### Self-regulation and transnational realities

During the sixteenth century, when long-distance trade became common through Europe, merchants developed their own system of rules for exchanging money and goods and for settling disputes that were independent of political jurisdiction.[31] Over the course of the next few centuries, as political leaders consolidated the new sovereign nationstates in Europe, they often adopted and codified this merchant law (self-regulation).

The current reality of self-regulation in the digital world is still somewhat bound to national boundaries. This however is directed towards change. A number of initiatives have started this process. We will look at a number of examples (within the earlier example of ISP self-regulation) or indications that the current stalemate has started to shift.

#### *Regional associations:*

Different national ISPAs are increasing forming regional ISPAs - one can currently trace four such arrangements: the European ISPA, the South American ISPA, the Asian and Pacific Association, the African Association. Each regional association is/has taken an active role in lobbying for a regional position of ISPs.[32]

The ISP industry (market) has an interest in developing effective self-regulatory models across the region. ISPs have an interest:

(a) in opting for regulation that enhances their profit making possibilities;

As Price and Verhulst[33] point out "Regulation by government always implies the use of government power to ensure certain actions by parties. Self-regulation, on the other hand, consists of a series of representations, negotiations, contractual arrangements and collaborative efforts with government. Further, self-regulation can be seen as that range of activity by private actors undertaken to prevent more intrusive and more costly action by government itself. In that sense, self-regulation can be explained as a collective economic decision, an intersection of maximisation of profit and expressions of public interest."

It is claimed that an effective and reasonable self-regulation system can in fact increase or at least maintain profit-making margins that are very often threatened by the imposition of state command and control regulation. Essentially industry has realised that there is a financial incentive to favour self-regulation over command and control state systems of regulation.

(b) in avoiding, or limiting the effects of government regulation (or multiple governments) that is often too heavy-handed;

Industry has claimed that an advantage of self-regulation over state regulation is that self-regulation is a more flexible type of regulation and consequently it may be less likely to impose excessive regulatory costs once the self-regulation reality becomes redundant or needs change. "If one code promotes inefficient practices, it is likely that firms will form a new organisation to develop a substitute code"[34] and not wait for the lengthy bureaucratic process involved in changing government regulation. Generally regulatory costs tend to be higher for more heavy-handed forms of government regulation." [35]

(c) in establishing norms of practice when government are lethargic or too slow to address changes in technology and behaviour.

Industry is unlikely to tolerate situations of State inertia for too long. Situations of inertia are unpredictable and create uncertainty in the market. Industry is known to have in situations of unpredictable state legal systems created its own predictable system in parallel to the state system to restore consumer and client confidence.[36] Some self-regulation initiatives have in fact been started to fill in a void in regulatory not filled in by State regulation.[37] As Haulfer points out[38] "where governments do not govern, the private sector does - often in response to the demands of public interest groups who find themselves unable to move national governments. And when governments are unwilling or unable to govern effectively, political leaders may see private governance as a valuable tool to achieve public ends." This is in fact a fair description to what has, is, happening in ISP self-regulation. As pointed out earlier in a number of countries ISPs have joined with interest groups[39] to attempt to regulate Internet content especially in the case of child pornography.

### **Regional practices**

Through regional funding, primarily in the European/EU region, ISPs have been acting together in for example setting up systems to take down child pornography sites. The INHOPE initiative, an EU funded project, is such an example.

### **Regional legislation**

Individual states, like the UK, Netherlands, Belgium have long supported ISP self-regulation initiatives. This support is generally based on, *inter alia*, the following reasons:

(a) the process of legislation and effective enforcement of legislation is too costly for the changing, ever-decreasing state economy, and therefore an alternative, preferably less costly for the state, method of regulation was encouraged;

(b) self-regulation, or regulation organised and administered by sources other than the state seemed to be accepted better by the parties involved than social regulation introduced by the bureaucratic structures of the state;

(c) governments claim that industry-lobbies are increasingly lobbying for self-regulation.

For similar reasons together with the principle of subsidiarity in EU law, the EU too seems to be directing and supporting self-regulation initiatives within the framework of for example the E-

commerce directive mentioned earlier.

The major sources of criticism of self-regulation have invariably been that self-regulation "lacks effective sanctions, broad public accountability and a specified commitment to monitoring and reviewing the scheme".<sup>[40]</sup> Self-regulation has been claimed works best where there is an effective threat of harsher command and control regulation is the self-regulation regulation does is not effective. One of the problems in the digital space is the potential lack of this effective threat. The existence of regional and international legislation as a fall back position if self-regulation does not work reinforces the potential success of self-regulation in a transnational context. Thus regional legislative frame-works support the effectiveness of self-regulation.

However state (or regional or international law) should be kept to the indispensable minimum. Excess regulation would in turn have the effect of scaring off customers to the digital market and thus have a counter-effect.

