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Regulation and Social Media: Speed Bumps or the Code 2.0.  
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“Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather (...)” (Barlow 1996).

Barlow’s declaration of independence of February 8 1996 was an expression of the libertarian approaches that have run through the Internet since its inception, and is the root of the misapprehension that the internet is somehow unregulated by state sovereignty. But why was it published that day? What happened?

Let’s start with a flashback to the internet that Barlow was describing and was willing to protect in his poem. It was the internet of relatively small groups of people interacting in online communities organised around common interests. It was a text-based internet where anonymous users interacted in MUDs (Multi-User Dungeon 2016). For a deeper understanding of the reality of those virtual communities read Dibbell’s “A Rape in Cyberspace” originally published in 1993 in *The Village Voice*. The author describes those text-based communities of anonymous users or characters, called MUD Object-Oriented (MOO), characterised by an accurate description of the content which defined the purpose of those chatrooms, indicating also the characters present at the moment with whom to interact, like a role-play game. But the real purpose of Dibbell’s article was to report a ‘digital rape’ where a character digitally (i.e. not physically) abused other characters. This digital violence led the community to gather in a dedicated ‘room’ to animatedly discuss and rule on the character guilty of the rape, who eventually was banned, an example of what is commonly reported as self-regulated internet. The contemporary manifestations of such communities are today social networks with hundreds of millions of users, resembling more closely a society than a community. At the time of the publication of the article in 1993, the World Wide Web (WWW) was just beginning. It was proposed by Berners Lee in 1989 but the first web site was only implemented at the end of 1990 functioning solely from Berners Lee’s computer (Castells 2001:15). In 1991 a cross-platform browser version of the World Wide Web was created and in April 1993 the WWW software became public with an open license (CERN 2016).

This was Barlow’s internet cultural background, but something was already happening in those years, which provoked Barlow to write his declaration of independence. In September 1993, a few months after the WWW software was released for public use, a Task Force charged by the Congress of the U.S. completed its Agenda for Action for the National Informational Infrastructure (The White House 1993). The purpose of this agenda was to propose the creation of the infrastructure necessary for a digital global market. The first paragraph of its chapter entitled ‘The Promise of the NII’ illustrates the power of this agenda in prescribing the future, describing a device which became a reality 15 years later:

“Imagine you had a device that combined a telephone, a TV, a camcorder, and a personal computer. No matter where you went or what time it was, your child could see you and talk to you, you could watch a replay of your team’s last game, you could browse the latest additions to the library, or you could find the best prices in town on groceries, furniture, clothes -- whatever you needed”.

This device described in 1993 looks to be, 15 years later on, the smartphone, one of the five factors recognised by the advisory board and the scientific committee of Noema, to have been fundamental in the relationship between technology and society (Capucci and Chighine 2016). The European Union also recognised this potential. In December 1993, a few months after the American Agenda for Action had been published, the EU Commission adopted the White Paper on “Growth, competitiveness and employment: The challenges and ways forward into the 21st century”, to promote the use of information technologies for the development of the European economies in the new world that was emerging (Delors 1993).

Western governments were laying the foundation for the information Super Highways, which became a common catch phrase in the early nineties, though by 1995, their promise was already being questioned (Besser 1995). It can be said that the role of information super highways in a society based on immaterial exchanges, is comparable to the role of the old communication routes (e.g. physical highways) in a society based on material exchanges. Information super highways became the globally-recognised solution to economic stagnation. In fact, the saturation of the market required the development of a new modality inside the existing economic system (which has been called the New Economy). It was no longer the lack of goods and services which represented the element of scarcity, but the ability to attract and retain the attention of the user-consumer. That is to say, the economy was not limited by the universe of products on the shelf or services for sale, but by the attention of the consumer. Thus the consumer has been successfully commercialised through the logic of empowerment. Something we know very well today with social media, where the users who produce the material being shared are not the customers, but the product which is sold to advertisers, marketers and developers.

We return now to February 8 1996. That day, a few moments before Barlow published his Declaration, President Bill Clinton had signed into law the U.S. 'Telecommunication Act of 1996' (U.S. Congress 1996). The aforementioned Agenda for Action was preparing the ground for this law. Previously, each medium (i.e. radio, TV, telephone, etc.) had developed separately on different networks, but with digital technology information could be stored and transmitted on the same network. The realisation of technological convergence brought about the possibility of a more general media convergence (Meikle and Young 2012). To foster this evolution, with "The Telecommunication Act of 1996", the American Administration eliminated antitrust barriers so as to permit the integration of different media under a single corporate entity. Barlow was aware of the changes that were about to be effected by governments, and released his Declaration the same day the American law was signed and published. Bearing all this in mind and looking at the cyber-reality of today, the declaration of independence sounds more like a swan song, a poem, which gave strength to the hope of a different world, and to the misapprehension that the internet is somehow unregulated; a misapprehension which became a mantra particularly among the cultural industries, which fed on people's anxieties of being under the control of the authorities (Hesmondhalgh 2013:126), and arguably aimed to maximise participation in the activities of the new digital environment.

