

# Designing effective regulation for the **"Dark side"** of the Web

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## Prologue: On predictions about the future of the Web

**Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather.**

**- John Perry Barlow, 1996**

# But the weary giants didn't think about leaving them alone...

## Regulation

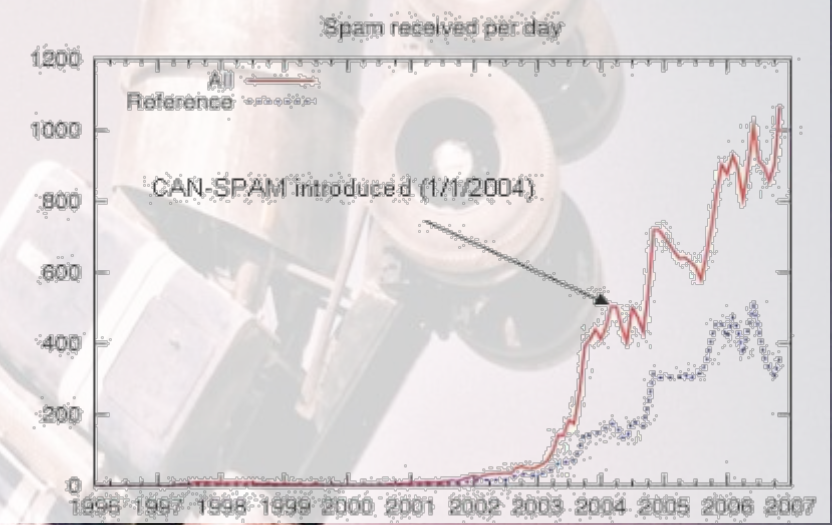
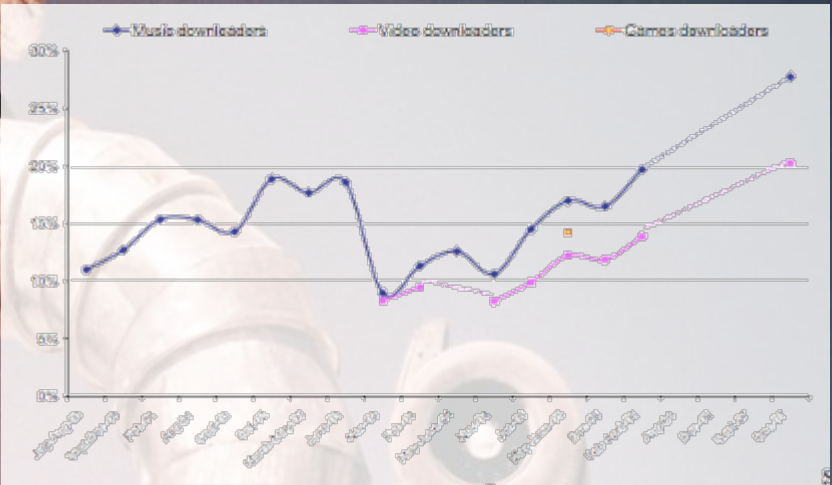


US DMCA 1996  
US NET 1997  
EU EUCD 2001



US CAN-SPAM Act of 2003  
CE Convention on Cybercrime  
EU E-Privacy Directive 2002

## Effect on behavior



Sources: PEW, Spamnation.info  
Picture: Almostjaded (CC-BY-NC-SA)

In the meantime, a thriving culture of self-regulation has emerged in “Cyberspace” – some with more, some without government involvement

ISPA W3C FOSI  
IGF

ICANN

PEGI

KJM

IETF

IMCB

ICSTIS

# But... what if those to regulate are not interested in self-regulation?

## (Lack of ) Motivation of Actors



ISPs – benefit from demand for broadband  
Operators of p2p networks – benefit from ample availability of content

## Three reasons to join self-regulation

Avoid formal regulation

Derive benefits

Gain legitimacy



ISPs – support fight against spam, but resist liability rules  
Spammers – it is their business model



Governments – no interest and no pressure to disclose filtering activities



ISPs – do not want to expose their network management practices

Picture: Bob

# Entrepreneurial regulation – regulatory entrepreneurialism

## Regulatory Enterprise

## Characteristic



Digital Media Exchange

They do not rely on the power of a national legislator or the courts to regulate user behavior



StopBadWare

They compete with other options for user acceptance and therefore need to actively find means of becoming effective



