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**Article**

## SHOULD THE INTERNET BE REGULATED? Contra: Why the Internet Should not be Regulated

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## CONTRA: WHY THE INTERNET SHOULD NOT BE REGULATED

DAVID POST\*

First, a clarification: Though I am deeply skeptical about efforts to regulate people's conduct on the Internet, I will not really argue that "the Internet should never, in any circumstances and for any reason, be regulated, by anyone." Regulation is not an evil. Governments, and the "regulation" of human conduct that they undertake, have a perfectly legitimate purpose; they are, in the words of the United States' Declaration of Independence, "instituted among Men" (and, we would of course now add, Women) to "secure" certain rights (to "Life, Liberty, and the pursuit of Happiness") that all people possess.

Their "just powers," however, derive from a very specific place: from "the consent of the governed."

The interesting and important question about Internet regulation, then, is not "should the Internet be regulated," because the answer to that question is too simple: of course it should be, if – but only if – the people there think it should be, and consent to that regulation. The interesting and important question about Internet regulation is: "Who is doing the regulating?" And, more to the point: "Do they have a right to do so, derived from the consent of those they are regulating?"

The answer to that question, with respect to attempts made thus far to "regulate the Internet," is "No, they do not." Attempts by the government of France to "regulate the Internet" do not meet this standard because the government of France

does not have a legitimate claim to represent the wishes of people on the Internet, most of whom are not French and most of whom have never consented to the application of French law and French regulation to their conduct. The same can be said, of course, about the government of the United States, or Brazil, or Singapore, or ....

Who, then, has the right to regulate in this new space? What institution or institutions can show that their exercise of regulatory power is a just one, derived from the wishes of the people on whom they are exercising that power, and that their regulations are falling on those who have consented in some way to them? If you can persuade me that there are such institutions, I have no principled objections to the regulation exercised by that institution. The problem is that I don't see any such institution out there. It's not ICANN, it's not the International Court of Justice, it's not the European Commission, it's not the International Telecommunications Union, it's not the United Nations Security Council.

So my position is simple, almost simple-minded: until I am shown such an institution, I will continue to view efforts to "regulate the Internet" with a deep skepticism and distrust.



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