

*Ordering Chaos: Regulating the Internet* BY PENG HWA ANG [Singapore: Thomson Learning, 2005. xi + 216 pp. Hardcover: S\$33.50 (excl. GST)]

For an academic, there are two ways to review a legal book such as *Ordering Chaos: Regulating the Internet*. The first is to examine the book from the perspective of a scholar, seeking to learn more about the topic or subject presented in the book. The second is to use the book as a tool of instruction, by assimilating the concepts and

ideas presented in the book, and representing them in a different form to students, with a view to helping them learn about the topic or subject. In the opinion of this reviewer, *Ordering Chaos* belongs to the latter category. In the course of my teaching, I found myself constantly referring to regulatory concepts introduced in this book such as “regulatory backstop”, “market for lemons” and “punishing users”. When explaining these concepts to my students, I also found myself wishing that my students had first read *Ordering Chaos*, in particular, Chapter Four of the book, which describes the possibilities and limits of self-regulation.

In his preface, Professor Ang describes the aim of his book as one to “enable policy-makers and students to be aware of the need to regulate the internet and to put forward best practices so as to achieve a safer and more effective internet.” And by “regulation”, the author notes the four instances of regulation elucidated by Lawrence Lessig in *Code and Other Laws of Cyberspace*: regulation by code, by market forces, by social norms and by laws. He observes in Chapter 2 that all forms of regulation are relevant in the regulation of the Internet. Yet the centrepiece of his thesis is that all forms of regulation must be supplemented by legal regulation—the “regulatory backstop”.

The Internet born out of the crucible of the Cold War was designed to be completely decentralized, architecturally redundant, and thus inherently unregulable. Yet technological and social changes as well as market pressures have all contributed to moving the Internet away from its starting point. To date, no one person and no one government knows what form the Internet will eventually take. As a “never ending world wide conversation” as described by the US Supreme Court in *ACLU v. Reno*, 521 U.S. 844 (1997) that transcends cultural, political and geographical barriers, one should doubt if it is even possible to agree on a “safer and more effective” Internet. The issue of whether it is possible to have a “framework for regulating the Internet”, as proposed by the author, should perhaps be preceded by the question of “What, if any, on the Internet should be regulated?” The Internet as a dynamic, ever-changing entity is not monolithic and homogeneous.

Professor Ang in his Preface notes the claims of libertarians that the Internet is completely unregulable and cannot be censored or controlled. The author clearly disagrees. He persuades the reader otherwise through the use of clearly Asian illustrations such as the issues concerning Internet regulation in Vietnam and China, in addition to the ubiquitous examples drawn from the US and European and supplements that with practical examples based on his own anecdotal experiences with Internet regulation in Singapore. This gives the book a very attractive global feel, and yet appeals the book to an Asian audience, which will perhaps be more receptive to governmental regulation of the Internet than its contemporary Western audience. To support his thesis that the Internet can and should be controlled, by way of laws and rules, Professor Ang illustrates this with examples regarding liability of Internet service providers for defamatory content posted by third parties and the protection of the Internet user’s data rights (which the author terms “privacy”). But, with respect, both are not really very apt examples of effective governmental regulation. And both actually illustrate the ineptness of such regulation. Thus while Internet service providers are generally indemnified from defamatory content that they host or provide access to, they are potentially liable for infringing copyright content. Likewise, although the European Union has a very strong EC Data Protection Directive to

regulate the use and access to personal data in the electronic environment, the US still leads the way by its e-commerce businesses taking proactive steps to protect consumer's data. As regards the latter, the author also reaches the same conclusion (albeit grudgingly!), at the end of Chapter 6. However, although the author notes his intention to discuss copyright issues (and contrast that with defamation issues) in Chapter 5, the rest of the Chapter makes no further mention of copyright issues, aside from a brief reference to the take-down mechanisms in the US Digital Millennium Copyright Act (which have been implemented in Singapore's copyright laws). This reviewer was really looking forward to the author's analysis in this regard.

Yet, as Sir Issac Newton has so tersely said in his Third Law of Physics, "For every action, there is an equal and opposite reaction." Despite all these technical, sociological, political, economic, and legal pressures, there are countervailing forces at work. It is a pity that the book does not make substantial references to many of these opposing forces such as the open source movement, the deployment of encryption to bypass many political and regulatory controls and the collective power of the Internet community. In many jurisdictions, the Internet is seen as a big equalizer, one that enables Internet users to escape from their oppressive national regulations. The regulatory model proposed by the author in the book seems to proceed on the premise that it is possible to have a universal, pan-community standard for proscribing content or activities. And indeed, for the areas cited by the author—defamation, data protection, child pornography, cybercrimes, consumer fraud, and "spam"—it is possible to have some broad international consensus in this regard. But there are other areas which are not so amenable to regulatory control, even where such control already exists outside of the Internet environment. Chapter 3 of the book talks about applying censorship rules to the Internet. In this chapter, the author alludes to the infeasibility of applying self-categorization rules such as the Platform for Internet Content Selection (PICS) and the Recreational Software Advisory Council's RSACi to Internet content. He puts this down to adverse press coverage over misplaced concerns that these could be used as tools for censorship. Yet the relatively unsuccessful Australian experience of applying censorship rules to Internet content was not mentioned. Conversely, self-regulation as applied by the US e-commerce industry to its data protection policies seems to have largely worked in the absence of regulation, as the author notes in Chapter 6. Perhaps this reflects as much the relevance of governmental regulation as the shortcomings of such regulation, a point which this reviewer feels the author does not devote adequate attention to in his book.

One last observation pertains to this reviewer's impression as regards the general level of editorial oversight for the contents of this book. For instance, the Preface describes the World Intellectual Property Organization's Treaty of 1998, but Chapter 2 of the book subsequently (and correctly) notes that it is a 1996 Treaty. There are also assertions, technical or otherwise, that do not seem to be adequately supported by references. For instance, Chapter 3 of the book asserts that blocking Internet content through proxy servers is not entirely effective. "[A]t most, several hundred pornographic sites can be blocked in the face of hundreds of thousands of others." It is unclear if this is a technological limitation (it is not) or a regulatory limitation (it may be, but it is only a manpower issue).

But these are minor matters which can be easily rectified, and do not detract from the fact that Professor Ang should be congratulated for writing this excellent and thought-provoking book that is an undeniably useful contribution to the literature on regulation of the Internet.

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