

Options for and Effectiveness of Internet Self- and Co-Regulation

Inception Report

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Preface

This Inception Report is the first deliverable element of the study being conducted by RAND Europe into 'Options for and Effectiveness of Internet Self- and Co-Regulation'.

The main objective of the study is to assist the Commission in development of a coherent and effective approach to future self- and co-regulation initiatives in the Information Society beyond 2007.

This we will do in two phases. In Phase 1 we will map existing regulatory and co- and self-regulatory institutions. There is substantial state of the art in this area (see bibliography) and our aim is limited to reviewing, updating and amending where necessary this 'state of the art'. In Phase 2, we assess a total of 20 case studies, and in our further analysis we synthesise these findings with other approaches designed to provide gap analysis and reveal emerging and developing areas of regulatory concern. This includes the degree to which outcomes resulted from self- and co-regulatory activities, the extent to which they might have occurred via other channels and any important side- or rebound- effects.

One element of the work has been undertaken prior to submitting this report: this is the preparation of the concise introductory literature review and select bibliography included here as Annex A (the latter presented by subject classification). We have also developed in full our proposed methodology for individual case studies, detailed in Chapter 4. Our further methods will be based on literature review and published source material on case studies, expert interviews with key industry participants, and a web survey of stakeholders in existing self- and co-regulation activities related to the Internet.

This study is being undertaken with the support of a Steering Committee appointed by DG INFSO; this Inception Report accordingly complies with a general plan in which we will report at each Steering Committee meeting on what has been done and on what is to be done in the period prior to the next meeting).

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We set out the objectives of the study and the general approach by which we will achieve those objectives: subsequent chapters expand on the methodology in general and in detail and then lay out the actual work proposed to be done subsequently, concentrating on the work to be done in Phase 1 prior to the next Steering Committee meeting. This complies with a general organisational approach in which we will, at each Steering Committee meeting, report first on what has been done in the preceding period and then on what is to be done in the succeeding period.

1.1 **Objectives**

The main objective of the study is to assist the Commission in development of a coherent and effective approach to future self- and co-regulation initiatives in the Information Society beyond 2007.

We will do this by making a detailed analysis of existing schemes of self-regulation both through:

- a meta-analysis across all schemes (Phase 1); and
- case studies of particularly relevant sectors;
- drawing on previous studies and interview input to select individual Self Regulatory Organisation (SRO) level (Phase 2).
- Finally in the final phase, we will analyse across SROs and produce conclusions and recommendations.

We will make a detailed risk analysis of participation issues using a balanced approach to specific issues of case selection and attribution (the degree to which outcomes resulted from self- and co-regulatory activities, the extent to which they might have occurred via other channels and any important side- or rebound- effects).

1.2 Schedule of Deliverables

The schedule of deliverables remains as detailed in the tender and offer, as shown in Table 1 below. We have included calendar months instead of the previous timeline. We note the intensive periods of Phase 2 case study research required in the June-August period, and the final task: preparation of the workshop, analysis and draft final report in September-October.

Table 1: Schedule of Deliverables

Deliverable	Title	Interim	Final
D1	Inception report	February	April
D2	Phase 1 Map of regulatory initiatives and cases selected	May	June
D3	Phase 2 Analysis & Detailed Assessment of Cases/Gaps	September	October
D4	Workshop with European Commission		September
D5	Final study report with Executive Summary	November	December
D6	PowerPoint of key aspects/findings, with speaker notes	November	December
D7	Management Report		December

1.3 Management, Resources and Phases of the Work

The D2 Phase 1 Report will be set out in full detail on May 7, which will provide the results of Phase 1 and the detailed Work Plan for Phase 2. In the progress of the Inception and Phase 1 reports, the resources divided between senior and junior analysts has been balanced to reflect the necessary expertise and background required for the Phase 1 activity. We do not anticipate alteration from the balance of labour allocation for the remainder of the study. In particular, the time devoted to workshop and reporting continues to be adequate in our view. The 69 day resource devoted to case studies should enable some reallocation between case studies, where needed. There are essentially 3 days per case study with 9 reserve and reporting days. This permits further resource for particularly challenging/interesting case studies. There may be synergies between closely related case studies permitting resource reallocation.

In the Inception and Phase 1 scoping phase, the core seniors team (Marsden, Cave, Simmons, Brown, Woods, Peake) has had meetings or ‘round robin’ emails (for instance to jointly draft papers or brainstorm research approach and mapping) on a fortnightly basis. Marsden has had bilateral telephone calls, or face-to-face meetings, on a weekly basis. This intensive management was necessary to deliver a consistent view of the mapping and case study criteria, as well as scope the initial case study selection and interview targets. In the Phase 2 case study period, management will concentrate also on ensuring appropriate support, mentoring and management of junior analyst (Klautzer, Hoorens, and Robinson, associate) time.

CHAPTER 2 **Overall Methodological Approach**

The following chapters set out the methodological issues and the actual work proposed in the next periods, i.e. Phase 1 prior to the second Steering Committee meeting, Phase 2 prior to the third meeting and workshop, and the final task of analysis and reporting.

A concise literature review has been conducted and is included as Annex A. It will be extended where appropriate for the case studies selected for Phase 2 of the study. In this chapter, we first analyze previous studies and the need for further research, the definitional issues in SROs in Internet regulation, before explaining the specific methodological tools to be used in the overall study. Further chapters identify the specific methodological requirements for each phase of the project.

2.1 Previous EC Co-/Self-regulatory Studies and Gap Analysis

The Tender makes reference to specific previous European Commission-funded studies of Internet and multimedia co- and self-regulation, especially those of Oxford University 2004 and Hans Bredow Institut 2006.

We have designed our methodology in order not to repeat the work of those studies which will provide useful input into our work. We will, rather, take a different approach which we believe to be more in keeping with the current requirement. Therefore, while full account is taken of the previous studies, in which principals in this study were members, this study focuses directly on the regulation of the Information Society, and in particular Internet-delivered content, applications and services. The previous studies of existing non-Internet media, including broadcast, telecoms, print and advertising self-regulation, are noted and form a useful background to this study. Several such examples are being extended online, and can form useful case studies. We will take full advantage of the research studies (both completed and in progress) of study members, and their networks and access to key Internet self-regulatory officials.

The dynamism and complexity of the ‘geometry’ of Internet self-regulation is such that full access to the key stakeholders is essential in reflecting the ‘state of the art’ in Internet self-regulation, and in the potential for future developments in the various substantive areas where reform and evolution of self-regulation may be anticipated. Consider what is different about Internet content compared to mass media regulation previously studied.

We can identify five factors which add richness and complexity to Internet regulation compared to earlier generations of offline media regulation.

Table 2: Five Reasons Why Internet and Mass Media Content Regulation Differ

Factor or Regulatory Interest	Internet Examples
'Glocalisation' of self-regulation	Global problems with 'local' enforcement – even to individual social networks or virtual worlds
Shifting alliances between government, industry groups and users	Avowed government commitment to role of SROs and/or co-regulation
Strength and pluralism of civil society stakeholder	Legacy of two types: oldies (netheads) and newbies (late adopters in mass markets)
Growth of user-generated content	Examples: YouTube, Bebo, MySpace, LinkedIn
Converging corporate interests	From telephony, computing, content, games etc

The case studies need to reflect these differences Internet self- and co-regulation compared to previous studies, as well as the inheritance and possible future contribution of offline regulatory schemes to Information Society-based schemes.

We note further that there has been substantial EC-funded research into co- and self-regulation in the standards process and privacy and trust, to take examples¹. We intend to build on these studies where relevant for the specific focus of this study on “content, services and applications.”

2.2 Defining Self- and Co-Regulatory Institutions for this Study

Those previous studies analysed self- and co-regulation on a continuum from state regulation to co-regulation and 'regulated self-regulation' to self-regulation, and on to standard setting and regulation by individual communities and by norm setting.

We note that the definition of a Self Regulatory Organisation (SRO) has been considered in previous studies of Internet regulation. SROs are defined broadly as institutions which by rule or the formation of norms exercise a function which shapes or controls the behaviour of actors in that environment (Lessig 1999 considers the use of the dominant PC operating system, or the Usenet discussion rules, for instance).

Note that the institutions may be specific organisations or even specific public statutes or standards. This extension is needed for two reasons. First, a given 'set of rules' may have

¹ Current studies include those on the New Approach to ICT Standard Setting, for instance <http://www.ictstandardisation.eu/> as well as <http://www.ictstandardisation.eu/survey.php> and Comparison of Privacy and Trust Policies in the Area of Electronic Communications for DGINFSODirectorate B – Electronic Communications Policy (Mr. Merijn Schik).

several institutional owners (as when a set of standards is adopted by many institutions or when a statute or Directive is approximated or reflected in different legal frameworks – these should not be treated as separate standard sets or laws, because they are explicitly linked). Second, a given institution may be constrained or affected by several sets of rules. This broad definition helps us to examine self-regulatory institutions with limited hard power (enforcement) but influential soft power (codes of conduct, for instance, or power to ‘name and shame’ members). It also allows for the consideration of ‘outliers’ in the SRO type.

Two examples immediately suggest themselves. In the United Nations system, the Internet Governance Forum (created out of the World Summit on the Information Society) has created a highly influential type of civil society involvement in its activities. However, it has no formal membership and no formal enforcement powers. It does however have the ability to formulate and publish opinions that have significant political ‘soft’ power, given the high degree of stakeholder involvement in the discussions. The presence of national government representatives at high levels in the WSIS process demonstrates its importance and potential for precedent-setting.

A second example concerns the highly influential self-regulated communities of users such as MySpace or YouTube, which have many millions of members regulated only by a combination of [a] the community’s conditions or Terms of Use; [b] general law including for instance libel and copyright law; [c] the technical means for users to self-regulate, by for instance rating and labelling content, as well as reviewing and choosing to set content or users as trusted friends or otherwise. Radically different models of user control, rating and filtering are enabled by such networks, though their relations to formal regulation and law are contingent. To fail to acknowledge and investigate the new user-generated content sites and their regulation would – in our view- represent a lacuna in our investigation of case studies of SROs. That said, in examination of 20 case studies, we do not consider that such case studies should exceed 2-3 key examples.

2.3 **Setting Self-Regulation Within an Evaluation and Audit Process**

In designing our methodological approach, we note the requirement for this study to contribute to processes of decision making about the choice of (or mix between) modes of regulation: there will be an assessment process to which this study will contribute. Whilst we are aware that this assessment process is likely to accord with the standard EC methods for Impact Assessment² (and therefore have an eye to ensuring that the needs of that method are met) we do not limit ourselves to any specific IA in method or to any specific IA in content.

