



Digital and Social Media Regulation

A Comparative Perspective of the US and Europe

Edited by Sorin Adam Matei
Franck Rebillard · Fabrice Rochelandet



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FOREWORD AND ACKNOWLEDGMENTS

Great minds think alike! Or, maybe, it is not minds that attract each other, but ideas. A great idea attracts another great idea, which invites another still. This volume is the product of several years of transatlantic intellectual collaboration of the issue of new media regulation for diversity. It emerged through the common work of the US-based Purdue University Global Communication Program sponsored by the Online M.A. program in Strategic Communication and the French Laboratory of Excellence in the Study of Cultural and Artistic-Creative Industries (also known as the LabEx ICCA) funded by the French National Agency for Research (CNRS). The chapters were selected from the papers submitted to the International Communication Association pre-conference (May 2019) *Riding or Lashing the Waves: Regulating the Media of Diversity in a Time of Uncertainty*. Held at the National Press Club in Washington, DC, the conference brought together, besides the contributors to this volume, academics and writers from a broad spectrum of interests, including David Weinberger, the author of several seminal books on the digital revolutions, including the most recent, *Everyday Chaos* (Weinberger 2019). The conference was organized both by the LabEx ICCA and by the Purdue Global Communication Program, the latter financially supported by the Purdue College of Liberal Arts.

The story of this collaboration is worth retelling as it highlights how a strong interest in interdisciplinary and experiential research and teaching can generate remarkable results.

In 2016, at the peak of the US Presidential campaign, Joseph Daniel, the author of *La Parole Presidentielle* (Daniel 2014) and a former professional political communicator was invited at Purdue University to participate in a series of events about political communication in twenty-first century. Dr. Daniel was invited by Dr. Sorin Adam Matei, who was in the process of launching the Global Communication Program, whose goal was to take Purdue students abroad to study the intricacies of the business, political, and cultural policies that shape the world of international digital communication. Dr. Daniel, a master analyst and storyteller, proved to be more than an informed observer of the US and French political spaces. He showed himself a generous thinker and connector, eager to share his knowledge and intellectual network. Upon his return to France, Dr. Matei visited him in the Fall of 2016, being introduced by Dr. Daniel to Dr. François Moreau, the director of the scientific advisory board of the ICCA LabEx and Drs. Françoise Rebillard, and Fabrice Rochelandet, the last two serving as co-editors of the present volume and core research leaders in the ICCA LabEx. The meeting led to the launch of the Purdue Global Communication Study Abroad program. The program was, from the beginning, imagined as a roving, on-the-spot experience, focused on in-person visits and discussion at major French media and regulatory organizations. Among them: the Superior Council for Audiovisual Media (CSA), the Commission for Information and Liberties (CNIL), the French Senate and National Assembly, DailyMotion, Google France, or the National Library. In addition, each iteration of the program included day-long academic seminars, some hosted by a third partner, the American Graduate School in Paris, at which the students and the researchers from both sides of the Atlantic presented papers and discussed emergent research projects. Some of the papers presented at the 2019 conference, including Dr. Curien's, Dr. Benhamou's, Dr. Matei and Kilman's chapters, were written as active acts of reflection toward the emerging program of research and education forged across the Atlantic since 2016.

A note about the historical context of our collaboration is also needed. The program of collaboration and research of the two organizations, ICCA LabEx and the Purdue Global Communication Program, emerged at a time of continental drift between the USA and European Union. Despite the fact that the two economic, political, and cultural areas share much of the same ideological, economic, and emerging international legal infrastructure, tensions and punitive measures have come about on both sides which threaten an increasing separation between these two global partners. We hoped that both our work together could be a model of collaboration and working together through the major and serious problems of our day.