Herdict

They are not legitimized by an institutionalized democratic process



Switzerland

# Main research question

Effectiveness

Benefits  
Gatekeeper

Legitimacy

Pragmatic  
Structural  
Normative  
Cognitive

# Digital Media Exchange / Noank Media

noankmedia  
cambridge • toronto • beijing • hong kong

## What it does

- Provides Internet Service Providers with infrastructure for a legal file sharing network
- Strikes licensing deals with music labels
- Provides ISPs with tools to monitor media traffic
- Distributes royalties to copyright holders according to popularity

## How it becomes effective

- G** • Deals with central gatekeepers of the Internet: ISPs
- B** • Value proposition for ISPs and record labels

## How it becomes legitimate

- P** • So far no operational network
- S** • Transparent profit distribution
- N** • Providing artists with remuneration widely accepted as good cause
- C** • Association with Berkman and Harvard brand

## What it does

- Catalogue web sites containing “badware”
- Disseminate warning messages through partnership with Google
- Operate “Clearing House” to remove badware warnings

## How it becomes effective

- G** • Cooperation with Google to display warning messages next to search results makes SBW achieve immediate effectiveness
- B** • Google avoids allegations of censorship for unlisting infected sites
- B** • Warning messages cause drop of traffic to listed sites, which motivates server operators to remove badware

## How it becomes legitimate

- P** • Is immediately effective
- S** • Transparent clearing process
- N** • Fight against badware good cause, non-profit character of organisation
- C** • Association with Berkman and Harvard brand, support by Google and other major companies

# Herdict



## What it does

- Monitors successful and failed access to web sites
- Maps aggregated view on blocked sites per country and per ISP
- Volunteers download browser plug-in or click on Herdict homepage

## How it becomes effective

- B** • Real time aggregation of data in central database allow comparison of access attempts across countries and ISPs and to identify blocking patterns
- B** • Supporting a good cause
- G** • No central gatekeeper

## How it becomes legitimate

- P** • Contribution varies widely across countries, little effect on actual blocking practices of States
- S** • 1000 eyeball principle to prevent gaming (depends on part.)
- N** • Fight against filtering good cause, non-profit character of organization
- C** • Association with Berkman and Harvard brand

# Switzerland



## What it does

- Provides experienced users with tools to measure performance of
- p2p network access between providers

## How it becomes effective

- G** • No central gatekeeper
- B** • Supporting a good cause
- B** • EFF expert analysis of traffic data allows users to assess service filtering practices of their providers

## How it becomes legitimate

- P** • Too early to assess – user demand established
- S** • No transparent structure to verify results
- N** • Fight against network neutrality considered good cause at least among EFF supporters, non-profit character of organization
- C** • Reputation of EFF as one of the major contributors to discover Comcast's illegal blocking practices