We will deal with the type of issue that must necessarily arise in choosing between options of: no regulation; self-regulation, and full regulation. Examples of such issues include:

2 RAND Europe is a contributing member of the European Evaluation Association.

1. Whether self/co-regulatory frameworks are able to include ALL stakeholders.
2. The continuous spectrum from self to co-regulation to ‘full’ regulation.
3. The degree to which EC level action is or is not appropriate in a global system:
 - co-ordination at global level;
 - harmonisation of national initiatives;
 - regional interventions on standards, interoperability and regulation.

2.4 Methodology and Phases in Research

The study proceeds from:

- a mapping exercise (Phase 1)
- via a logical framework (logframe) analysis of individual SROs chosen in consultation with the Steering Committee (Phase 2), and
- a further meta-evaluation across those schemes (gap analysis following Phase 2).

There are three main methodological elements in the evidence-gathering phases:

- documentary evidence gathering;
- expert interviewing, and
- a web-based survey.

2.4.1 Primary and Secondary Documentary Evidence

The study methodology will be populated largely via documentary evidence collated through publicly available and other sources as detailed in the select bibliography at the end of this report. This is a more comprehensive set of sources than that offered in previous studies, given the breadth and scope of the sectoral schemes that we intend to examine.

Generic Documentation Applicable Includes:

Official and policy documents include:

- Policy papers relating to EU policies for innovation; for Internet regulation, and for the role of policy in Information Society content, services and applications;
- Documentation relating to E.C. requirement for monitoring and evaluation systems e.g. SEC (2005) 433;

- Any essential parallel information on activity in the other Directorates-General, especially in relation to the Lisbon objectives and innovation; and
- Documentation relating to past monitoring and evaluation studies in Internet regulation e.g. those in existing ICT and media programmes (e.g. Hans Bredow 2006), Safer Internet Action Plan (e.g. Tambini et al 2004), College d'Europe ICANN study (2003); and
- Peer-reviewed literature on the design, performance and evolution of self- and co-regulatory institutions, including for instance LSE for ICANN (2005).

2.4.2 Expert Interviewing

We will supplement documentary evidence with expert interviews with key stakeholders. These will be detailed in D2 (Phase 1 report) with suggestions on specific case studies (and the key interviewees) for Phase 2. In both of the substantive research phases of this study, key expert interviews are designed to 'road test' the emerging analytical framework and draft conclusions and recommendations with experts. (A further 'reality check' will be provided by the September workshop after the conclusion of Phase 2). While robust independence of the study's work will be maintained, the continued engagement with the leading exponents of Internet self-regulation will enhance the ability of the study members to fully and constructively test the validity of results of the study.

At least 50 expert interviews will be conducted for the Phase 1 and Phase 2 investigations. At least twenty will be conducted for Phase 1. We note that Phase 1 interviews are necessarily less formal than Phase 2, as the questionnaire for Phase 2 (see Section 5.1.4) is central to the Phase 2 fieldwork.

In this context, we note further that the geography and identity of the experts is a complex and dynamically evolving map: both the territorial extent of Internet regulation and the multi-stakeholder participation in the process is becoming more multi-level. There are global, plurilateral, regional (including European) and national fora, as well as thematic activities. Stakeholders include industry, governments (including European Commission experts), independent and academic experts and civil society representatives (Non-Governmental Organisations). Some of these have relatively little-known formal representational legitimacy but substantial 'soft power' to influence and form coalitions to influence self-regulatory processes. The mapping of these 'soft power' geometries, primarily via expert interviewing, is a complex but unavoidable task that needs further development from previous studies. The interviewees will be selected from the following groups:

- Regulators: National or international regulators with specific expertise in co-regulation;
- Co-regulators: Founders and board members of co-/self-regulatory institutions;
- Independent Experts: Academic and other experts as current/former participants in co-/self-regulatory institutions;
- Industry: Industry participants and experts in self-/co-regulatory institutions;

- Civil Society: Civil society participants and experts in self-/co-regulatory institutions;
- Other Experts: Analysts and observers of co-/self-regulatory institutions.

In addition academic experts will be consulted. This is in addition to feedback received from both relevant conferences and workshops as will be detailed in the Phase 1 report Annex.

We note that the initial interviews will be heavily weighted towards international institutions and interviewees, a deliberate selection given the ‘pyramid’ structure’ of Internet governance, with these institutions and individuals representing the broadest and most strategic groups of actors in Internet regulation. We expect the interviewees in this initial phase to be especially insightful in the gap analysis of current modes of Internet regulation, for instance in the area of security and standards, and the ‘democratic governance deficit’ (notably in the Working Group on Internet Governance, the Domain Name System, but also in national and regional co-/self-regulatory schemes).

The initial ‘sounding board’ provided by these discussions can lead to more formal structured interviews once the case studies have been selected, or (where more appropriate) in discussion of the comparative merits of different co- and self-regulatory institutions. This mix of stakeholders is intended to be replicated in Phase 2, though we note that the limited resources spread across 20 case studies may mean that the co-/self-regulators predominate in that Phase. By use of an Internet survey, it should be possible to complement this with users (civil society, approximately) and other interested experts (notably researchers). We anticipate that Phase 2 case study interviewees are likely to comprise more national, pan-European and sector specific experts, which will balance this initial selection.

Deliverable D2 will consider the mapping of several case studies of substantive Internet self-regulation, as an aid to the Steering Committee in further selecting the Phase 2 ‘targets’.

CHAPTER 3 **Phase 1 Methodology: Map of major co- and self-regulatory Initiatives**

In Phase 1 of the study, the study team will: “*establish a map of major co and self-regulatory practices that exist on the internet globally and in Europe as well as selecting non-European examples for those areas where the above are absent.*”

This mapping and substantive ‘organisation charts’ will be presented in the Phase 1 report D2 and at the second Steering Committee meeting.

Precedents for such an exercise include the United Nations Working Group on Internet Governance (WGIG), OECD³, Internet Governance Study⁴, Oxford Internet Institute⁵ and others⁶. These examples include both detailed analyses of sectors, policy issues and schemes, and broader meta-analyses of Internet regulation. We note that a map is a snapshot at one moment in time and in a fast-evolving environment cannot be relied on to have any long-term validity. Nevertheless it is an essential first step in deciding on more focussed selection of SROs.

An example of a mapping exercise of media and Internet content regulatory institutions was carried out by Oxford University for the Safer Internet Action Plan in 2004⁷. The exercise took sectors and geographies as its axes, and attempted to draw on available pan-sectoral and cross-national media comparisons. The addition of a code that reflected the degree to which institutions can be considered government or private sector adds a further degree of complexity to the map. Cross-cutting and pan-European schemes are of obvious interest given the scale and scope advantages that they may – in principle – offer. In particular they may offer examples of best practice that can help inform the Lisbon goals, by ensuring identical rules across the Internal Market.

³ Longstanding interest dating from OECD "Internet Content Self-Regulation Dialogue," 25th March 1998, Paris, to its most recent report on user-generated content, 13 April 2007, at <http://www.oecd.org/dataoecd/57/14/38393115.pdf?contentId=38393116> and the joint workshop with the National Science Foundation "Social and Economic Factors Shaping the Future of the Internet", Washington D.C. at <http://www.oecd.org/dataoecd/46/52/37965012.pdf>

⁴ <http://www.internetgovernance.org/>

⁵ <http://www.oii.ox.ac.uk/research/category.cfm?id=4>

⁶ <http://www.diplomacy.edu/ISL/IG/default.htm>

⁷ Tambini et al (2004) at p75: <http://selfregulation.info/iapcode/0405-iapcode-final.pdf>

However, it encompasses only content regulation, whereas our map and consequent case study selection must also encompass other areas, notably technical infrastructure inasmuch as it impacts on content, services and applications.

3.1.1 Objectives

We will review, analysis and synthesis of the ‘evidence base’ of policy and peer-reviewed papers, specifications, best practice material and documentation relating to the requirements for regulation in the Information Society, and to existing case studies, schemes and SROs of relevance. The analysis will include a consideration of desirable design features and activities based on the stated objectives of previous studies, and a recommended strategy statement laying out key features.

We will undertake a systematic analysis of the Evidence Base, and abstract the key features in the form of mapping of co- and self-regulatory initiatives, from meta-mapping to case study to individual SRO. This will be appropriate to the formulation of a strategy statement in Phase 1, in which we will set out the aims, objectives and final selection criteria of the further detailed case studies and the outline of the means by which that might be achieved.

3.1.2 Methods

There are four methodological activities: literature review and documentation collation; expert interview and consultation; synthesis and analysis, including that of gaps in institutional analysis; and reporting (graphical and textual representation of the overall exercise).

Activity 2.1

We will collect and collate ‘evidence’ from a range of documentary sources including both background official documents and documents produced by, or in assessment of, self-regulatory institutions, as seen in Annex A.

Activity 2.2

We supplement the documentary activity with approximately 20 expert interviews with key stakeholders. These activities assist in assessing the relative importance and inter-related networks of self-regulatory institutions, in order to assist in establishing which are the ‘class leading’ or otherwise precedent setting self-regulatory bodies.

Activity 2.3

We will collate and finalise the Phase 1 pre-existing evidence base taking into account the feedback from the second Steering Committee meeting, and from the stakeholder interviews.

3.2 The ‘Shape of the Map’ in Detail

The mapping exercise incorporates graphical representation of the multi-disciplinary relationship of the technical infrastructure of the Internet architecture to the specific content-services-applications co- and self-regulatory institutions that the study will examine in depth in Phase 2. While the content of that graphical representation is properly a matter for the Phase 1 report, we can detail the topic areas that provide the basis for the map.

It is clear that there are several different approaches that can be taken to such a map, beginning from sectors, from legal bases for regulatory and policy intervention, or from the architecture of the Internet itself. The latter approach commends itself given our commitment to taking a more holistic approach to Internet co- and self-regulation extending beyond the application of media regulation to Internet content, in order to examine the more particular problems of the Internet such as security and trust, and property rights allocation (via for instance digital copyright). Given the bottleneck control over the user experience provided by Internet Service Providers (ISPs), it also appears sensible to consider those co- and self-regulatory initiatives populated by these critical actors.

We can therefore envision content and applications and their regulation sitting atop the Internet’s architecture, which is typically represented by the ‘Protocol Stack’ (at its simplest, this is the technical standards that have been agreed and deployed and enable the Internet to operate successfully as a global medium). An example is provided in Figure 1 below, showing graphically that an ‘iceberg’ of standards and protocols underlie the content and applications that users enjoy. Furthermore, several case studies can demonstrate the links between core protocols and content regulation: for instance in the area of personal Internet security against spam and viruses, or in digital property allocation. It is explained in full in the Phase 1 report.