Finally, we would like to acknowledge the following individuals and organizations for the unwavering support they provided to our initiative and program: David Reingold, Dean of the Purdue College of Liberal Arts was a strong supporter of the project, providing directly or indirectly the material support for the 2019 conference. The institutional leadership of the LabEx ICCA, including its scientific board, also provided financial support for the conference. Dr. Daniel's visit to Purdue and Dr. Matei's trip to Paris, in 2016, was supported by a Purdue University Global Synergy grant. The events in Paris would've not been possible without the unwavering support and time investment of Julie Gibellini, Councilor at the French National Assembly and a remarkable intellectual property scholar, Geoffrey Delcroix and Regis Chatellier, who opened the doors to the innovative research laboratory at CNIL (the Liberties and Informatics Council), David Dieudonné, from Google France. These individuals, among many others, have taught us many valuable lessons about the surplus of similarities and minimal differences between the scholarly and regulatory regimes in the France and the USA. In the USA, many thanks are owed to Bart Collins, the director of the Online M.A. Program in Strategic Communication, who has facilitated the recruitment and integration of the course taught in France in the regular curriculum of his program, co-sponsoring the Global Communication Program in Paris.

We are not only grateful to these individuals and organizations for their past support, but also the future commitment made to the continuation of our common work.

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- Weinberger, David. 2019. *Everyday Chaos: Technology, Complexity, and How We're Thriving in a New World of Possibility*. Harvard Business Review Press.

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Introduction: New Paradigms of Media Regulation in a Transatlantic Perspective

*Sorin Adam Matei, Franck Rebillard,
and Fabrice Rochelandet*

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To claim that communication technology and practices have undergone a tremendous shift over the past 30 years is a self-evident understatement. However, the same cannot be said about our regulatory framework—the product of political and economic ideas several centuries old. Thus, the worlds of communication practice and communication policy-making often are at odds. While it would be easy to claim new material forces demand new laws, the reality is our traditional media customs and laws are rooted in values, needs, and long-term projects that cannot be changed without impacting our entire way of life. Many facets of everyday life rely on this existing framework: individual autonomy, creativity, rule-based interactions, and fairness. A core challenge for technologists, legislators, and policymakers is to integrate new ways of communicating within the existing framework of values and practices in such a way that current values are preserved while specific regulatory practices are updated to match today's technological, economic, and cultural norms.

This volume examines these issues from a specific lens: that which intends to preserve diversity of production systems and respects the variety of consumption patterns. In doing so, we cover four core regulatory issues: intellectual property (copyright, especially), privacy, media diversity, and freedom of expression. The contributors to this volume examine the evolution of regulatory domains and their rules under the pressure of social-cultural practice, technological innovation, economic mechanisms, and legal constraints. More importantly, our contributors offer new cross-cultural approaches, grounded in our modern discourse, to processing and challenging the interplay between these social, legal, and economic forces (Schwanholz et al. 2017).

The authors propose several emerging solutions for re-aligning regulation with practical realities defined by technology, economics, and politics. In this context, we must emphasize that regulation is not seen only as a narrow set of limiting rules or enforceable laws that prescribe strictly and punitively certain behaviors, possible paths of development, or resource allocation, rights, and obligations. This collection insists: Regulation can be more broadly defined as the structural embedding of communication practices and technology in a certain framework of values and principles. Effective regulation should be based on rules and guidelines that are socially acceptable while creating adequate incentives for individuals and organizations to respect and apply them. In this sense, regulation facilitates social, productive interaction; it is not a constraining force. Because of this, the chapters included in this volume may imagine regulation as a collection of self-regulatory, co-regulatory, or directive regulatory practices and legal structures. More importantly, regulation is seen as a necessary means toward a self-sufficient end, which is free, thriving

societies in which individuals and communities can learn, do business, and express themselves in a pluralistic way to the benefit and cultural enrichment of all human beings. Values such as diversity and richness of perspectives, a creative new way to think about the present and the future, fair and supportive mechanisms for the full realization of all human beings are of paramount importance for the regulatory mechanisms analyzed in this volume (Bertot et al. 2012).