## Conclusion

As with many other areas, the Internet will continue to be an area of activity where state- enforced regulation will be complemented by elements of self-regulation. We can expect to continue to see a pattern of states intervening where economic issues (e.g. Copyright) or public concerns (e.g. state security or computer crime) are strong enough motivators. Otherwise, in a number of cases where the cost of intervening - whether fiscal, social or political - appears to be disproportionate to the likelihood of results, states will be happy enough to leave regulation of the Internet to ISPs and Netizens.

Some cynics may point out that the adequacy of self-regulation is often in direct proportion to the perceived importance of an issue by states. Thus, while many states pay some form of lip-service to privacy, the latter is often not considered to be important enough to merit more than encouragement towards self-regulation. On the other hand, the economic consequences of copyright infringement or hacking have led to full-fledged treaties tackling behaviour with transnational consequences in such instances.

The strength and nature of the motivation for state intervention is a factor common to both national and transnational issues. Transnationality has correctly often been examined in the context of jurisdiction and enforceability. Quite simply, if for example a regional association of ISPs is relatively effective at removing sites putting up child pornography, the states in that region will have no incentive to go to the trouble and expense of a long formal process establishing an intergovernmental legal instrument (convention) to achieve the same aims<sup>[41]</sup>. If anything, transnationality, may prove to be an example of cost and effort being a strong disincentive to state-enforced regulation and thus leading to encouragement of self-regulation. It is relatively easier to make a rule enforceable within territorial boundaries. It is often at least ten times as difficult (and as long and as costly) to establish a consensus between different states about the way that transnational behaviour should be regulated in given circumstances. Thus, it would appear reasonable to conclude that, unless it is really worth the effort, (in terms of fiscal, state security or political gains) when it comes to transnational issues, it is unlikely that states will favour intervention over self-regulation.

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<sup>[1]</sup> Haufler, Virginia. (2001) A public role for the private sector: industry self-regulation in a global economy. Carnegie Endowment for International Peace: Washington, D.C. pg.9

<sup>[2]</sup> Biegel, Stuart (2001) Beyond our Control? Confronting the limits of our legal systems in the age of Cyberspace. MIT Press: Cambridge, MA.

[3] Price, Monroe E. and Stefaan G. Verhulst (2000). In search of the self: charting the course of self-regulation on the Internet in a global environment. In Marsden, Christopher. (ed.) *Regulating the Global Information Society*. Routledge: London

[4] Sinclair, Darren. (1997) Self-regulation versus command and control? Beyond False Dichotomies. *Law & Policy* Vol. 19 (Issue 4), 1997, 529-560

[5] see Biegel, Stuart (2001) Beyond our Control? Confronting the limits of our legal systems in the age of Cyberspace. MIT Press: Cambridge, MA for discussion in Chapter 2.

[6] Lessig, Lawrence. (1999) Code and other laws of Cyberspace. Basic Books: New York pg. 63 & 82

[7] L'Affaire Yahoo! - Tribunal de Grande Instance de Paris, 20 novembre 2000 (accessed at <http://www.foruminternet.org/documents/jurisprudence> 25th February 2002)

[8] Council of Europe Convention on Cybercrime ETS 185 opened for signature 23<sup>rd</sup> November 2001

[9] e.g. the dilution of certain content-related clauses (e.g. Article 9(4)) in the Convention of Cybercrime

[10] Price, Monroe E. and Stefaan G. Verhulst (2000). In search of the self: charting the course of self-regulation on the Internet in a global environment. In Marsden, Christopher. (ed.) *Regulating the Global Information Society*. Routledge: London pg 58

[11] Haufler, Virginia. (2001) A public role for the private sector: industry self-regulation in a global economy. Carnegie Endowment for International Peace: Washington, D.C. pg.8

[12] Maxwell, John W., Thomas P. Lyon and Steven C. Hackett. *Self-regulation and social welfare: the political economy of corporate environmentalism* The Journal of Law and Economics Vol.43 (Issue 2) 2000, 583-618: pg. 584

[13] See Price, Monroe E. and Stefaan G. Verhulst (2000). In search of the self: charting the course of self-regulation on the Internet in a global environment. In Marsden, Christopher. (ed.) *Regulating the Global Information Society*. Routledge: London

[14] Black, Julia. Constitutionalising self-regulation. *The Modern Law Review* Vol. 59 (Issue 1) 1996, pg.26

[15] *ibid* pg.26

[16] Boulding, Mark E. Self-regulation: who needs it? By developing and enforcing a well-designed set of rules, e-health codes of ethics can direct attention to the best-quality sites. *Health Affairs* Vol. 19 (Issue 6), 2000, pg 134

[17] Gunningham, Neil and Joseph Rees. Industry self-regulation: an Institutional Perspective. *Law and Policy* Vol. 19 (Issue 4) 1997 pg.370-380