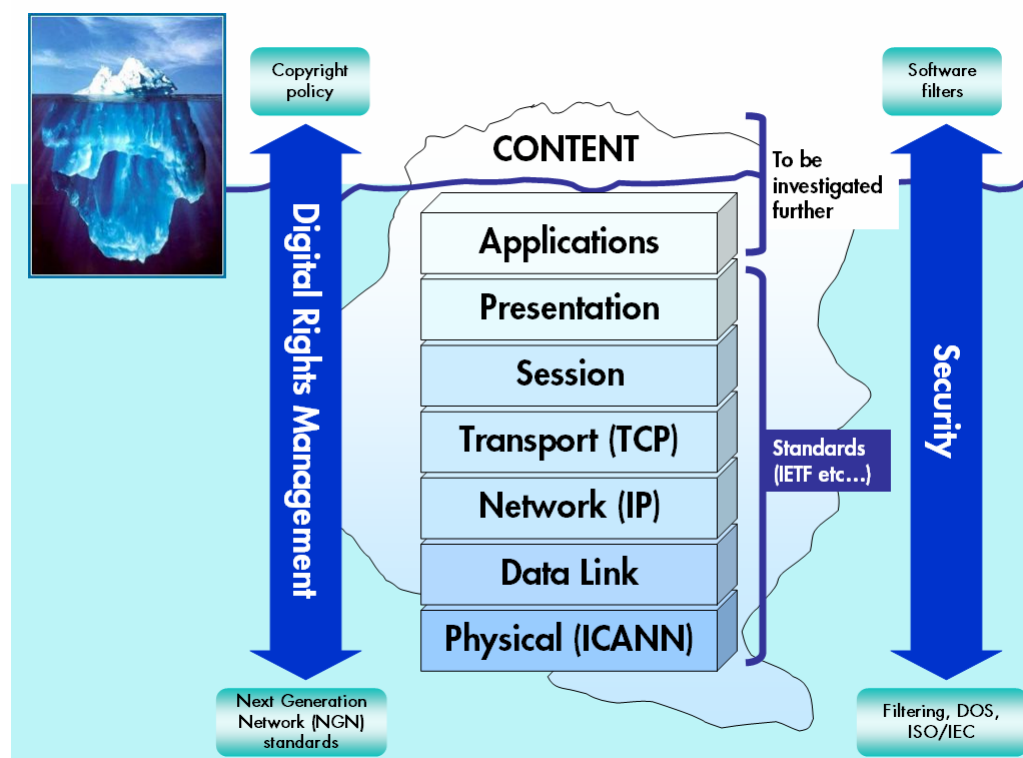
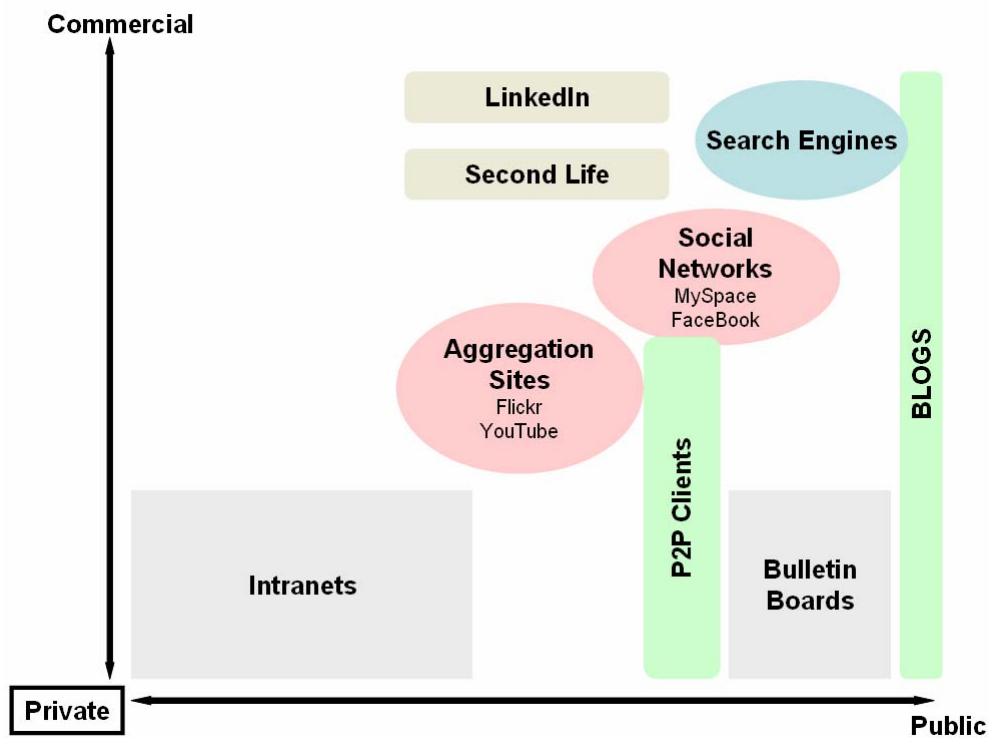


Figure 1: Graphically Representing Content Sitting Above the Standards 'Iceberg'

The content and applications themselves can be clearly differentiated by their technical and commercial similarities to Internet standards (for instance Digital Rights Management affects content consumption but can also be embedded within architectures and hardware) or to mass media regulatory standards. We offer a draft example in Figure 2 below that demonstrates the diagram. A more traditional regulatory view considered in previous studies analyses only content, and asks whether it is public and commercial or private and therefore outside the realm of traditional media regulation⁸. Such a map which considers user-generated or shared content can provide a perspective as seen in Figure 2.

⁸ We note the approach taken in the consultation on mobile phone content (October 2006), on media literacy (published April 2007), on Content Online (2006) and the further consultation on the Safer Internet Action Plan (to June 2007), all of which consider the technical underpinning of the content, applications and services which are the object of regulation, and the need to adopt a holistic approach. Legal regulation is understood to need to act in conjunction with technical and economic incentives within the Internet environment, in order to be effective in changing behaviours. An example is the need to tackle spam via legal, economic, social and technical means.

Figure 2: Content Regulation Mapped Using Axes Public/Private and Private/Commercial



In D2, we will consider a variety of techniques and tools applied to specific regulatory sectors – such as content and standard setting – as a second in order to bring specific focus to the first step of broad meta-mapping that provides a holistic view of content and standards.

3.2.1 Gap Analysis (concluding Phase 1 and Phase 2)

The gap analysis purpose of the (Phase 1) mapping exercise, and (Phase 2) detailed examination of a representative and strategically chosen universe of case studies, is to identify the continually emerging environment for new topics and/or sectoral areas of regulatory and/or legislative interest.

In particular, at the conclusion of Phase 1, evidence is likely to demonstrate gaps in areas where emerging social, technical or economic trends create new ‘regulatory spaces’ to examine. Phase 2 is anticipated to demonstrate and evaluate the response of existing co- and self-regulatory institutions to these evolving spaces. The final analysis in September-October should examine whether, how and why the existing institutions may ‘fill’ the regulatory space, or leave a ‘regulatory void’ or vacuum, and how the EC can best respond to these emerging policy issues.

3.3 Results

Deliverable **D2**, map of existing regulatory mechanisms, will be delivered on May 7 and finalised (taking into account input from the Steering Committee) by early June. It will include, *inter alia*:

- Summaries of the evidence base;
- A methodological assessment of, and suggestion for, further case studies and any additional analyses to be undertaken in Phase 2 activities; and results of Phase 1 key informant interviews and surveys.

We will further analyse the evidential material collated in Phase 1 in the light of the input of the 2nd Steering Committee meeting.

We will review and – where necessary – extend the map of the regulatory initiatives that is the main deliverable of Phase 1. We will finalise the gap analysis identifying particularly emerging areas of interest for case study focus.

CHAPTER 4 **Selection Criteria for Case Studies**

4.1 **Criteria for Selecting Case Studies**

Selection of the case studies will be made on the basis of:

- *Prior studies identified in the literature*, including especially those in previous EC studies identified in the Terms of Reference;
- *Areas of emergent interest* identified in the expert interview process.

These will be presented in D2, the Phase 1 Report of May 7. We now explore the more detailed set of criteria applicable to case studies, with a view to these definitional issues.

Two clear and apparent criteria for selection of case studies are to ensure a wide variety by geography and type of regulatory scheme. Choice needs to focus on a broad spectrum of individual countries and more international schemes, and on schemes that are of various types in terms of the spectrum of choice between co-regulation and self-regulation. The institutions should encompass aspects of: national, European, other regional and global self- and co-regulation; and varieties of co- and self-regulation from schema considered: closest to government control to those most representative of ‘pure’ self-regulation, including novel, archetypal or only partially evolved initiatives.

This spectrum from co-regulation closest to government supervision, to more clearly self-regulated forms, is of greatest interest where similar industries and/or nations adopt significantly differing regimes, or where particular countries ‘opt out’ of regionally recognised schemes.

Where this occurs (as in Germany’s decision to adopt co-regulatory standards for computer games rating and mobile content, where other countries have adopted self-regulatory schema), its importance extends beyond novelty into competitiveness, legitimacy and implications for innovation, particularly in view of the Lisbon agenda and completion of the Internal Market.

To take a specific example: mobile content regulation. Given the ubiquity of mobile phones amongst children in the most developed European countries, there had been intense pressure on operators to self-regulate Internet-based media content which they or

their partners supplied (Ahlert et al 2003, 2005). The recent EC consultation on child protection and mobile phones states that:

Self-regulation is seen as potentially the most appropriate way to ensure child protection due to the rapidly changing technical environment, but self-regulation still needs to be launched or effectively implemented in some countries. Some respondents call for more regulation in some other countries. A number of proposals have been made concerning actions to be carried out at European level. Through their European association GSME, MNOs propose the "development of an EU-wide common Framework for national self-regulation".⁹

In Germany and the UK, different solutions were adopted despite ostensible similarities in market actors and conditions. The former adopted a co-regulatory solution, the latter self-regulatory. Our selection of both case studies reflects the following:

1. The strategic importance of the sector to European development of the Information Society content/applications/services under the Lisbon agenda;
2. The wide divergence in approach between schemes:
 - a. With apparently similar national, market or constitutional environments (which could include either differences in national markets or sectors within a national market);
3. The strategic importance of these schemes to other countries/sectors:
 - a. Notably in market actors and language/format
 - i. UK content adapted for Ireland and other English language markets; German content adapted for Austria/Switzerland etc.
 - ii. e.g. video content that is pre-classified and formatted for one platform, such as mobile, has economies of scale for other platforms e.g. IPTV or PC;
4. The possibility for adoption of pan-European schemes:
 - a. Noted in the EC consultation on mobile content regulation;
5. The availability of, and access to, key stakeholder and SRO interviewees:
 - a. With previous studies conducted by Oxford's research team
6. The previous selection of the case study by Oxford (2004) and the EC consultation (2006)
 - a. Indicating enduring regulatory interest in the case study.
7. The changing nature of the SRO over time

⁹ See EC (2007) SUMMARY OF THE RESULTS OF THE PUBLIC CONSULTATION (to October 2006) "Child safety and mobile phone services" at http://ec.europa.eu/information_society/activities/sip/docs/public_consultation/public_consultation_results_en.pdf

- a. The Oxford studies covered the period of foundation (2003) and establishment (2004/5) of the scheme in the UK. As it has now operated for several years, a refreshed view of its functions is justifiable.