A complex problem demands an approach to match. The perspectives offered by the authors span a broad array of experiences, domains, and levels of abstraction. This heterogeneity is intentional. As we will emphasize below, the authors were selected to include basic and applied research, regulatory, educational, and practical journalism experiences. As a dual intellectual and policy-practical approach, a diversity of opinions offer a clearer picture of what the future of digital and social media regulation should or can be (Forrest and Cao 2010).

Before summarizing the individual contributions—and given the theoretical concerns that inform this volume—let us categorize the issues decided on by this volume’s authors, issues that undergird media and communication regulation in the twenty-first century. These choices are domain-specific. The contributions to the volume discuss regulation in the context of four key issues: intellectual property, privacy, freedom of expression, and media diversity. The significance of each of these issues demands both a diachronic and synchronic perspective. We must look back at the origins of these issues, their recent history, and their simultaneous interplay with technologies and communication practices. Also, as social media has been through a tremendous political upheaval during the last decade, especially in the USA, where accusation and counter-accusations of abuse and censorship abound, we need to look at the emergence of these problems in context (Brannon 2019). A good overview of these issues has been provided in the literature, which not only precedes but informs our work (Napoli 2019; Picard 2020).

To better understand the emergence of communication industry issues, we need to go back in time three decades ago (Picard 2020). The 1990s represented a major technological advancement, legislative change, and political questioning of media regulatory regimes worldwide. The liberation of the Communist nations and economic liberalization of China after 1989 opened the floodgates of communication within those nations and across borders. More important, these exchanges were turbocharged by technological innovation and economic globalization. During the 1990s, worldwide content industries abruptly switched from analog to digital dissemination of information through open and free networks, integrated into the global Internet. New markets for media products and processes spread across continents.

The immeasurable flow of digital information (and the devices that made them possible) challenged every single regulatory regime on the planet. Data started moving across media and between people, often dissolving the border between the two entities. States' ability to consistently enforce copyright laws dwindled. Privacy expectations were affected similarly. The common consumer used mass-interpersonal media—with vast, unplumbable databases of user data—to broadcast their personal brand to anyone else who would listen. The era of newsgroups, email lists, and chatrooms evolved into social media; Twitter, Facebook, Instagram, TikTok, Snapchat, Tinder, and others centralized millions of address books. Partly unintentional, partly by design, personal information from these social vectors became a new type of fuel for marketing and advertising campaigns.

Simultaneously, governments worldwide have begun to mine this information for their own purposes—preventing, sometimes inciting, violence. Yet, despite even the most ham-fisted attempts to control the media, freedom of expression evolved due to the Internet into a truly universal *de facto* practice. Until 1990, freedom of expression was, at the global level, a mere desideratum, inscribed in the Universal Declaration of Human Rights. For many nations, receiving or sending information was limited to interpersonal conversations. In some, other means of communication, such as typewriters in Communist nations like Romania, were controlled or registered by the government. After 1990 due to the Internet expansion, freedom of expression has become a common practice, especially and counter-intuitively in countries that pre-Internet could easily clamp down on non-governmentally approved public conversations. From China and Russia to Iran or Cuba, information has started to flow in and out via computers, cell phones, thumb drives, satellite, and VPN networks. While a boon for well-intended activists, this freedom of expression also aided ill intended ones. The explosion in militancy and the rapid spread of violent movements on a global scale that shook the world after 9/11, 2001 couldn't have been possible without easy and cheap access to worldwide exchanges of information via social media and content sharing platforms. In the past decade, social media campaigns have become the weapons in the global war of influence via propaganda campaigns targeting electoral processes, instigating cross-border violence, or confounding the public via fake or spun news. All these evolutions have muddied the tasks of media regulation. On the one hand, digital innovation and practices have generated endogenous social norms. For instance, with the proliferation social media-based innovation, individual users and online service providers continuously redefine the social norms of privacy, making it hard to stabilize and efficiently enforce privacy rules. On the