



## **Who Watches the Watchmen?**

**The role of self-regulation within the context  
of Internet content regulation**



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# Difficulties in defining “harm”

- **Harm Criterion is different within different European states:** Human Rights and ECHR balance? See *Handyside v UK* (1976), App. no. no. 5493/72, Ser A vol.24, (1976) 1 E.H.R.R. 737; *Castells v. Spain* (1992), App. no.11798/85, Ser.A vol.236, (1992) 14 E.H.R.R. 445
  - Different approaches to “hate speech” in Europe: Illegal, harmful, offensive speech?
  - Different approaches to sexually explicit content in Europe: Illegal, harmful, offensive speech?
  - **ECHR article 10, and margin of appreciation**
  - Problems of harmonisation and concerns for freedom of expression
  - Different approaches to “hate speech” and “sexually explicit content” between Europe and North America
  - First Amendment, US Constitution
- ## Harmful Content
- **What is harmful depends on cultural differences**
  - EU & US consider pornography to be harmful to **children**
  - Some Feminists consider it to be harmful to **women**
  - Saudi Arabia considers it to be harmful to its **people**



# Distinguishing between “harmful” and “illegal” content

- The difference between illegal and harmful content is that the former is **criminalised by national laws**, while the latter is considered as **offensive or disgusting by some people but certainly not criminalised by national laws**. So, within this category of Internet content, we are dealing with **legal content which may offend some Internet users or content that may be thought to harm others, e.g. like children with their accessing of sexually explicit content**.
- This form of Internet content may include **sexually explicit content, political opinions, religious beliefs, views on racial matters, and sexuality**. However, it should be noted that the European Court of Human Rights has confirmed in *Handyside v UK* (1976) that **freedom of expression extends not only to ideas and information generally regarded as inoffensive but even to those that might offend, shock, or disturb** (*Castells v. Spain*, 1992) and **this sort of information legally exists over the Internet as well as in other medium**. But, legal regulation of this sort of Internet content may differ from one country to another and this is certainly the case within the European Union with **different approaches to sexually explicit content or to hate speech by the member states of the European Union**.

## Child Pornography

- Society sees it as a problem.
- Child pornography is not a new problem.
- Digital child pornography is not a new problem - can be traced back to mid 1980s.
- Clear cut example of “illegal content”
- Criminalised by the CoE CyberCrime Convention, the UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the EU Council Framework Decision on combating the sexual exploitation of children and child pornography (not adopted yet)
- UN Optional Protocol: **108 Signatories, 71 Parties as of February 2004.**

## Hate Speech

- ✓ Society sees it as a problem
- ✓ Racism and xenophobia is not a new problem.
- ✓ Digital hate is not a new problem - can be traced back to mid 1980s.
- ✓ Difficult to categorise: Depending upon its nature and the laws of a specific state it could be considered illegal or harmful/offensive (BUT legal)
- ✓ Harm criterion is different within different European states.
- ✓ CoE Additional Protocol to the CyberCrime Convention on the criminalisation of acts of a racist and xenophobic nature committed through computer systems: **23 signatories so far but no ratifications.**

## Pornography

- Society does NOT always see it as a problem
- Pornography is certainly NOT new
- Difficult to categorise: Depending upon its nature and the laws of a specific state it could be considered illegal or harmful/offensive (BUT legal)
- Harm criterion is different within different European states.
- UK approach is rather different to the German or Scandinavian approaches to sexually explicit content
- **NO international attempt to regulate “sexually explicit content”**



# Internet Governance



**CoE**

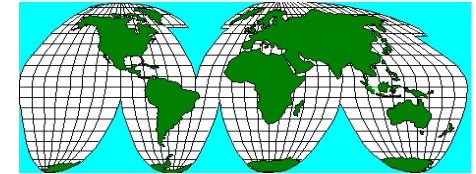


**osce**

**GLOBAL**

**UN**

**REGIONAL  
INT.**



**NGOs & Civil Society**

**NATIONAL**

**EU**

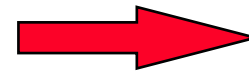
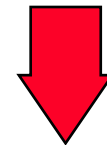
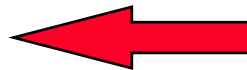
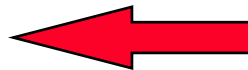
**INDUSTRY**