We can represent these common selection criteria in tabular form and apply across all selections, as seen in Table 3. Note that a case study need not fulfil all seven criteria in order to be selected, but the more criteria satisfied, the stronger the case for including the particular case study.

Table 3: Case Study Selection Criteria

Selection Criterion	Case Study Selected
Strategic importance (Lisbon goals)	As described in EC documents/ policy statements/ speeches (e.g. mobile content, video-on-demand etc).
National Divergence of Practice	Demonstrating variable approaches
Strategic Importance/Applicability to Other Sectors/Nations	Classified due to market size or innovative capacity
Pan-European Scheme Suitability	Potential to meet Lisbon/Internal Market goals
Access to interviewees/documentation	Practical resources to undertake case study
Selection in previous studies	Demonstrating enduring policy interest
Development and reform of case study	Value added in conducting further research building on previous studies

This list of criteria develops a strategic approach, but it must also be based on prior art wherever possible, given the limited resource for each individual case study. Previous examples can inform our decision-making, particularly in view of the significant case studies examined in the Hans Bredow and Oxford studies.

We especially note that where offline examples have proved particularly influential and/or are being adapted for use by Internet SROs, there can be a strong case for their reassessment. Examples of this type of SRO include the Dutch co-regulatory scheme for media content labelling, NICAM, which is being used for the ISFE computer games labelling scheme, itself previously used for offline gaming but now extended to online games. These are therefore two examples that were originally designed for offline (non-Internet) SROs but are being adapted for online activity. A further example is the UK premium telephone co-regulatory scheme, ICSTIS (Independent Committee for the Supervision of Standards of the Telephone Information Services). It provides the physical location for, and informally played a role in the foundation of the Independent Mobile Classification Board (IMCB), the mobile content regulator in the UK. In addition its co-regulation relationship with Ofcom is seen as a precedent for further co-regulatory schema.

4.1.1 Further Selection Methodology: Interviews With Commission Officials

We will collect further evidence via a maximum of six key informant interviews with concerned Commission personnel, largely in DG INFSO. This should be undertaken in the period 9 May to 30 May. The Steering Committee’s input into this process will be sought and appreciated.

CHAPTER 5 **Phase 2: Methodology and detailed assessment for case studies**

5.1 **Detailed Methodological Approach: log frame analysis**

We will in Phase 2:

- analyze the in-depth case studies,
- conduct in-depth expert interviews,
- operate and disseminate the web survey to stakeholder groups, and
- examine documentary evidence relevant to indicators for each case study which we identify in this section.

Implicitly or explicitly, assessment methods will normally utilise some form of logic modelling. This is particularly useful in imposing structure on the highly variable operations of Information Society co- and self-regulatory institutions. Formal regulatory organisations are consciously designed and have specified remits, objectives and powers of actions. Self- and co-regulatory arrangements are inherently more diverse and flexible.

To understand individual organisations, it is necessary to put them in a context defined by evolving (existing and emergent) challenges, opportunities and other organisations. Thus, in order to understand the general efficacy of such arrangements and the possibilities for fruitful collaboration between formal and informal regulatory bodies it is necessary to take account of:

- their internal logic (the specific actor's motivation and role),
- the policy landscape (the theatre) and
- the 'evolutionary play' of overlapping entities and initiatives.

This account could easily become complex – our intention is to make it clear, without losing its complex reality. In other words, while it is not necessary (or possible) to develop

a full, unbiased and analytic account of the deliberate and fortuitous forces behind the organisations, it is necessary to recognise two organising linkages:

- many organisations arise, change or act in response to a given threat (they do not ‘take turns’ or agree to stay out of each others’ way); and
- individual organisations produce benefits by (changes in) their objectives and engagement with key actors as well as through the exercise of explicit hard/soft power. Alliance building is an element of importance in co-/self-regulatory design.

In the following sections, we show how the dynamic of the organisation interacts with the broader policy environment. First we demonstrate via two diagrams how the process flow of the institution fits within the environment. Then we unpack the internal workings of the institution and show how a straightforward log frame analysis can illustrate the organisation’s processes.

5.1.1 Organisational Dynamics

Figure 2 illustrates the manner in which interests flow into needs and then institutional design. The institution then produces outcomes which have broader impacts. The four processes on the right side of Figure 2 – the real work of the institution – have been often viewed from outsiders as a ‘black box’ inside the regulatory institution without transparent process. Our methodology is designed to remedy this and make processes more transparent. ‘Needs’ and ‘Outcomes’ are found in the arena of daily political public debate, and the Interests and Broader Impacts are of a meta-impact level such that they form a frame around the daily debate: the shifting view of trade-offs between freedom of speech, information security, child protection or family values might form such a context.

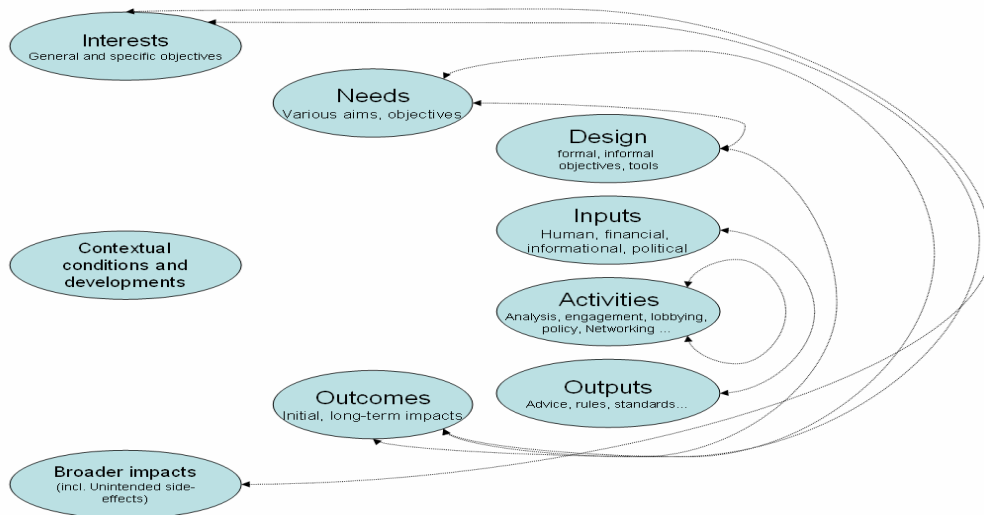


Figure 3: Simple Diagram of Regulatory Interests-Needs and Their Outcomes-Impacts¹⁰

¹⁰ Developed from inter alia the EC Guidelines for Evaluation.

The more structured perspective that policy analysts in government take of such processes produces a more complex interplay between differing policy agendas, especially in a ‘mixed’ (economic-technical-social-rights based) environment such as Internet regulation. This may help to explain why constitutional lawyers or institutional economists or technical experts so often develop entirely differing views of the Interests-Needs and Outcomes-Impacts of self- and co-regulation in Information Society activities. The multi-disciplinary team in this project should help to mitigate any mono-disciplinary tendencies in the research approach.

Figure 4 shows these relationships within an evaluation context. The Domain context is where the various institutions overlap. The dotted arrows indicate the overall intervention logic of various institutions, connecting a range of needs (since a given self-regulatory institution may combine many interest groups) with a range of outcomes (since the members and other stakeholders will be concerned with a range of ‘target’ outcomes and with others not directly connected to the constitution of the organisation). Within this column, there are two types of more detailed map of the organisational ecology.

The first is a *process map* showing activities within and among the various stakeholders. Interchanges can include:

- Directive (command and control) influence (hard power)
- Informational flows
- Promulgation of standards
- Resource transfers or sharing

Activities within SROs can include the specific activities exemplified in the “Institutional context” column of Figure 4. It is important to recognise that many of these flows are connected: for instance, an exchange of regulatory forbearance for some form of public activity. In this regard, note also that SROs, in distinction to formal bodies, are not defined by their functions. Thus, an individual firm may fall within the technical, economic or societal regulatory scope of a given formal agency, but belong to an SRO defined along different lines. If the regulator, for instance, has economic regulatory power over the firm, but also has a societal regulatory obligation, it may exchange performance in one area for forbearance in another. These trade-offs can be opaque where, for instance, rate of return regulation is clearly modelled on transparent public methods, but elements of social regulation (e.g. content or media literacy) are devolved to a self-regulatory institution¹¹.

¹¹ Examining this ‘Gordian knot’, through expert interviews and the web survey, may increase the transparency of such trade-offs, and assist in formulating an evaluation agenda that reveals whether the cost-benefit of such implicit trade-offs is increasing or decreasing over time.

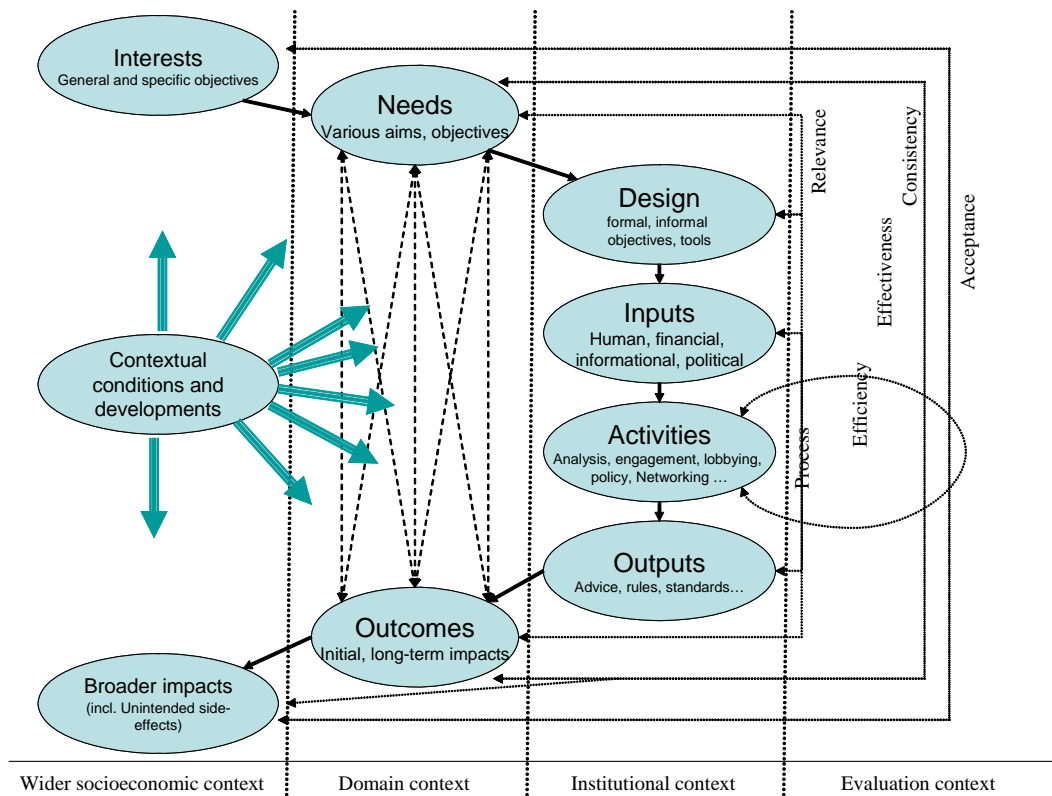


Figure 4: Overall Framework Including Contexts for Activities

The second could be a *relational map* showing the relations between organisations in the context of specific domains. These relations could take various forms:

- Hierarchical – one organisation reports to or must obey another - and therefore one is more important than the other (in soft or hard power terms);
- Complementary – organisations’ activities can advance each others’ objectives (as above, this may cross domains);
- Complicating – another organisation must be taken into account when formulating strategy or tactics, evaluating outcomes, etc.;
- Co-operating – when organisations act jointly.

