

Policing the Internet in Singapore: From Self-Regulation to Auto-Regulation

The 2000 CAMLA Essay Prize winner was Terence Lee, a PhD candidate at Adelaide University. Terence provides a thoughtful analysis of Singapore's auto-regulation of the Internet and questions whether this is the only viable way to regulate cyberspace.

The sheer pervasiveness of the Internet makes it impossible for even the best-intentioned of regulators to keep out. Such issues as privacy, consumer protection, intellectual property rights, contracts and taxation cannot be left entirely to self-regulation if e-commerce is to flourish. The real question, alas, is not whether to regulate the Internet, but how.

The framework of self-regulation, especially industry-based self-regulation, is presently the *zeitgeist* of internet and new media regulation in most parts of the world. Self-regulation is a concept which sells because it appears to satisfy industry players who prefer to operate under free-market bases, as well as libertarians who believe that self-regulation is a step closer to the much-vaunted state of deregulation, or even absolute freedom.

Self-regulation, which shifts the onus of cultural choice to the consumer, appeals to three primary groups of people: the individual, civil society, and the state. It appeases the pro-choice individual, even the ones who profess to reside on high moral ground. It also appeals to civil society organisations, especially non-governmental interest groups, who often claim the *de facto* right to act as industry and/or societal watchdogs. At the same time, governments and regulatory authorities are happy to embrace self-regulation because it frees them from the onerous task of continuous monitoring and policing, a task that is becoming more difficult to carry out. Above all, "self-regulation" is a pleasant catchphrase which looks good on any public relations statement, especially those emanating from government departments.

Using the example of Singapore's internet policy, this article contends that far from leading to a state of less regulation, self-regulation is likely to lead us in the opposite direction, that is, of a more subtle approach to tighter regulation. In his much-acclaimed work *Discipline and Punish*, Michel Foucault expounds on the concept of the *Panopticon*, the disciplinary institution which perfects the onerous task of surveillance. The goal is:

*'to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power. So to arrange things that the surveillance is permanent in its effects, even if it is discontinuous in its action; that the perfection of power should tend to render its actual exercise unnecessary; that this architectural apparatus should be a machine for creating and sustaining a power relation independent of the person who exercises it; in short, that the inmates should be caught up in the power situation in which they are themselves the bearers.'*²

Using Foucault's description, I argue that internet regulation in Singapore is really about ensuring an "*automatic functioning of power*" – what I have termed 'auto-regulation'.³ I suggest that despite its authoritarian leanings, the "success" of Singapore's internet policy via "auto-regulation" has the potential to become the accepted global regulatory mindset.

SINGAPORE'S REGULATORY MINDSET

Paradoxically, Singapore's rapid economic growth and increasingly sophisticated market development has actually coincided with more effective government control of the media⁴. In spite of Singapore's notoriety for excessive control and strict censorship regimes – such as the oft-ridiculed ban on private satellite dishes – Singapore is on its way to becoming a major info-communications hub. There are more than 17 licensed satellite broadcasters, 20 production companies and 5 international broadcasters headquartered in the city-state⁵. Apart from the Government's pro-

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business incentives (top of the list being generous tax concessions), the key reason for such media vibrancy is Singapore's world-class info-communications infrastructure.

Since end-1999, Singapore has attained the status of "intelligent island" with all 750,000 households effectively connected to a S\$600-million hybrid fibre-optic network. This network, the result of a *IT2000* master plan,⁶ not only enables the delivery of both cable and must-carry free-to-air television via the Government-owned Singapore Cable Vision ("SCV"), it makes every home ready for Singapore ONE, Singapore's much-vaunted broadband interactive site which promises a host of audio-visual services, including high-speed Internet access. In addition, cable telephony is in the horizon following SCV's recent grant of Singapore's third public telecommunications licence. It is noteworthy that whilst many in the world are lamenting the ever-widening gap between the information-haves and have-nots, Singapore is ambitiously preparing for e-commerce, touted as the next phase of the dot.com era. The broadband cabling of Singapore's Central Business District, the shopping belt of Orchard Road to Suntec City, and the Science Park area was expected to be completed by the end of 2000.⁷ Singapore would then be fully "dot.com-ed" and e-commerce ready!

