

*Telefonica*

DIGITAL POLICY LAB

# CAN REGULATION SAVE THE INTERNET?

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**A VIEW FROM BERLIN**

# Foreword



From the inception of the internet, there has been an ongoing debate as to whether it is possible and feasible to regulate it or whether it should be a free place where actors can self-regulate according to informal community rules. This debate has somewhat ended in recent years amid increasing calls for some measure of regulation to protect citizens online, largely spearheaded by the EU which has become a lodestar for digital policymakers around the world.

Yet while the debate as to whether we should regulate may have drawn to a close – at least in the EU - debates over how we should regulate and what we should regulate continue. Meanwhile, the internet fundamentally tests the way in which governments do regulate; eluding enforcement, transcending national and international administrative boundaries, and muddying traditional delineations between markets and sectors or consumers and producers.

On 24 September 2019, the European Council on Foreign Relations organised a workshop in collaboration with Telefónica in Berlin to debate these questions. The workshop brought together 25 leading experts from the government, civil society and private sector to identify the key issues in internet regulation and identify possible solutions.

# The issues

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## 1. Definitions

Traditional definitions and distinctions become problematic in the online space, such as the distinction between producer and consumer or between different markets and sectors (as seen in the convergence between media, telecommunications and online platforms). This blurring of boundaries evidently poses significant challenges when attempting to regulate. Meanwhile, definitions and distinctions that are already problematic in the physical world are transferred to the online space and often amplified. For instance, how to identify and address extremism, disinformation, coercive behaviour, bullying and other harmful activities or content that are neither legal nor illegal.

*“The key issue on regulation is how do we grapple with the new type of economy and make sure it serves to the public interest.”*

– Andrew Puddephatt,  
*Internet Watch Foundation & ECFR.*<sup>1</sup>

<sup>1</sup> This quote along with all others in the document are taken from publicly available video interviews conducted with participants following the workshop discussion. To see the full interviews, visit [\[link al video\]](#).”

## 2. A jurisdictional phenomenon

Given the virtual and global nature of its existence - transcending administrative boundaries both domestically and internationally - the internet proves naturally resistant to regulation. Existing regulatory institutional frameworks are often national (taking the form of sector or activity specific national agencies and ministries), and as such are ill equipped to address the transversal challenges of the internet and digital technologies.

## 3. Stifling innovation

While the EU’s bid to insert European values (such as the fundamental right to privacy) into all facets of technology is appealing - particularly in the context of a global techlash - participants warned of the risk that disproportionate or ill-designed regulation poses to innovation, placing European tech companies at a disadvantage when competing at the local and international level and further consolidating the position of dominant companies. The EU will have to depart from its habitual approach to regulation – often characterised as restrictive and protectionist – and pursue smart policymaking that balances regulation with the need to foster innovation.

*“One of the key things is how do we create an online space, a digital public sphere that doesn’t hinder people from forming their political opinions freely and independently, but actually supports it.”*

*– Julian Jaursch,  
Stiftung Neue Verantwortung.<sup>1</sup>*

## **4. All talk and no action**

How do we get from a discussion on regulation to concrete decisions and implementation? While several internet regulation initiatives have been proposed by the private sector, government, civil society and multilateral institutions – with much convergence between them – many of the recommendations have remained recommendations. Participants stressed the urgency of advancing towards the policy making and implementation phase.

<sup>1</sup>This quote along with all others in the document are taken from publicly available video interviews conducted with participants following the workshop discussion. To see the full interviews, visit [\[link al video\]](#).”



# The solutions

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## 1. Multi-stakeholder model

All stakeholders play a crucial role in the internet ecosystem, whether it be the private companies who own much of the internet infrastructure or the individual end user carrying out user to user communication or other online activities. As such, the multi-stakeholder approach to internet governance has emerged as a more viable option over the past decade as opposed to the solely intergovernmental. This involves individuals and organisations from private sector, government and civil society participating alongside one another in different fora and governing bodies to develop policy consensus. See for example, the Internet Corporation for Assigned Names and Numbers (ICANN), the organisation tasked with managing the Domain Name System (DNS), IP addresses and other critical components of the internet architecture.

As governments begin to pay heed to the question of internet governance and regulation, participants stressed the need for them to maintain the multi-stakeholder approach, arguing that the more inclusive the process is, the better the outputs and their implementation. As one participant argued, the multi-stakeholder approach is an expression of our understanding of democracy. However, it is true that the multi-stakeholder model will need to be

improved if it is to be used as a toolbox for policymaking; including its slow and diffuse processes, its lack of clear accountability incentives, and a lack of effectiveness in the interest of inclusiveness.

*“We need to intensify the conversation and find a solution that takes into account the interests of the stakeholders but is also founded on a democratic participatory process.”*

– Wolfram von Heynitz,  
German Federal Foreign Office.<sup>1</sup>

## 2. Private sector ownership

As one participant pointed out, politicians may not understand technology, but the tech industry hasn't made a concerted effort to assist. Technology companies should reduce information asymmetry and educate policymakers or see itself continuously fall victim to misguided pieces of legislation.

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### 3. Guiding principles

Nevertheless, it is the role of the policymaker to define the set of principles and rules that cover the way that technology companies – in particular platform economies – should operate. The appropriate role for the policymaker in the digital and technology sphere is not to provide detailed policy prescriptions but to instead provide a set of general principles by which they can judge how a company is operating. Norm-setting cannot be delegated to private entities though implementation and supervision to some extent can be.

### 4. Transparent algorithms

Far from being passive hosts of content, it is now commonly understood that platforms actively shape the information received by users to significant effect, with one participant advancing that “the technical is the new political”. Greater transparency is required from tech companies as to how they curate content online. For instance, the public should be able to see how the algorithms function and what they have decided the user should and shouldn't see on their page.

### 5. Boosting the EU's tech industry

The EU has assumed a global leadership role in digital policymaking, but regulation is not a means to all ends. Apart from regulation, Europe needs to boost its own digital credentials if it aims to catch up with China and the US, enacting policies to nurture innovation, strengthen investment in research and development, and incubate its own tech industry. The bloc must also be mindful that its own regulations don't put future digital champions at a disadvantage when competing internationally or locally against other tech competitors. Beyond the economic incentives for boosting the EU's tech industry is the fact that it will be the tech leaders who will have the greatest say in shaping norms and rules globally.

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