There are several publicly-available examples of the extensive reach of government sovereignty over privately owned Internet Service Providers (ISPs), which goes far beyond the development of information infrastructures and the regulation of media companies. For example, in Egypt on 27 January 2011 during the revolution that eventually led to the capitulation of President Hosny Mubarak, the internet was shut down with a view to stopping the demonstrations (BBC 2011 and Labovitz 2011).

In the UK, in 2013 the Internet Service Providers (ISPs) were ordered by the high court to block access to websites which are considered illegal (O'Carroll 2013). In Turkey, social media such as Facebook and Twitter are routinely blocked by the Court, most recently in March 2016 (Akkoc 2016). But the most insidious government involvement was revealed by Edward Snowden in June 2013. Classified documents showed that the US National Security Agency (NSA) has since 2007 run a programme of personal data collection, code-named PRISM, through the main social media and computing companies: Facebook (which includes Instagram and WhatsApp), Google (YouTube), Microsoft (Skype), Apple (iTunes), and Yahoo (Tumblr and Flickr). Yahoo, for example, was coerced into participating in the data collection with a threatened US\$250,000 fine per day (Meikle 2016:106). These examples confirm two things; first that governments are wary of the potential of media and communications tools; and second, despite rhetoric to the contrary, that governments are both able and keen to exercise control over the Internet.

Traditionally governments' media policies have intervened in all areas of communications and cultural markets. For example they legislate on contracts, competition, copyright and privacy. They can regulate in more detail through regional agencies which monitor local activities. They can subsidise different sectors of the economy directly or through grants, from research to the arts (Hesmondhalgh 2013:123). These three domains of action have blurred since the advent of the information society, which drove governments to adapt telecommunications and economic policies to "the new world that was emerging" as exposed above with the American "Agenda for Action" and the European "White Paper". Following the policy changes, telecommunications have a far more important role within the other economic infrastructures such as energy, money and transport, in influencing business. But licensing powers, ownership restrictions and content rules are not the only media policy instrument. Governments have also to deal with the promotion of a symbolic notion of nationhood, and economic outcomes (for example, jobs). The panorama is a lot more complex, and Lessig classifies four mechanisms of constraints which might clarify the complexity of the reality, these are: laws, social norms, markets and the "regulation of real space architecture" (2006: 247) or 'nature'. Besides the traditional media policy led by governments through legislation, there are social norms ruling social behaviour, the market which determines customers' choices, and 'nature' defined as physical limits, either natural or manufactured. Each mode of regulation listed above influences the other. For example when Governments have to enforce the use of the seat belt, they might take into consideration the most effective way, also economically speaking, to reach the goal. Threatened punishment may be insufficient to convince people to wear it. Governments might for example subsidise insurance companies to offer reduced rates to seatbelt wearers (law regulating the market as a way of regulating behaviour). Another example is the use of speed bumps to keep down the speed of a car (nature or architecture of real space regulating the behaviour). All four mechanisms of constraint can be located in cyberspace. In the context of the digital environment and the internet, Lessig intends 'nature' as 'code', i.e. constraints dictated by technological architecture which includes software and hardware. The law can govern behaviour in communities with copyright laws, obscenity laws and so on. Social norms regulate behaviour in cyberspace, for example if one tries to sell his second hand bicycle in a group where the topic is politics, the community could impose sanctions. The market can also influence behaviour, for example, pricing structures constrain access to devices or websites. And the 'code' ('nature'), also regulates behaviour. Castells remarks that programmers are one group which hold power in the network society (2015:9). Examples could be Facebook's protocols which guide the users in their preferred way, or the default settings which channel the user to a preferred behaviour (van Dijck 2012). In fact, it takes effort to change the default settings, which are often considered the best average choices by the users, and that is why default settings are so valuable: it has been reported that Google paid Firefox 300 Million dollars each year for three years (until 2014) to be its default search engine only in the US (Levy 2014). But "the point is not against indirect regulation generally", "the point is instead about transparency" (Lessig 2006:135). An example is Facebook's news feed experiment which demonstrates how users' emotions can be channelled through the code (Kramer *et al.* 2014). Without their knowledge, 689,003 participants were artificially exposed to positive or negative friends' moods to demonstrate that their emotional states could be influenced by the kind of news feed to which they were exposed. Snowden's disclosures and the Facebook experiment, among others, give substance to Lessig's argument, which is that governments have a range of tools they use to regulate, and "cyberspace expands that range. Indirectly, by regulating code writing, the government can achieve regulatory ends, often without suffering the political consequences that the same ends, pursued directly, would yield. We should worry about this. We should worry about a regime that makes invisible regulation easier." (2006:136)

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