Regulating the Internet: National Necessity or Global Folly?

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Benefits of Cheap Communication

- increases diversity of ideas
  - Example: conventional media do a poor job of covering views from the mainstream
    - Recent hagiography of Mother Teresa; suppression of Parker Barss Donham's critical article by Halifax Daily News
  - Example: those who can't afford to speak in conventional media can do so on the Internet
- increased flow brings us closer to economies of perfect information
  - Example: when telephones were introduced in rural towns in Sri Lanka, small farmers increased their prices to middlemen from 50 to 60% of the Colombo price to 80 to 90% of the Colombo price
- removes isolation
  - Example: use of shortwave radio by native communities in northern Canada for schooling, medical emergencies, etc.
  - Tero Sand

Benefits of Cheap Communication (Continued)

- weapon against tyranny
  - When a French judge banned *Le Grand Secret*, an exposeé of Mitterrand's ill health while in office, written by his personal physician, copies appeared on the Internet
  - e-mail said to have played a crucial role in preventing the Russian military from toppling Yeltsin
  - Stalin, on the proposed construction of a national telephone network in the USSR: "I can imagine no greater instrument of counter-revolution in our time."

The Twilight of Sovereignty

- title of Walter Wriston's 1992 book
- sovereignty is, at its root, control over a *physical* territory
- but cyberspace is not really a physical territory
  - Example: Usenet postings "consist of continuously changing collections of messages that are routed from one network to another across the global net, with no centralized location at all. They exist, in effect, everywhere, nowhere in particular, and only on the Net." (David G. Post)
- governments can no longer effectively control information that crosses national borders
  - "Satellites are no respecters of ideology." (Walter Wriston)
- "[Cyberspace] is not a system designed for the convenience of lawyers." (David G. Post)

The Twilight of Sovereignty

- reactions have varied from resignation to bluster
  - US Customs Service has effectively given up: "...we recognize that the U.S. Customs Service cannot, for all practical purposes, enforce a prohibition on importation by transmission, given the global dimensions of the information infrastructure of the future..."
  - RCMP raids on satellite dish owners
  - Minnesota Attorney General's office distributed a "Warning to All Internet Users and Providers" stating "persons outside of Minnesota who transmit information via the Internet knowing that information will be disseminated in Minnesota are subject to jurisdiction in Minnesota courts for violations of state criminal and civil laws."

Rationales for Regulation

- "cultural protection"
  - Micro-Bytes case (Canada)
  - Georgia Tech Lorraine case (France)
  - simultaneous substitution
    * financial rationale startling in its frankness
    * Canadian Association of Broadcasters: simultaneous substitution "has done a good job protecting broadcasters rights [sic] by keeping hundreds of millions of Canadian advertising dollars from flowing across the U.S. border."
- copyright and intellectual property
  - JET report case (England)
  - Mondex case (Canada)
- national security
  - cryptographic export restrictions (USA)
  - domestic cryptography restrictions (USA)

Rationales for Regulation (Continued)

- protecting minorities
  - hate speech on Internet
    - Zundel hearings before CHRC
- ensuring accurate information
  - "The Singapore government isn't interested in controlling information, but wants a gradual phase-in of services to protect ourselves. It's not to control, but to protect the citizens of Singapore. In our society, you can state your views, but they have to be correct." – Ernie Hai, director of the Singapore Government Internet Project
- protection of minors
- international treaty commitments
  - Example: McGill's Irwin Cotler argues that as a signatory to the International Convention on the Elimination of All Forms of Racial Discrimination, Canada has a statutory obligation to legislate against hate speech on the Internet

Internet Regulation as Global Folly

- States may succeed in enforcing laws against individuals
- However, the offending documents themselves will still be available
- Censorship simply draws more attention to the document in question
- Censorship applied to foreign states may result in retaliatory action
- Which is more important, that Canadian ideas are available for world consumption, or that Canadians are "protected" from unpleasant or offensive foreign ideas?

What Will Replace Sovereignty on the Internet?

- One possibility: more uniform international law
  - more multilateral treaties
  - more international governing bodies
  - very difficult to achieve international agreements on some subjects
- Another possibility: more decentralized law-making
  - service providers become new sovereigns
  - users can choose a service provider in line with their needs
  - service providers enforce rules through user agreements and use punishment such as "banishment"
  - a good model *provided* there is diversity in service providers
- Trotter Hardy has suggested an analogy with *Lex Mercatoria*
  - *Lex Mercatoria*: a legal system that arose in the Middle Ages to govern transactions at trade fairs
- Perhaps we need a *Lex Cyberia* – rules developed and enforced by the people who actually use the Internet