**SUPRA-  
NATIONAL**

**Co-Operation**

- **REGULATION**
- **SELF-REGULATION**
- **CO-REGULATION**

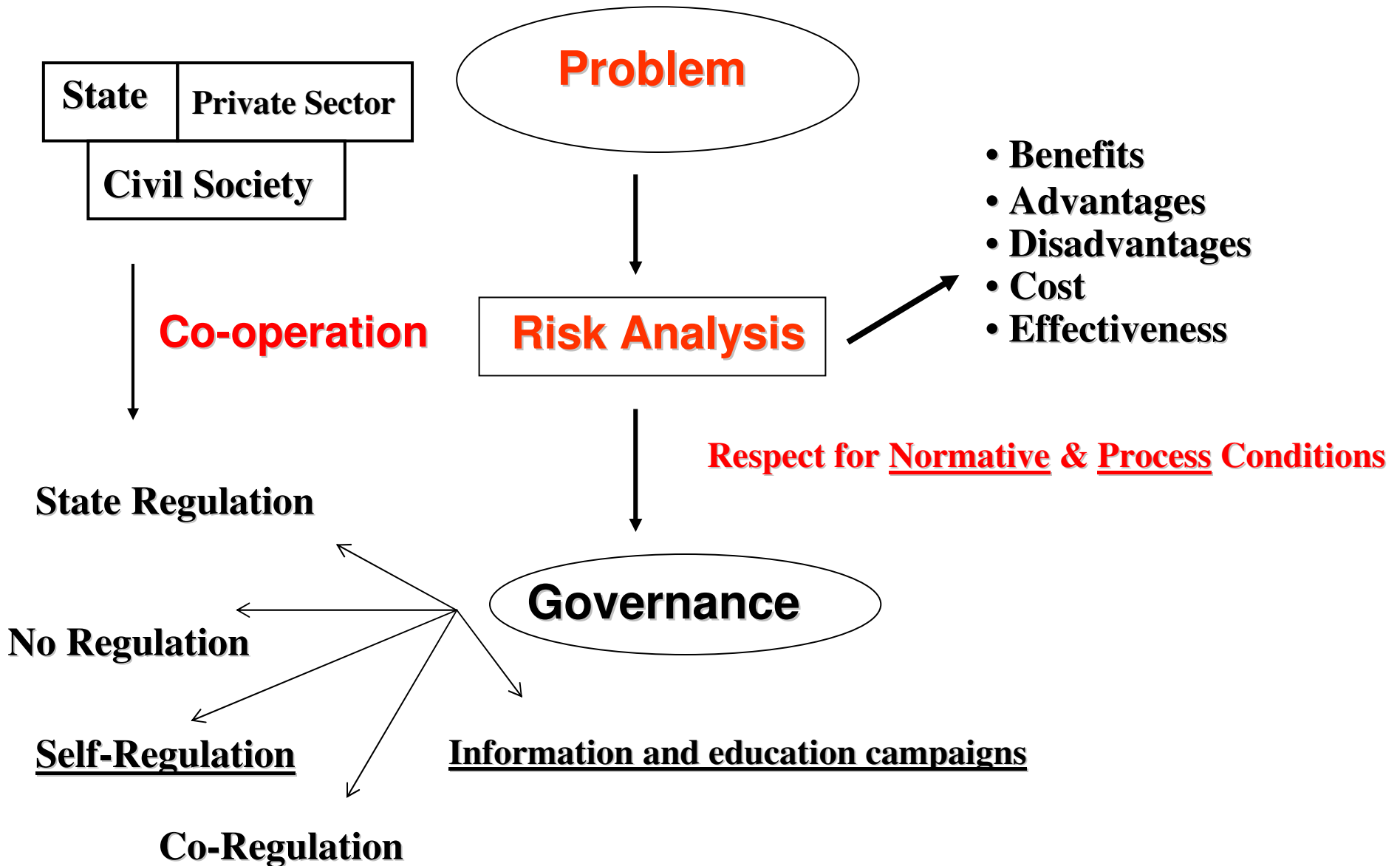


# Alternatives to International Regulation

- Regulation is often designed to reduce risk **but alternative methods can be less costly, more flexible and more effective** than **prescriptive government legislation**. These include the option “to do nothing”, self-regulation, co-regulation, and information and education campaigns.
- The Declaration on Freedom of communication on the Internet adopted by the Committee of Ministers of the Council of Europe on 28 May 2003 encouraged self-regulation and co-regulatory initiatives regarding Internet content.
- Similar recommendations were also made in a CoE Recommendation (2001) 8 on self-regulation concerning cyber-content.
- The no rush to legislation approach adopted by the European Commission with its Action Plan on promoting safer use of the Internet should be applauded which is now extended to cover EU candidate countries. The Action Plan includes research into technical means to tackle both illegal and harmful content, and information and education campaigns.



# Better Policy Making?



# The credible self-regulatory scheme: a checklist

- The scheme must be able to command **public confidence**
- There must be strong **external consultation and involvement** with all relevant stakeholders in the design and operation of the scheme.
- As far as practicable, the operation and control of the scheme should be **separate** from the institutions of the industry.
- Consumer, public interest and other **independent representatives must be fully represented** (if possible, up to 75 per cent or more) on the governing bodies of self-regulatory schemes.
- The scheme must be based on **clear and intelligible statements of principle and measurable standards** – usually in a Code – which address **real consumer concerns**. The objectives must be rooted in the reasons for intervention.
- The rules should **identify the intended outcomes**.
- The scheme must be **well publicised**, with maximum education and information directed at consumers and traders.