This finding may not be discoverable within Phase 2 itself, but during the final phase of synthesis and analysis across case studies the relations between such SROs will be a goal of the gap analysis.

5.1.2 Examples of Log Frame Analysis Applicable to Each Case Study

We can analyse each institution much more straightforwardly in inserting evidence into each example. For this we use standard log frame analysis.

The Oxford methodology in analysing case studies took the 5 ‘C’s approach, described as: Constitution, Coverage, Content, Communication and Compliance. We have adapted and updated them here in Table 5 to more accurately reflect the features of Internet SROs.

Table 4: Oxford 5 ‘C’s Adapted to Internet SROs

Oxford 5 ‘C’s	RAND Roles	Details on Updated Categories
Constitution	Constitution	Note particular attention to conditions of exclusion/ membership/ reform
Coverage	Scope	Note particular attention to expansion of scope/role of SRO
Content	Financing and Roles	Activities of SRO critically dependent on resources
Communication	Stakeholders	Recent scholarship reveals importance of civil society-user outreach as integral in legitimacy of functioning of SRO. Thus update to include central role of this activity.
Compliance	Cultural context	SROs function in many different ways – enforcement actions not always appropriate and culture (sectoral or national) determines efficacy of sanctions. Often sanction is negative publicity/censure/expulsion for company, rather than legal tradition of expulsion.

In particular, we postulate that enforcement is a feature that more specifically reflects a legalistic view of explicitly co-regulatory institutions, but that it has little specific applicability to the institutions we propose to study. It is therefore an element in ‘constitution’ (initial membership, censure and potential expulsion conditions and activities) and ‘stakeholders/governance’ (consideration of for instance information-based censure: ‘naming and shaming’ via tribunals, critical reports on activities and other information-based censure). We further note that the acceptance of the integral role of stakeholders rather than as a ‘Communication’ function. All these differences are nuances adopted to indicate focus, rather than fundamental distinctions.

The following example is in two parts. Figure 5 below is a log frame structure for the descriptive classification of arrangements linking the six main study criteria to a description based the “5 C’s” approach of selfregulation.info. Our examples take:

- the specific analytical requirements of the Tender offer: effectiveness, efficiency, sustainability, innovation, competitiveness and competition, and
- analyse them against those 5 ‘C’s: constitution, scope, financing, stakeholders/governance and the cultural context, whether sector or nation¹².

¹² Tambini et al (2004) at p17: <http://selfregulation.info/iapcode/0405-iapcode-final.pdf>

Figure 5: Logframe Example for SROs

Regulatory Scheme	Constitution	Scope	Finance	Governance	Context
Effectiveness	All members?	Clearly defined and achievable	Fit for purpose	Clear transparent rapid decision-making; appeal process	National-Regional-Sectoral
Efficiency	Suitability for stakeholders	Problem resolution	Cost benefit	Decision making	National-Regional-Sectoral
Sustainability	Obedience and Enforcement	Responsiveness to market conditions	Duration	Development and legitimacy	National-Regional-Sectoral
Innovation	Amendment Arrangements	Reform Process	Membership Criteria	Reform	National-Regional
Competitiveness	Flexibility and standing	Comparative international institutions	Comparative costs – to regulation and self	Comparative and best of breed performance	National-Regional-Sectoral
Competition	Cartel conditions?	Horizontal or vertical?	Barriers to entry?	Transparent and conforming?	National-Regional-Sectoral

The second part is a listing of the ‘rows’ of a conventional logframe for a generic case against the criteria most closely related to this study. The columns representing the measurable indicators (including data and analytic tools) and risk factors are simply sketched because they vary too much with specific types (e.g. as listed in Table 6).

Table 5: Logframe for evidence base

Level	Criterion	Evidence: indicators ¹³	Assumptions: risks
Design, organisation	Relevance, fitness	I, D:	Active participation, acceptance, duplication, gaps, conflict
Inputs	Quantity, quality	I, S, D: staff, budget levels	Co-ordination, resource availability
Activities	Participation, adherence	I, S: coverage, compliance	Enforcement, monitoring
Output	Efficiency	I, S, D: output range, awareness	Dissemination, attention, receptivity
Outcome	Effectiveness	S, D: utilisation	Structural, market development
Impact	Competition	S, D (esp. market data): concentration, pricing, sector performance (efficiency)	Antitrust and other regulation – balance between technical, economic, societal regulation.
Sustainability	Innovation, competitiveness	I, D: patent activity, macroeconomic performance	Reconsideration of need, channels, regulatory reform, market changes, e.g. globalisation
Evaluation	“MIS” quality, transparency, accountability	I, D: management information, self- and external review, link to strategy and design	Systematic compliance, participation; appropriate incentives, information.

To populate the log frames, we require three types of evidence: interview, documentary, and survey. We have described the expert interview approach, and in the Phase 1 report section on case study selection will indicate key interview targets for each case study

13 I = Interviews, S – survey, D = documents (including quantitative data)

proposed. Below, we identify the documentary evidence and survey research approach that will assist in this process.

5.1.3 Phase 2 Additional Documentation

Documents relevant to each of the twenty examples of self-regulatory institutions include:

- The charter, Codes of Conduct and rules of the body
- Annual reports
- Press briefings
- Parliamentary or regulatory filings
- Minutes of directors’/ board meetings
- Public documents and presentations
- Member companies’ releases, reports and other documents relating to the work of the institution
- Stakeholder responses and analyses
- Financial accounts and reports
- Tribunal and/or other case data
- Other forms of dispute resolution permitted under the ‘constitution’ of the self-regulatory body.

Where necessary, appropriate and relevant, for instance where there is a lack of transparency and documentation in the public sphere concerning the body, this primary data can be supplemented by reviews of the body’s work. Ideally these will be peer-reviewed scientific surveys, but may also include less authoritative yet indicative coverage in the press, online reportage, journalists’ blogs, and the wider ‘blogosphere’¹⁴.

5.1.4 Additional Methodology: Web Surveys

In Phase 2, in period June-August, we will undertake a large-scale electronic survey of stakeholder participants, specifically to sample non-participants in expert interviews (i.e. non-enfranchised users) and measure perceptions of and satisfaction with self- and co-regulatory arrangements in terms of specific policy areas and overall transparency, accountability, effectiveness, etc. The sample of target institutions can be amended in accordance with case study selection following the second Steering Committee meeting.

¹⁴ In particular it is acknowledged that the controversy surrounding the work of these self-regulatory bodies often leads to ‘slash-dor’ type incidents, in which a mass of media-generated user complaints and commentaries are made about a particular judgment or decision from the regulatory body. Such incidents are often illustrative of a particular concern regarding the legitimacy of the activity of the body, though the ‘technorati’ of educated and often libertarian consumers is by no means the only relevant group. We therefore treat such evidence with the proper caution that it merits.

We will conduct a large-scale electronic survey of stakeholder participants, to capture those interests often overlooked in expert studies of Internet governance: civil society stakeholders and Internet users. Due to the voluntary nature of many of the arrangements, insight into the choices and constraints they face is vital to assessment of the current impact and evolution of self- and co-regulatory arrangements. The limitations of surveys are well known and accepted: since what is proposed is essentially a trawl, however, the study team anticipate being able to reach all areas of opinion. The objective is to sample the range, not to replicate the statistical distribution. However, these soundings will support some quantitative analysis especially of correlations and patterns of response (and non-response).

Note that as the results are fully automated and the server provided for no extra charge by RAND Corporation in Santa Monica, its total resource will be only 5 days of analyst time and 2 days (maximum) of senior time.

The survey will be carried out with the assistance (in terms of contact details at a minimum) of the civil society groups constituted within the fora with which the study will interact. Examples include the Internet Society, At-Large-Advisory-Committee (ALAC) and Public Participation programme of ICANN, Association of Internet Researchers (AoIR), GIGANET (Global Internet Governance Academic Network) and Association of Progressive Communications (APC). Other bodies specific to particular case studies can also be called upon.

The survey URL distribution is very much a broadcast activity, with the intention of reaching a broad audience of users. We rely on the institutions and personal contacts to distribute the survey. Given the resource limitations, we recognise that this is not intended to be directly representational of the entire Internet population: the World Internet Project or Eurobarometer perform such functions. It is therefore only intended to be broadly representative of user opinion as a “best effort” activity. Given the specific nature of the individual surveys for each SRO that the survey elicits from users, there is little or no added value in reaching the entire Internet audience without specific knowledge of individual SROs.

The stakeholders whose views we expect to capture should they complete the survey are both participants and users of the institutions and those who bear the consequences

See <http://web3.rand.org/resurvey/TakeSurvey.asp?SurveyID=5MIm53L02lm0M> for a draft of the survey.

5.1.5 **Phase 2: Analysing and Integrating the Evidence Base**

Based on the three complimentary and synergistic evidence types (documentary, expert and broad survey), we will draw together a comprehensive holistic analysis of the evaluations for each case study to produce generalisable conclusions on effectiveness, efficiency and sustainability in co- and self-regulation.

It should be emphasised that this goes beyond the heavily summative and judgemental character of many evaluations. In addition to its formative character, it examines a set of

overlapping public, private and civil society institutions. Therefore it is inappropriate to simply evaluate them as one institution's programme in terms of its stated objectives and terms of reference. Rather, we shall take account of the multiplicity of institutions, and assess the balance of roles, responsibilities, information, powers to act and incentives. This is essential not least because many of the challenges driving self-and co-regulatory innovation will, if not handled in this way, be dealt with in other ways.