# Summary of findings



## Effectiveness

- Benefits
- Gatekeeper



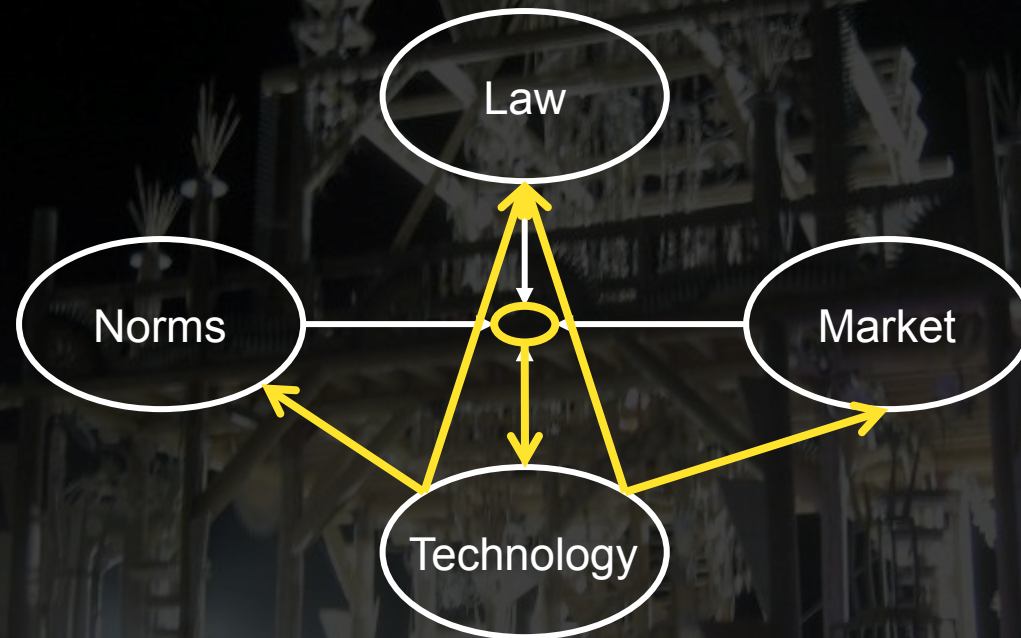
## Legitimacy

- Pragmatic
- Structural
- Normative
- Cognitive



\* Not yet operational

# From regulating behavior to behaving like a (entrepreneurial) regulator

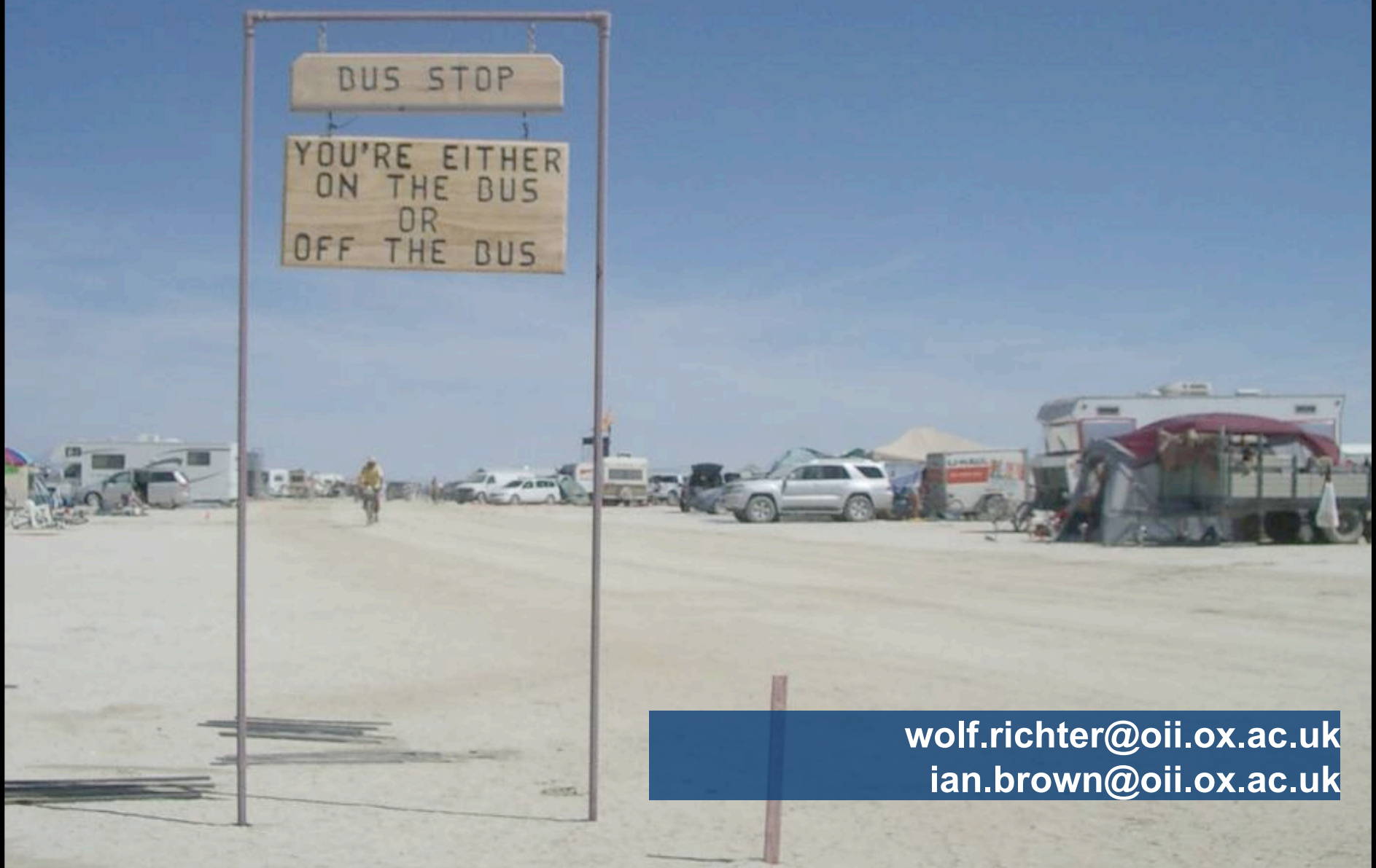


“Pathetic Dot”

Regulatory Entrepreneur

Social Entrepreneur

Questions, suggestions, comments?



BUS STOP  
YOU'RE EITHER  
ON THE BUS  
OR  
OFF THE BUS

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