- The scheme must be regularly reviewed and **updated** in the light of changing circumstances and expectations.





# Rating and Filtering Systems

## Privatised censorship ?

- Both rating and filtering systems are problematic
- They do **NOT** offer full protection to concerned citizens
- They could be defective
- Massive overblocking is witnessed in many filtering software: See **Internet Filters: A Public Policy Report**
- **Too much reliance on** mindless mechanical blocking through identification of key words and phrases.
- They are based upon the morality that an individual company/organisation is committed to: broad and varying concepts of offensiveness, "inappropriateness," or disagreement with the political viewpoint of the manufacturer is witnessed.
- Apart from overblocking, underblocking is also witnessed with certain filtering software: Which? found that the filters fail to block many offensive sites and often deny access to innocent ones: **Which.Net Research, May 2000: "Internet filters don't safeguard children against pornography and other net nasties"**

- **I-Gear** blocked an essay on "Indecency on the Internet: Lessons from the Art World," the United Nations report "HIV/AIDS: The Global Epidemic," and the home pages of four photography galleries.
- **Net Nanny, SurfWatch, Cybersitter, and BESS**, among other products, blocked House Majority Leader Richard "Dick" Armey's official Web site upon detecting the word "dick."
- **SmartFilter** blocked the Declaration of Independence, Shakespeare's complete plays, *Moby Dick*, and Marijuana: Facts for Teens, a brochure published by the National Institute on Drug Abuse (a division of the National Institutes of Health).
- **SurfWatch** blocked such human-rights sites as the Commissioner of the Council of the Baltic Sea States and Algeria Watch, as well as the University of Kansas's Archie R. Dykes Medical Library (upon detecting the word "dykes").
- **X-Stop** blocked the National Journal of Sexual Orientation Law, Carnegie Mellon University's Banned Books page, "Let's Have an Affair" catering company, and, through its "foul word" function, searches for *Bastard Out of Carolina* and "The Owl and the Pussy Cat."