Thus the counterfactual is not 'no enforcement' but different enforcement, and the assessment will be integrated to consider the evolution of the ensemble of interacting arrangements on the basis of a suitable evaluation of its components.

5.1.6 **Phase 2 Deliverable**

The Phase 2 report (**D3**) containing the detailed assessment of selected cases and gaps, will be delivered prior to the third meeting of the Steering Committee.

CHAPTER 6 **Task 4: Reporting, Workshop and Preparation of Final Study Report**

6.1 **Elements in Final Task**

The final task encompasses cross-cutting analysis, an expert workshop and the final reporting task. We explain the method for each in turn.

6.2 **Case Study Analysis Workshop**

We will conduct an expert workshop **D4** of no more than 30 people (including RAND and Commission representatives and invited experts) to discuss the case study outcomes from Phase 2. The workshop can tentatively be timetabled for the second week in September.

The composition of the workshop will be discussed in advance with the Steering Committee, but could comprise:

- 6 members of the RAND team and expert consultants;
- 6-8 EC officials including Steering Committee members;
- 6 industry co-/self-regulatory representatives;
- 6 civil society and other user group stakeholders;
- 4-6 independent academic experts.

The workshop could adopt the following structure to enable a more interactive discussion as well as presentation of the case study conclusions and roundtable discussion. A summary of the workshop should be included in the final report and where appropriate management report.

Time	Activity	Participants
0900	Introduction to Study	Steering Committee Chair
0915	Summary of Mapping Exercise	Study Leader
0945	Selection of Case Studies	Study Leader/Chair
1000-1100	Case Study Key Conclusions	Team Members
1115-1300	Break out groups on case study analysis: [1] selection; [2] individual case conclusions; [3] cross-cutting conclusions	All in groups of 6 (including at least 1 EC official and 1 study team member, the latter to take notes and guide group)
1430	Report back on break out groups	Break out group leader
1500	Report on draft recommendations	Professor Cave
1530-1630	Roundtable brainstorm on recommendations	All chaired by study leader/Steering Committee chair ¹⁵

The break-out group concept is intended to test conclusions and recommendations against expert opinion, and in particular to add value to earlier phases of the study by ‘brainstorming’ which (if any) of the draft cross-cutting comparisons and conclusions have validity in the eyes of the experts.

6.3 Formulation of Recommendations and Conclusions

We will construct a final set of recommendations for presentation and validation at the workshop and in the draft final report. At all times, it will report to, and consult with, the Steering Committee in the progress of the research. We will provide the Steering Committee with summaries of draft analysis of those consensual views arising from our interviews, that might lead to the formulation of recommendations, together with the means by which we propose to validate, modify, or even (possibly) discredit those views en route to the formulation of recommendations. The draft analysis will be contained in the Phase 2 report prior to the workshop.

We also propose up to a maximum of 5 follow-up interviews at the conclusion of Phase 2 with key cross-institution actors. In the final phase – conclusions and recommendations – the case studies are to be brought together with the cross-cutting activities and lessons highlighted.

The workshop, discussions with the Commission and Steering Committee, and the potential cross-cutting interviews should enable a reinvestigation of the mapping exercise in which elements of the gaps identified can be re-examined for a predictive analysis of their outcomes. In other words: the insights from the case studies should better inform both mapping and gap analysis as an activity to include in the final report.

¹⁵ To be discussed.

6.3.1 **Responsiveness of Recommendations to European Innovation and Competitiveness Goals**

In addition to SRO- and sector-specific goals of efficiency, effectiveness and sustainability, from the evaluation of SROs, gap analysis, and recommendations we will conduct the meta-analysis of the overall framework for co- and self-regulation of the Information Society in Europe, and particularly in the context of the i2010 goals for European innovation and competitiveness.

We will prepare the final version of the Study Final Report, integrating the evidence base, lists of indicators, and supporting analyses with the future perspectives for the evaluation and monitoring strategy and the proposed forward multi-annual evaluation framework. This document will set out a clear structure itemising the outcomes of the 20 self-regulatory SROs evaluations' relationship to Lisbon goals. This is an essential input to collating and evaluating the overall contribution of the case studies to the Lisbon goals – and important findings will be to discover which of the case studies contribute to, which detract from, and which have no measurable impact on the Lisbon goals. It cannot be assumed that individual case studies will produce qualitatively or quantitatively significant results and therefore analysis of the aggregated effect of SROs is necessary.

We will deal with the type of issue that must necessarily arise in choosing between options of: no regulation; self-regulation, and full regulation. Examples of such issues include:

- Whether self/co-regulatory frameworks are able to include ALL stakeholders.
- The continuous spectrum from self to co-regulation to 'full' regulation. the legislative base and technology adoption developments,
- the policy background and the exigencies of the i2010 approach.

We will also examine the degree to which EC level action is or is not appropriate through:

- co-ordination at global level;
- harmonisation of national initiatives;
- regional interventions on for instance standards, interoperability, user empowerment through literacy and tools, and regulation.

We will trace the variables that lead SROs to greater or lesser compliance (or ignorance of) with these policy goals.

6.3.2 **Results**

Deliverable **D5**, the Draft Final Report, will be delivered **before the end of November 2007** prior to the fourth meeting of the Steering Committee. It will contain analyses, conclusions and concrete recommendations, as well as an Executive Summary of 5-10 pages. It will be accompanied by **D6**, PowerPoint presentation of key findings and aspects of the study, with speaker notes.

The Steering Committee's inputs will be integrated with the Draft Final report whose core content will be validated by test run with a RAND Europe panel of senior evaluation experts to ensure its components, coherence and suitability.

The resulting document will be edited for accuracy, readability and language, and subjected to RAND Quality Assurance procedures (internal peer review). This will be used to produce a final version.

Deliverable **D7**, the Management Report, will detail all work, resources and results completed, and conclusions. It will be delivered **before the end of November 2007**.

ANNEX A: LITERATURE REVIEW

Introduction: Effectiveness and Options for Internet Co- and Self-Regulation

This short literature review (followed by a longer select bibliography of essential works) is intended to introduce the definitions, concept and actors in analysing co- and self-regulation in the Information Society. Three points must first be made. First, the Information Society is broader than simply the Internet, however important that medium. Second, and moderating the first, the Terms of Reference for this study, and hence this review, are to examine controls on Internet content, applications and services. Third, the Terms of Reference exclude standard setting organisations and infrastructure provision except insofar as it impacts on content, applications and services. We therefore do not exclude that literature, but focus especially on its impact on the evolving regulation of content, applications and services. Finally, we can state simply that the Internet is a global medium, that the term 'Information Society' and our regard for these sectors means that a technical or national-regional review would not explore the concepts fully, and therefore this review encompasses economic and socio-legal literature, and examines the evaluation, competitiveness, and better regulation literature as well as previous European Commission studies in this area. While a short review cannot be comprehensive, it covers the main points under examination, and leaves to Phase 2 case studies more detailed analysis of the specific works, many of which are included in the select bibliography.

Why Regulate?

A discussion of self and co-regulation assumes that there is a reason to regulate. Although there may be broad agreement on specific topics that need regulation, there are numerous frameworks within which they can be analysed. These frameworks affect the weight attributed to the values to be protected and also the manner in which it is perceived appropriate to achieve those objectives and that, within a particular field, a mixture of approaches are desirable. The unfolding of the Internet as a carrier for the Information

Society thus created specific tensions among the technological, legal, socio-political and economic notions of acceptable use. The main models are based on: economic principles and market failure (Ogus 1994: 29-49), which can be seen as a form of utilitarianism; human rights and human dignity (Brownsword, 2005); and social solidarity (Prosser 2006), though the last of these receives the least attention. Each perspective on the need for regulation brought with its own powers of action, tools and institutional relationships for balancing competing interests.

Self-Regulation and the Internet: Origins, Standards and History

The Internet was largely a U.S. government creation, ARPANET, with architecture originally intended to survive thermonuclear strike. The ‘end-to-end’ principle (Saltzer, Reed and Clark 1984) is hard-wired into the Internet’s architecture by the technical standards and protocols that govern the engineering of the Internet. In this narrow engineering sense, much of the Internet is self-regulated, for instance, by: W3C (World Wide Web Consortium), an E.U.-Japanese-U.S. consortium of private and public universities and researchers, including corporate researchers; the similarly constituted IETF (Internet Engineering Task Force) and ICANN (Internet Corporation for Assigned Names and Numbers). The legacy of such technical self-regulation is that minimal direct government interference was seen in standards (Kahin and Keller 1996). The self-regulatory bodies are international in character and were begun as non-commercial self-regulatory organizations (Lemley and Lessig 2001).

The consensual model of standard setting and self-regulation of content, which may have sufficed in the early development of the Internet, is a legacy model which is under challenge in the more technical policy arena. It is held to be untenable in the advanced consumer – and therefore democratic – adoption of the Internet (Goldsmith and Wu 2006). The European invention of the World Wide Web (WWW), by Tim Berners-Lee and colleagues at CERN (Berners-Lee 1999), created a graphically appealing and simple means of communication, since supplemented by easy-to-use editing tools, which helped the Internet achieve a mass user base by the late 1990s.

It was claimed by some pioneers (Perry Barlow 1996) that the Internet is a global phenomenon beyond nation-state control, in which unregulated any-to-any communications is possible. After the early adoption of the Internet in the United States in the 1990s, regulatory analysis was dominated by a ‘cyber libertarian’ school of analysis developed amongst technologists and was adopted by legal analysts (Johnson and Post 1996). After United States partial privatisation of the Internet infrastructure in the early 1990s, self-regulation using Codes of Conduct became the default approach to regulate users’ behaviour in speech, security and fair use. Following privatisation and increasing commercial use of the Internet, the regulatory model began increasingly to borrow from economic regulation in terms of regulatory tools (e.g. merger and price controls) and default assignments of responsibility (fair competition, caveat emptor). The Internet was viewed as a ‘gigantic empowerment machine for profit-seeking firms’ (Engel 2005: 7).

Citizen demands for protection and security create a classic global public goods issue, which governments are now addressing (Kaul 1999). The global nature of the medium, but with local content and other legal issues, has raised the debate about global versus national or regional rules (Johnson and Post 1996, Lessig 1999, Goldsmith and Wu 2006,

Drezner 2007). These debates are examples of both the limitations of global governance and the rapid maturing and thus increasing complexity of ‘civil society’. The concern regarding the place of the Internet and national sovereignty since 2003 has focussed on the World Summit on the Information Society (WSIS) and the reformation of the Internet Corporation for Assigned Names and Numbers (ICANN). The latter, which runs the ‘telephone numbers’ for the Internet and oversees the 246 ccTLDs (country code Top level Domains such as .de and .uk) has retreated from earlier commitments to: a democratic control via direct elections by registered Internet users after the election of 2002; and the removal of supervision by the US Department of Commerce via its National Telecoms and Information Administration (NTIA).