Although technologically sophisticated, media gatekeepers in Singapore are keenly aware of the 'limits' of regulation. Like most other developed nations, self-regulation is widely propagated, though not in terms of editorial independence/freedom. It is common knowledge that the Singapore media is duty-bound to be the Government's mouthpiece.⁸ The concern of self-regulation is not so much about whether the media would step out of line, but that local media companies, primarily the Government-backed Singapore Press Holdings ("SPH") and the national broadcaster, Media Corporation of Singapore ("MCS") would lose their competitive edges amidst global competition whilst serving their 'national' duty. As a result, the Government has moved to consolidate their positions within the industry with the recent announcement that both SPH and MCS will be allowed to move into each other's core business territories. That is, SPH will run a television station and MCS will publish newspapers. Concomitantly, both companies will move aggressively into Internet businesses.⁹

In trying to shake off Singapore's nanny-state image, the Government recently voiced its concern that Singaporeans have conformed to its traditional cultural policy framework of censorship so much that human creativity and entrepreneurial

spirit, the very talents and skills of the new economy, are gradually disappearing. As such, measures are now in place to "market" the positive attributes of creativity, all for the sake of staying ahead in the new economy. One of the most noteworthy outcomes is that the role of censorship in Singapore has shifted from one of governmental geophysical control of information flows¹⁰ to one that is marked by the idea(s) of:

"creating a balance between maintaining a morally wholesome society and becoming an economically dynamic, socially cohesive and culturally vibrant nation".¹¹

Evidently, such a censorship "balance" is sufficiently broad for it to remain applicable through time and all media, old and new alike. In September 1999, it was rumoured that a new censorship review was to be carried out to make censorship relevant to contemporary situations. Michelle Levander of the *Asian Wall Street Journal* opined that any review should yield "incremental reforms" with a "lighter touch" approach expected.¹² What does "lighter touch" entail in the internet age and how incremental should censorship reforms be? The answer, I propose, can be broached by looking critically at Singapore Broadcasting Authority's ("SBA") internet content policy.

SINGAPORE'S INTERNET POLICY: AN AUTO- REGULATORY FRAMEWORK

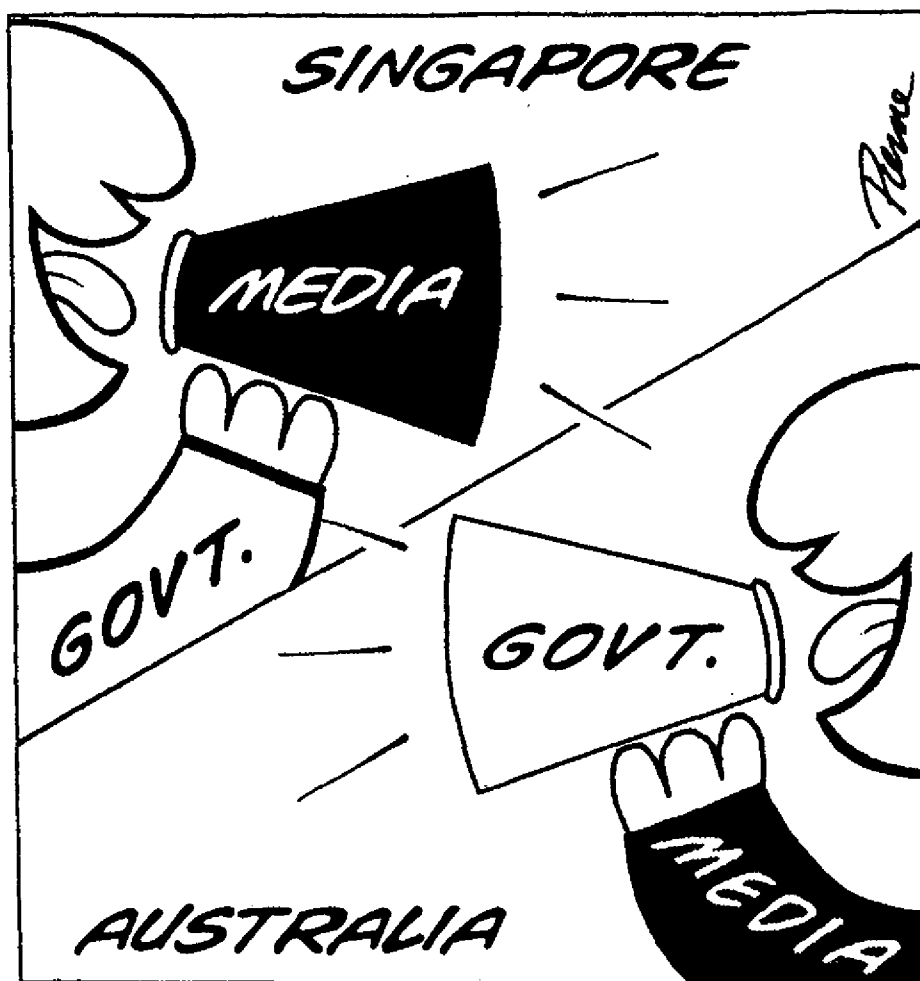
The SBA is empowered by its Act of 1995¹³ to regulate internet content. SBA's internet policy comprises a set of *Industry Guidelines on the Singapore Broadcasting Authority's Internet Policy*,¹⁴ an *Internet Code of Practice*¹⁵ and a Class Licence scheme.¹⁶ The *Industry Guidelines* explain the main features of SBA's internet regulatory policies and spell the rules for internet service and content providers (ISPs and ICPs respectively). Although the *Internet Code of Practice* is highlighted within the *Industry Guidelines*, it is essentially a separate document specifying details of "do's and don'ts". Most noteworthy is the extensive definition of 'prohibited material' as:

*'material that is objectionable on the grounds of public interest, public morality, public order, public security, national harmony, or is otherwise prohibited by applicable Singapore laws.'*¹⁷

What at any time constitutes 'public' is not, and perhaps cannot be, clearly defined. As many critics have noted, policy/political terms in Singapore are not transparent nor open to/for debate.¹⁸

To further strengthen regulatory enforcement, a blanket *Class Licence* scheme is applied to all ISPs and ICPs so that all who put up any content on the web are automatically licensed without the need to actually apply for one. The only exception, for obvious political expedience, is that any website seeking to promote political or religious causes must pre-register. The *Class Licence*, an example of 'light-touch' self-regulation, is proudly referred to as an '*automatic licensing framework*'.¹⁹ Herein lies one of the key strengths of 'auto-regulation': by creating an 'automatic' mode of licensing, a panoptic sense of power and subjection is instilled automatically. Internet users and service providers would surely comply with self-regulatory guidelines – either willingly or grudgingly, or perhaps with an ambivalent combination of both. Irregardless, minimal supervision is needed by the authorities to make auto-regulation work.

Singapore's Internet policy is introduced thus:



*"SBA recognises the ability of the Internet to offer unique opportunities and benefits, and strives to adopt a balanced and light-touch approach towards encouraging a healthy environment for Internet to thrive. Its aims is to develop and harness the full potential of the Internet while at the same time, maintain social values, racial and religious harmony. SBA aims for minimal legislation and greater industry self-regulation and public education so that users are empowered to use the Internet for its benefits."*²⁰

The idea of maintaining a 'balance' is again employed here, but this time, it is used alongside the 'light-touch' concept. A light(er)-touch approach, like the notion of censorship in Singapore, is about maintaining a balance between being pro-business and being socio-politically sensitive to society. As Singapore's polity is founded upon the principle of '4Ms' (multiracialism, multiculturalism, multilingualism and multireligiosity), Singaporeans are compelled – by law – to respect and live harmoniously with all races and religions. The Government has also warned private individuals and the media not to engage in politics unless they are prepared to be publicly cross-examined.

In essence, SBA's light-touch regulatory approach simply states that the authorities would be slow(er) to incriminate when its rules or the laws of the land are breached, thus giving the offender a chance to rectify. But the concept of 'minimal legislation' is also invoked to suggest the malleability of codes governing the rapidly-evolving internet. It is worth highlighting here that both 'light-touch' regulatory style and 'minimal legislation' do not suggest that all online violations would be conveniently overlooked. Apropos, the internet is also subject to Singapore's traditionally strict laws that apply to all media. This includes the vaguely-defined Sedition Act 1964 which '*prohibits any act, speech, words, publications that have a seditious tendency*' where to '*excite disaffection against the Government*' would be tantamount to sedition²¹. Clearly, it is not difficult to fall out of line, especially when 'online'.