[18] Price, Monroe E. and Stefaan G. Verhulst (2000). In search of the self: charting the course of self-regulation on the Internet in a global environment. In Marsden, Christopher. (ed.) *Regulating the Global Information Society*. Routledge: London pg.62

[19] Australia, Austria, Belgium, Canada, Denmark, France, Germany, India, Indonesia, Ireland, Italy, Japan, Luxembourg, The Netherlands, Pakistan, Slovenia, South Africa, Spain, United Kingdom, United States

[20] the European organisation (EuroISPA); the Asian & Pacific Internet Association (APIA), the South American and Caribbean Association (Federacion de Lationamerica y El Caribe (eCOM-LAC)) and Association of African Internet Service Provider Associations (AfrISPA)

[21] Woods, Darrin; Boardman, Bruce; Doherty, Sean; MacVittie, Lori; Schuchart Jr., Steven J.; Shipley, Greg (2001) ]Service Providers and Outsourcing. *Network Computing*, 17<sup>th</sup> December 2001, Vol12 Issue 26 pg.55-61 (accessed at EBSCO 15<sup>th</sup> February 2002)

[22] e.g. the Internet Service Providers Association of South Africa

[23] in what is UK ISPA? ([http://www.ispa.org.uk/html/what\\_is\\_ispa.htm](http://www.ispa.org.uk/html/what_is_ispa.htm)) accessed on 13th February 2002)

[24] like the Australian Broadcasting Services Act

[25] Recommendation No.R(99) 5 for the protection of privacy on the Internet (23 February 1999) <http://cm.coe.int/ta/rec/1999/99r5.htm>

[26] Biegel, Stuart. (2001) *Beyond our control? Confronting the limits of our legal system in the Age of Cyberspace*. The MIT Press: Cambridge, Massachusetts, United States. pg 348

[27] in May 1999 ([http://www.ispa.org.uk/html/updateable\\_010207legalforum.htm](http://www.ispa.org.uk/html/updateable_010207legalforum.htm) accessed on 28<sup>th</sup> February 2002)

[28] The Protocol is used by the judicial police who provide the ISPs with notification for removal of material. Every ISP has a link on their site to a 24-hour contact point (funded by the ISP) ensuring all members of the public are aware of the procedure. A complaint is reported to this 24-hour contact point and then passed on to the police.

[29] Vide <http://www.rightswatch.com>

[30] Directive 2000/31/EC of the European Parliament and the Council of 8<sup>th</sup> June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce), OJL 178, July 17, 2000.

[31] Haufler, Virginia. (2001) A public role for the private sector: industry self-regulation in a global economy. Carnegie Endowment for International Peace: Washington, D.C. pg.15

[32] e.g. the South American Association has been a very active lobby within the ICANN developments to ensure that South American ISP industry interests were not ignored.

[33] Price, Monroe E. and Stefaan G. Verhulst. *In search of the self: charting the course of self-regulation on the Internet in a global environment*. In Marsden, Christopher. (ed.) *Regulating the Global Information Society*. Routledge: London 2000 pg.60

[34] Wallace, John, Denise Ironfield and Jennifer Orr (refereed by Dr John Fallon). *Analysis of Market Circumstances where industry self-regulation is likely to be most and least effective* report by Tasman Asia Pacific prepared for the Australian Commonwealth Treasury May 2000 pg.5

[35] Wallace, John, Denise Ironfield and Jennifer Orr (refereed by Dr John Fallon). *Analysis of Market Circumstances where industry self-regulation is likely to be most and least effective* report by Tasman Asia Pacific prepared for the Australian Commonwealth Treasury May 2000 pg.4

[36] e.g. "The harsh and sometimes unpredictable exercise of law in traditional China led merchants to seek to avoid encounters with the formal legal system. Similarly, societies under colonial rule developed informal orders that paralleled the system of state law." Ginsburg, Tom. Does Law Matter for Economic Development? Evidence from East Asia (Review Essay). *Law & Society Review* Vol.34 Issue 3 (2000) pg 834

[37] as the Conflict Diamonds consortium; or the Australian Code of practice for Computerised Checkout Systems in Supermarkets (1989)

[38] Haufler, Virginia. (2001) A public role for the private sector: industry self-regulation in a global economy. Carnegie Endowment for International Peace: Washington, D.C. pg 29

[39] like Internet Watch

[40] Wallace, John, Denise Ironfield and Jennifer Orr (refereed by Dr John Fallon). *Analysis of Market Circumstances where industry self-regulation is likely to be most and least effective* report by Tasman Asia Pacific prepared for the Australian Commonwealth Treasury May 2000 pg.48

[41] Although, as a matter of fact, child pornography is covered by the Convention on Cybercrime