Formal democratic decision-making for the global issues which Internet governance raises are extremely immature, as in the novel ICANN form of co-regulation of domain names (the addressing space) for the Internet that the US government established in 1998 (Froomkin 2000, College d’Europe 2003). ICANN has in its short history been a lightning rod for concerns regarding the legitimacy of a single nation state (the US) controlling the address space for Internet names (NTIA 2005, Rice 2005, ITU 2005), and therefore the ability to locate other users (other options exist at the margins but are not as yet relevant in policy terms: see Kahn and Cerf 1999). This reflects a wider concern (Marsden 2001) that a crude version of ‘first mover’ advantage may have meant the wholesale export of US standards (Kahin 1995, 1997), language, speech values (*ACLU v. Reno* 1996, Reidenberg 2004) and content to the rest of the world. European and East Asian countries have rapidly overtaken the US in absolute numbers of Internet users, especially broadband-enabled consumers, but this is not yet reflected in a multilateral settlement for the crucial addressing space (Mathiason and Mueller 2005).

Human Rights and the Internet

Whilst concerns about the reaction of authoritarian states (China, Cuba) may justify concerns about the level/manner of state involvement, in the above analysis, the individual seems lost, appearing only to a limited degree as the consumer benefited indirectly by competition policy. A rights-based analysis shows several areas of possible difficulty. One problem arises at the systems level in that, despite the claimed inherent nature of human rights, the scope of particular rights varies between systems, notably the difference in approach between freedom of speech under the US First Amendment and freedom of expression within the EU (Barendt 2005), as well as privacy/right to a private life. Given Article 6(2) Treaty of European Union, the appropriate standard of review for EU policy is that of the European Convention on Human Rights (ECHR) as interpreted by the European Court of Human Rights (ECtHR).

Whilst obvious concerns arise regarding the interplay between freedom of expression and copyright, particularly Digital Rights Management (DRM: Akester 2006), the issues go beyond use of material to access. Whilst there is no jurisprudence directly on point, ECtHR case law includes not just speech, but to transmission mechanisms (*Autronic*) and while no-one has a specific right to airtime or to a particular platform (*Haider*), it seems that individuals have a right not to be discriminated against in terms of access (*Huggett*). Technology can facilitate the spread of new ideas, but also act as a barrier. This point has been identified also by UNESCO (2007), and raises the difficult issue of net neutrality.

Access issues might be implied also by the right to information. In this context we might see reflections of the view that technology conditions behaviour; it can operate to limit rights (Lessig 1999). Cerf (1994) classified three types of regulation: technical constraints, legal constraints and moral constraints, to which we can add economic regulation. He stated that: “In reality, all of these tools are commonly applied to channel behavioural choices.” He explained that university and research institute conditions of use, including Codes of Conduct, regulated online behaviour from the Internet’s invention (Price and Verhulst 2004).

Rights concerns extend further. Privacy concerns are raised by the increasing collection of personal data, both by governments and by private entities and the asymmetry of information (Council of Europe, 2005). The extent of rights claims is not yet understood: will we see claims for identity rights within the virtual world (whether in the context of social networking sites or on-line games). All of these rights imply procedural questions about enforcement of rights and rights to natural justice (Ahlert et al 2004), as noted in the Hans Bredow Study. Frydman and Rorive (2002) state that: “Business operators should never be entrusted with ... guidelines defining the limits of the right to free speech and offering procedural guarantees against censorship... which belong to the very core of the human rights of a democratic people.” With a growing emphasis on civil society, these rights based considerations become ever more important as they form essential elements for citizen participation in the Information Society.

Methods of Regulation: Regulation, Self-regulation and co-regulation

Regulation has been seen as falling into traditional command and control regulation as opposed to self regulation. Both are considered to have weaknesses. State control is portrayed as showing limited understanding of the subject it seeks to regulate, as well as being slow to react. Self-regulation may be seen as constituting the self interest of the group regulated (including the risk of cartel behaviours) and of dubious legitimacy from the perspective of others (such as consumers) affected by the process. Craig (1987) cautions that: “Regulation is often informal, characterized by negotiation, persuasion and cajoling... The potential economic advantage of informal regulation in achieving a cost-effective level of regulation must be weighed against the danger of regulation becoming ad hoc and circumventing procedural safeguards in legislation.” Foster (1992) considers regulation “[I]n its widest conception is state intervention in the economic decisions of companies.” A broader sociological definition “considers all mechanisms of social control” to be forms of regulation, which encompasses self-regulatory models, the role of firms and social norms. This enables the consideration of non-legal norms, and the interaction of firm, civil society and state. Ayres and Braithwaite (1992) state: “By working more creatively with the interplay between private and public regulation, government and citizens can design better policy solutions...administrative and regulatory practice is in a state of flux in which responsive regulatory innovations are politically feasible.”

Responsive regulation reflects a more complex dynamic interaction of state and market, a break with more stable previous arrangements (Teubner 1986). It is in this space of dynamic interaction that co-regulation exists. Co-regulation is a pragmatic response to the common perception that regulatory frameworks must quickly adapt and continually be optimized to maintain relevance and effectiveness to rapidly evolving markets. It can be

found in globalising phenomena other than the Internet, for instance financial and environmental law (Gaines 2001), where initial European public reaction to the Internet resembled that associated with environmental pollution, and negative externalities are highlighted for public concern (Whitehead 1997). Price and Verhulst assert the limits of both government and private action, and assert the interdependence of both – there is little purity in self-regulation without at least a lurking government threat to intervene where market actors prove unable to agree (Price and Verhulst 2000).

Co-regulation expresses a dialogue process between stakeholders, which results in a form of regulation which is neither state command-and-control regulation in its bureaucratic central or regulatory agency specialised functions (Baldwin et al 1998), but is also not ‘pure’ self-regulation as observed in industry-led standard setting in Internet infrastructure – as for instance in the EC’s new approach in the 1990s (de Cockborne et al 1999). The state and stakeholder groups including consumers are stated to explicitly form part of the institutional setting for regulation (Braithwaite and Drahos 2000). Co-regulation constitutes multiple stakeholders, and this inclusiveness results in greater legitimacy claims. However, direct government involvement including sanctioning powers may result in the gains of reflexive regulation – speed of response, dynamism, international cooperation between ISPs and others – being lost. It is clearly a finely balanced concept, a middle way between state regulation and ‘pure’ industry self-regulation.

Economic Analysis of Self-Regulation

Beyond the Information Society- and policy-orientated work described above, there are four other strands arising principally from the economic literature. They are briefly mentioned here because the concepts they develop are useful in interpreting both the current state and dynamics of self- and co-regulation and because the associated analytic tools may be of direct utility if data and interest justify. The first stems from the recognition that self-regulation in general, and voluntary codes of conduct in particular, are social conventions (Young 2003, Morris 2001, Jackson 2002, and Cave 2005). As such, their evolution is governed by the twin forces of cohesion and contagion, and well-described by models taking explicit account of the structure of networked interactions among the stakeholders. This does not refer to ICT networks per se, but rather to exchange of information, discussion and coordination activities. A further observation is that participation in self-regulation (and even co-regulation) alters the structure, strength and directionality of these networks, which sharpens the ex ante assessment of such arrangements. The second strand is the economics/game theory literature on mechanism design (Laffont and Tirole 2004) – developing rules of engagement that can implement desired outcomes in the face of information asymmetries and incentive problems. This is directly applicable to the construction of co-regulatory arrangements, including arrangements linking different public and private bodies. Two other strands of work concern the connections between self- and co-regulation and regulatory reform (Cave 2006) and the literature on the relation between sector convergence and the diffusion of governance arrangements (Marsden et al 2006) - for instance, the way regulatory concerns (e.g. around content) have been affected by migration from broadcast to web sites to online games and the way self- and co-regulatory institutions merge (e.g. combined utility network regulators, and media co-regulators, in Netherlands and Germany) or change charter in response to evolving challenges.

Evaluation Strategy for Self-Regulation in the Information Society

Evaluation strategy can assess the characteristics of co- and self-regulation, in order to evaluate success and failure of schemes. The usefulness of such processes has been emphasised by the Commission in several recent policy pronouncements, notably the 2003 Inter-institutional Agreement on Better Lawmaking and the 2005 Communication on Better Regulation.

The measure of such success and failure can be due to internal or external logic: schemes can fail within their own terms, or due to external forces, including social and/or economic forces that render them ineffective or redundant. Internal logic failure can be caused by the institutional setting, the intervention logic, the financial resources or the cultural setting of such schemes. It should be noted that there are many potential outcomes from failure: the replacement of the scheme by another co- or self-regulatory scheme; the replacement by direct government intervention to regulate, invest in or even take ownership of the market under examination; or no scheme at all, with market forces and companies' internal enforcement the options remaining. (ICANN was established in 1998 as a direct US government response to what they chose to perceive as a self-regulatory failure). Users may also choose to institute alternative forms of control in the case of scheme failure (for instance parental controls on browser software in the case of the lack of sufficiently widespread adoption of the content labelling scheme PICS in the period after 1996, accompanied by the ratings organisation ICRA). A negative result for competitiveness may be either a scheme that fails to adapt to changing circumstances, an overpriced scheme, or one that is so ineffective that European users choose not to use the Internet or curtail their usage (which mobile telephony providers arguably pre-empted by their choice of self-regulation in 2004, prior to widespread adoption of broadband mobile telephony, Reding 2005).

Successful schemes within their own logic may nevertheless still fail to enhance the i2010 goals. Two good examples are the anti-competitive potential for schemes which may be construed as cartels, and schemes which impose high compliance costs on industry, and which are only complied with under duress – for instance where the costs of compliance with a government-owned scheme would be significantly above even the costs of a high-cost scheme. Regulators in the content industries are faced with a difficult choice in assessing such schemes against European competitiveness: in the US government content controls are unconstitutional under the First Amendment, and therefore all European content controls may potentially raise entry costs for European content providers to global markets. An intervention response may therefore be the type of industry promotion undertaken in the eContent programme, accompanied by co-regulation that imposes least-cost minimum standards. The impact of such schemes has recently been assessed (Marsden et al 2006) and applied a methodology that examined industry value chains and examined impacts in terms of innovation and competitiveness. The study also shed light on the potential for anti-competitive cartels to emerge in standard setting, whether for content regulation or more content-neutral traffic filtering, and cautioned that regulatory assessment needs to carefully examine the potential for dominant network actors to exert bottleneck control through self-regulation.

European Commission Studies on Self-regulation in the Information Society

The importance of the Internet as the primary information network for the creation of the Information Society has been recognized by the European Union, from the Bangemann Report of 1994 to the eEurope+ Progress Report of 2004 and beyond.