Furthermore, SBA's ability to maintain a clean record of policy adherence owes a great deal to several incidents in Singapore's brief history of the internet. In 1994, the year when public internet access was first made available through SingNet (Singapore's first ISP), at least two scans for unlawful pornographic

materials and viruses were reportedly conducted on users' email accounts. In November 1998, the local daily reported that a section of the Police Force is tasked to 'patrol the alleys of cyberspace' to keep hackers and cyber-criminals at bay. More recently in April 1999, SingNet was (again) found to be conducting unauthorised scanning of its subscribers' web accounts, supposedly for deadly viruses. This particular case made the headlines because the Ministry of Home Affairs, the parent ministry of the Police Force, was involved, forcing SingNet to issue a mass apology.

Although SBA has repeatedly stated that it does not conduct online monitoring, the fact that significant public attention were given to these 'scandals' speaks volumes about the immense power of auto-regulation. Whether or not actual file-searching or monitoring is carried out becomes irrelevant in an auto-regulatory climate. The demonstration of a government's technical capacity and capability is far more potent. Indeed, auto-regulation hinges on an ideology of control and surveillance with the sole aim of producing law-abiding, self-regulated and therefore, useful citizens - what Foucault calls '*docile bodies*.'²² Although SBA has not been implicated in any of the above incidents, it has been a major beneficiary insofar as continual compliance to its internet guidelines is concerned. With the welcomed addition of statutory power to define regulatory conditions, SBA could then go on to advocate industry self-regulation in an enlightened and seemingly unproblematic fashion.

SBA is not as innocent as it seems. Perhaps the most significant auto-regulatory tactic employed by SBA since October 1997 - in conjunction with the release of the aforesaid *Internet Code of Practice* - is the *gestural* blockage of 100 pornographic sites via proxy servers of ISPs. SBA's rationale for censoring these 100 smut sites is to reaffirm the conservative values of Singaporeans, hence a gesture of pastoral concern.²³ Even in the face of international condemnation, the majority of Singaporeans, arguably well-schooled in the art of portraying conservatism in public surveys, supported the move as a morally desirable one. This mode of gestural censorship exemplifies auto-regulation *par excellence* as it works to not only draw public attention to its new guidelines (which were announced at around the same time), but also to:

*'reaffirm the means by which the government of Singapore is able to enact the ideology of... social control of the public sphere, demonstrating the means by which the habitus of controlled behaviour is still reinforced and able to be reinforced in Singapore.'*²⁴

CONCLUSION

SBA's defence is that its internet policy has been developed in consultation with the industry. This does not, however, negate the powerful perceptions that a panoptic mode of surveillance continues to dominate in Singapore - if not physically, then ideologically. Auto-regulation works because the enclosed nature of a panoptic regulatory supervision '*does not preclude a permanent presence from the outside*.'²⁵ The public is always welcome to scrutinise the guidelines/codes (by downloading them from government websites) or examine other functions of surveillance (by visiting and/or interviewing the authorities), all of which are held within the central *Panopticon* 'tower'. As a consequence, the authorities can lay claims to being objective, consultative and transparent. The regulatory role of policing thus strengthens rather than weakens. Auto-regulation, like the *Panopticon*, becomes as Foucault notes: '*a transparent building in which the exercise of power may be supervised by society as a whole*.'²⁶

The concept of self-regulation with endless co-applications of legislations, codes and guidelines is at worst, a misnomer, and at best, a temporary solution. Governments around the world are under increasing pressures to demonstrate their abilities to fulfil the basic task of governing, especially in the internet age. Australia has, enduring much protest, introduced legislation to hinder access to selected internet content.²⁷ In Britain, a '*Regulation of Investigatory Powers Bill*' was recently passed to allow the monitoring of online activities. As the world inches towards e-commerce, it is certain that more of such legislations will be enacted. This is where auto-regulation comes in. I would contend that the auto-regulatory framework employed by Singapore in the cultural/ideological management of the internet and other media holds tremendous potential for expansive adoption. For whether one likes it or not, policing tendencies are here to stay. Or as Foucault puts it, '*surveillance is permanent in its effects, even if it is discontinuous in its action*.'²⁸