# Conclusions & Recommendations

## Limitations

- The capacity of the rating & filtering tools is limited to certain parts of the Internet. Therefore, these tools do not address the availability of harmful content issue fully. [But at no point the official statements address or warn about the limitations of these technologies.]

Rating systems are designed for the World Wide Web sites while leaving out other popular Internet related communication systems such as the chat environments, file transfer protocol servers (ftp), Usenet discussion groups, real-audio and real-video systems which can include live sound and image transmissions, and finally the ubiquitous e-mail communications. These systems cannot be rated with the currently available rating systems and therefore the assumption that rating systems would make the Internet a “safer environment” for children is wrong as the WWW content represents only a fraction of the whole of the Internet content. Although it may be argued that the World Wide Web represents the more fanciful and the most rapidly growing side of the Internet, the problems that are thought to exist by the regulators over the Internet are not World Wide Web specific.

- Furthermore, as the Economic and Social Committee of the European Commission on its report (1998) on the EC’s Action Plan pointed out, it is highly unlikely that the proposed measures will in the long term result in a safe Internet with the rating and classification of all information on the Internet being “impracticable”. The Committee, therefore, concluded that there is “little future in the active promotion of filtering systems based on rating”. But so far, the promotion of such tools continue by the Internet industry and by the regulators.



# Conclusions & Recommendations

## Definitional Problems

- Even when the rating technology is applicable to the WWW, it is not clear what the regulators have in mind when it comes to what sort of content should be rated.

However, there is no consensus as to what is actually being referred to by the regulators, perhaps apart from the availability of sexually explicit content over the Internet. In all cases, the targeted category of Internet content remains within the limits of legality rather than illegality.

- Another downside of relying on such technologies is that these systems are defective and in most cases they are used for the exclusion of socially useful web sites and information



# Conclusions & Recommendations

## Adults' rights vs. children's rights

- While the children's access is the most cited excuse for the regulation of the Internet, this global medium is not only accessed and used by children.

In fact, it is not possible for children to have their own Internet accounts without the involvement of a parent or adult as it is not possible to get an Internet account through an ISP before the age of 18 in almost all countries. Therefore, children's access to the Internet is already limited as it is not possible to obtain an account without the involvement of a parent.

- There is always a role to play for the adults and parents in relation to the children's access to the Internet and adults should act responsibly towards children's Internet usage rather than relying on technical solutions that do not fully address Internet content related problems.
- Librarians and teachers should also have a role to play as far as access to the Internet is provided from public libraries and schools for children.
- Any regulatory action intended to protect a certain group of people, such as children, should not take the form of an unconditional and universal prohibition on using the Internet to distribute content that is freely available to adults in other media.



# Conclusions & Recommendations

## Freedom of Expression & Censorship

- Originally promoted as technological alternatives that would prevent the enactment of national laws regulating Internet speech, filtering and rating systems have been shown to pose their own significant threats to free expression. When closely scrutinised, these systems should be viewed more realistically as fundamental architectural changes that may, in fact, facilitate the suppression of speech far more effectively than national laws alone ever could. (Global Internet Liberty Campaign, 1999).
- Rating and filtering systems with blocking capabilities could allow repressive regimes to block Internet content, or mandate the use of such tools.
- If the duty of rating is handed to third parties, this would pose free speech problems and with few third-party rating products currently available, the potential for arbitrary censorship increases.



# Conclusions & Recommendations

## Personal and Parental Responsibility

- If a “light regulatory touch” with an emphasis on self-regulatory or co-regulatory initiatives represent the European vision, then “self” should mean individuals rather than self-regulation by the Internet industry without the involvement of individuals and Internet users.
- There should be more emphasis on promoting the Internet as a positive and beneficial medium.
- There is urgent need for awareness of Internet usage.
- Parents and teachers and those who are responsible for children’s Internet usage need to be educated. Putting the PC in the living room or installing a filtering software is NOT the solution.