The establishment of the Safer Internet Action Plan in 1998 led to funding for a study in 2001-4: selfregulation.info. It cautioned that self-regulation of Internet content was being implemented sporadically, with effectiveness of hotline schemes to remove illegal content and Codes of Conduct to establish appropriate content hosting guidelines varying by service provider as well as national cultural variables. Its examination of mobile content Codes of Content and computer games rating found that self-regulatory body constitutional and financial independence and effective enforcement were as yet unproven. A further study focussed on media content by the Hans Bredow Institut in 2004-5 found variable implementation included that extended into the online arena, with the German co-regulatory scheme introduced in 2003 unique in Europe. Examples often held to be co-regulation were found to be self-regulation of unproven effectiveness (e.g. the UK Association of Television on Demand) and vice versa (the Internet Watch Foundation in the UK is a co- not self-regulatory body).

A common understanding of the concept of co-regulation, its importance for regulators, and the perspective with which to assess its impact are among the most important threshold issues to address, before it is possible to consider specific regulatory responses (Goldberg, Prosser and Verhulst 1998). Currently, however, as has been noted (Lievens, Dumortier and Ryan 2006, Senden 2005) there is some uncertainty as to the precise scope of the terms self-regulation and co-regulation. The Commission recognizes that co-regulation can be used as a means to implement objectives set by regulatory Directives and has outlined in the White Paper on European Governance (COM 2001 428) a set of conditions under which it will consider the use of co-regulation. Crucially, the Commission suggested in that context that co-regulation was not appropriate to protect fundamental rights, though the Hans Bredow Study seemed to move away from the absolute nature of this view.

The Hans Bredow study concludes (Schulz and Scheuer 2006: 152) that “...there is no reason to believe that the level of justification for co-regulatory measures has to be higher than for pure state regulation.” Therefore measures that would be legitimate as pure-state-regulation will most likely be justified under Article 10 ECHR if they are part of a co-regulatory regime. Though a state cannot use co-regulatory measures as pretence to impose stricter limitations than law justifies, co-regulatory systems may do so, solely based on voluntary participation of its members that are free to join and leave the system. From the perspective of the individual, the conclusion is that voluntary systems of market actors take them outside rights protection regimes, as they are not actions which can be attributed to the contracting state party. This creates a legitimacy problem, in for instance the mobile content arena. Also note that private law (such as the contractual agreements between network owners and content providers) must be construed in line with constitutional protection.

The Hans Bredow study focuses on legal and ‘constitutional’ analysis, complementing the selfregulation.info focus on the practical implementation of ‘codes in action’ and the

influence of stakeholders and market analysis (particularly in the cases of mobiles and games completed in 2004). While an avowedly legalistic approach is appropriate for media industry co- and self-regulation, Internet co- and self-regulation involves many more fluid and dynamic interactions between stakeholders and therefore the focus needs to be on the actors, informal practices and linkages (human or 'liveware' as well as institutional) between the co- and self-regulatory bodies. That does not remove the need for legalistic analysis, but moves towards the adoption of a more multi-disciplinary analysis. It is also appropriate to examine the multilateral institutional element of such analysis, as the policy community that is focussed on co- and self-regulation of the Internet is significantly more globalised than that for the culturally specific (if international) media industries. To take examples, the linkages between East Asian, North American and European policies and self-regulation of domain name allocation, Internet child pornography or mobile content are much stronger than in the cases of television or advertising regulation.

There is thus substantial need for further research into the sustainability and responsiveness of Internet regulation (Camp and Vincent 2004). In order to holistically examine the impact of digital networks in the Information Society more generally, this should be broadened from content regulation derived from media regulation, to consider broader governance concerns (Drake 2004, Clark 2005, and Internet Governance Consortium 2005). This includes the further development of self-regulation (whether by individual companies or across sectors) in such areas as Internet search, social networking, mobile and game content, as well as the sustainability and stakeholder legitimacy of Internet governance at micro (e.g. specific interoperability standard setting) and macro-levels (e.g. the United Nations Internet Governance Forum IGF, and London Action Plan against spam: Brown, Edwards and Marsden 2006). The Safer Internet Action Plan Plus 2004-8 has recognised this analysis, and provides co-funding for a study that seeks to examine and reduce spam, based in Germany.

Security Against Spam and Other Unsolicited Content, Copyright Reform and e-Europe

In its eEurope Action Plan Review 2004, the Commission identified eliminating legal barriers to e-commerce, the copyright bottleneck for broadband content, and the increasing nuisance of spam as priorities. Regulation is declared to be a key element in the development of an inclusive and safe Information Society in which users make full use of the potential of the Internet. This broader approach matches that of Member State governments, with initiatives such as the Forum des Droits sur l'Internet, which is a multi-stakeholder forum first established in Paris by the French government, but since expanding with membership from over eight European countries. It has conducted extensive research led from Oxford on mobile content regulation (Ahlert et al 2005), as well as on Internet governance and the United Nations World Summit on the Information Society (WSIS). A further example in a more technical arena of government-funded research is the work on Distributed Denial of Service (DDOS) attacks, the cause of many security breaches on the Internet (Brown, Edwards, and Marsden 2007). This latter effort inspired in part the London Action Plan, an international multi-stakeholder anti-spam group with over 60 members from 38 countries. This security work dates from 2003/4, and complements the approaches both regional and multinational, in the CERT community and the European Network and Information Security Agency (ENISA) and Council of Europe Convention on Cybercrime (2001) and First Protocol (2004).

Content Co- and Self-Regulation

Effective content regulation is necessary to protect the public interest in cultural and linguistic diversity, rights to information, protection of minors and human dignity and consumer protection in such areas as advertising and telesales. The term ‘co-regulation’ encompasses a range of different regulatory phenomena, which basically have in common the fact that the regulatory regime is made up of a complex interaction of general legislation and a self-regulatory body.

In analyzing various content sectors, it is vital to recognize the different points at which some form of regulation is necessary, both for content and for economic protection of the consumer. The varying interests of actors – governments, viewers, distributors and producers – result in different incentives to cooperate or attempt unilateral actions at the various points of control. Without sensible analysis of the multimedia sectors from film to video to cable, satellite and terrestrial television, to distribution over broadband and mobile phones, it is impossible to rationally assess actors’ individual motives and therefore their incentives to pursue regulatory options of various types. Without regulation responsive to both the single European market (Temple Lang 1998) and the need for constitutional protection of freedom of expression and protection of minors at national levels, co- and self-regulatory measures cannot be sufficiently responsive to economic and cultural environments to be self-sustaining (Reidenberg 2002, 2004).

Media economists such as Wildman see multimedia as an ‘umbrella term’, generated from three phenomena: first the integration of separate media; secondly, ‘de-specialisation of transmission technologies’, caused by digitalisation; thirdly, the convergence phenomenon of the delivery of broadcast, telephony and Internet via the same transmission network (Wildman 1998). Because of this multimedia convergence, consideration of content regulation requires not only examination of advertising regulation and protection of minors by traditional means (PIN numbers, watersheds etc.) but also consideration of new media and their impact on traditional regulation. In addition to the traditional regulatory models seen above, there are other ‘purer’ self-regulatory models in broadcast advertising, film and video classification, and computer games rating, that rely on rating the content and using information regulation to inform the end-user that content may be unsuitable for minors.

There have been many studies of self- and co-regulation in the content sector (Bollinger 1976, Boddewyn 1988), notably those for the European Commission (PCMLP 1999, V-chip report, selfregulation.info 2004, Hans Bredow 2006), and of others (Humphreys 1996), Marsden (1999) and Verhulst (1997) as official consultants for the Council of Europe, while shorter country- or sector-specific contributions have been published in the past five years in European Audiovisual Observatory journal, IRIS. At the Birmingham ‘*Assizes Audio-visuels*’ in 1998, the formulation used was: “Self-regulation that fits in with a legal framework or has a basis laid down in law” (Schulz and Held 2001: 7). Schulz and Held (2001) investigated co-regulation in the German context, specifically in the case of protection of minors. In their view, self-regulation in Anglo-American debate is concerned with “reconciliation of private interests” whereas their formulation – regulated self-regulation (after Hoffman Reim 1996) – is indirect state regulation based on constitutional principles. It is the combination of “intentional self-regulation” – the actions of market

actors, whether in social or economic settings – with the state sanction in reserve which results in self-regulation which is ‘regulated’ by the possibility of state intervention.

Schulz and Held suggest that ‘regulated self-regulation’ can be any of these categories: co-regulation, intentional self-regulation, or a third category - ‘audited self-regulation’. Independent audit of self-regulation is a U.S. concept of using an independent standard or professional body to audit a self-regulatory organization or individual company according to pre-set standards. In the case of ISPs, audited self-regulation might involve at least a standard being set that an audit firm could certify organizations against (or at least that organizations could self-certify with reporting requirements), but could involve the setting of an international standard, as increasingly occurs in accountancy, for instance. At a minimum, dedicated budgetary and personnel resources, with activity reports, would be required to demonstrate regulatory commitment. The German concept of regulated self-regulation gives the state a role when basic constitutional rights need to be upheld: “The extent of possible delegation [to self-regulation] depends ... on the relevance ... in terms of basic rights” (Schulz and Held 2001: 8).

The term ‘co-regulation’ also gives a sense of the joint responsibilities of market actors and state, short of outright command-and-control, in the activity under investigation. It has been used by the UK’s telecom regulator to suggest a state role in setting objectives which market actors must then organize to achieve – with the threat of statutory powers invoked in the absence of market self-regulation (Ofcom 2004). We note that relations between co-regulatory fora such as the German FSM, Dutch NICAM, Australian Broadcasting Authority (ABA) schema (Wright 2005), Internet filtering bodies (Johnson, Crawford and Palfrey 2004) such as ICRA (Machil et al 2003, Zittrain and Edelman 2004) and the global (but US-based) ICANN (Mueller 1999, Ahlert 2001) have been investigated at length in previous Commission and independent studies, including selfregulation.info and the Hans Bredow report. We conclude that the term ‘co-regulation’ is used in such a wide variety of circumstances that its specific meaning must be seen in the national, sectoral and temporal context in which it is used.

Conclusion: Self-Regulatory Literature and Studies Indicate Empirical Methodology

There are three general methodological lessons from the literature that can be applied to the study. First, consistency of methodology is vital for comparative data capture to be accurate, between sectors as well as national examples. This depends on consistency of approach, ideally taking a ‘snapshot’ of several institutions and analysing their interdependencies and linkages. Second, historical studies can cast light on the efficiency and sustainability of self- and co-regulatory models and their evolution. Third, co-regulation is a moving target – the national and sectoral examples encompass the different and dynamic practices of co-regulation in each geography and sector examined. This makes continued experience of designing and implementing co-regulatory surveys essential – law in books is of little assistance in so informal and dynamic a field. In order to analyse the dynamics of co-regulation, it is vitally important to conduct empirical research into market actors, regulators and civil society organizations.

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