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- 12 Levander, Michelle 'Facing Reality, Singapore Rethinks Thought Control,' *The Asian Wall Street Journal*, 24(1), 1 September 2000, pp.19-20 The rumours of a censorship review were quelled by Lee Yock Suan, Minister of Information and the Arts in October 2000, when he pointed out that the current guidelines were valid and applicable for the present time. Yet, many in Singapore continue to push for a further 'lightening' of censorship rules.
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- 14 *Industry Guidelines on the Singapore Broadcasting Authority's Internet Policy*, (1997a) October 22 1997
- 15 *Internet Code of Practice* No. 3810/97 (1997b) November 11997
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- 17 *Internet Code of Practice* No.3810/97/1997(b), item 4(1)
- 18 Lee, Terence and Birch, David 'Internet Regulation in Singapore: A Policy/ing discourse' *Media International Australia Incorporating Culture and Policy*, No.95 2000, p.160
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E-markets ... the next wave?

Christina Rich and Shane Barber provide an overview of the tax and legal implications of the current online phenomenon of vertical and horizontal e-markets.

The first wave of e-business swept consumers into the enticing world of electronic sales via the internet. While ordering online has now become routine for some (purchasing anything from books to travel packages), many dot coms that were established to address this new channel to market have, of late, experienced difficult times in meeting the objectives of their business case. There appears to be any number of reasons for the difficulties faced by the dot coms and their business cases – although those reasons are not the subject of this article.

Whatever the reasons for the difficulties faced by many dot coms, it is the older bricks and mortar companies which appear to be leading the next wave of e-business, producing an explosion in business to business exchanges. These exchanges, or e-markets, bring with them a myriad of tax and legal implications which require particular attention.

WHAT IS AN E-MARKET?

Also known as "B2B exchanges", e-markets involve common groups of entities banding together to undertake B2B transactions.

E-markets can focus on either indirect or specific direct goods and services, and may be built around 'vertical' (industry specific) or 'horizontal' (cross industry) lines. E-markets typically integrate the e-sales and e-procurement systems of all parties in a particular industry, creating a single digital standard for transacting business.

E-markets enable the "many to many" connectivity required to exploit the efficiencies created by early e-sales and e-procurement systems, while allowing companies and their suppliers to begin creating an integrated industry-wide

supply chain. For example, assuming 10,000 suppliers deal with 1,000 manufacturers who deal with 10,000 retailers, in an "each to each" system – up to 100 billion electronic data interface connections may be required. Where one hub is used acting as a central conduit, this is reduced to 21,000 electronic data interface connections.

The creation of "B2B exchanges" now allow companies to develop solutions for problems previously accepted as being an integral cost of doing business. For example, by connecting electronically with suppliers, companies can reduce the cost of searching for products and negotiating prices. Likewise, sellers benefit from an expanded global market place and increased volumes.

At the time of writing, approximately 500 such exchanges are in the early stages of development globally, with various estimates pointing to 10,000 exchanges being formed by 2002-2003.

Significantly, consolidation activity is expected to take place at this point, with industry pundits predicting about 500 exchanges to survive beyond 2005.

Consolidation appears to be driven by two main factors:

- the value of an exchange, like a supermarket, grows geometrically as new buyers and sellers are added; and
- companies enjoy greater efficiencies when they can transact business in a single environment.

WHY BECOME INVOLVED IN AN E-MARKET?

The aim of e-markets is essentially to create a major revision of the supply

chain. For decades, businesses have endeavoured to drive down the costs involved in buying and delivering products and services. With the advent of the internet, e-markets are enabling businesses to reduce these costs by creating value through their purchase power and price efficiency. Supply chains are integrated, ensuring market efficiency and reducing costs even further.

This trend appears to be continuing. Each company involved in an e-market uses its entry into the exchange (or exchanges in some cases) to facilitate change in their supply chain. Further, it is expected that e-markets will diversify to deliver content, product, consulting, IT and financial services, logistics, risk mitigation and demand planning.

MAJOR TAX AND LEGAL ISSUES

Clearly there are many tax and legal issues associated with the formation of a multi-billion dollar independent enterprise, both for the enterprise itself and the other various participants.

An e-market may have its employees, server, buyers and sellers located in a completely different jurisdiction, identifying difficult questions as to where a transaction occurs. The nature of the income generated and whether withholding or transaction taxes apply are just some of the issues to be dealt with at internet speed.

Some of the major taxation issues facing an e-market are:

- entity structuring and location;
- operational tax and legal issues;
- transaction tax issues;