

Editorial

# The Regulation of Media and Communications in the Borderless Networked Society

Pascale Chapdelaine <sup>1,\*</sup> and Vincent Manzerolle <sup>2</sup>

<sup>1</sup> Faculty of Law, University of Windsor, Windsor, ON N9B 3P4, Canada

<sup>2</sup> Department of Communication, Media and Film, University of Windsor, Windsor, ON N9B 3P4, Canada; vmanzero@uwindsor.ca

\* Correspondence: Pascale.Chapdelaine@uwindsor.ca



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This Special Issue<sup>1</sup> builds on the interdisciplinary dialogue that took place at the University of Windsor (Canada) symposium on the regulation of digital platforms, new media and technologies in the fall of 2019.<sup>2</sup> The collection gathers the works of several academics worldwide who reflect on some of the biggest questions and challenges of our time: how do transnational digital media platforms, algorithms and big data shape commerce, politics, speech and mobilization or resistance on pressing issues such as climate change, the pandemic, elections, racial discrimination or social justice? How do transnational digital platforms redefine the role of our governments, our everyday lives, the citizenry? How do governments, private undertakings, institutions and citizens resort to, or respond to, this ultra-mediatized networked environment? To what extent have national borders become obsolete in this networked global village?

Building on the scholarship of Canadian media theorist Marshall McLuhan<sup>3</sup> and others, as a point of departure to explore the regulation of new media, this Special Issue tackles several of these pressing questions in a post-colonialist (see [Chrystall 2021](#)), post-truth environment. Various theories about media, networks and borders at the intersection of law and regulation will, so we hope, better inform the goals that law and policy makers should pursue (or not). This is particularly timely as governments, private companies and citizens around the world face unprecedented challenges with flows of (dis)information about the global pandemic, hate speech and environmental crises.

## 1. Media and Borders

One of the goals of this Special Issue is to draw together a variety of parallel discussions about the intersection of media theory and law. It presents a sample of the ways in which this intersection might be developed. The collection is loosely inspired by Marshall McLuhan's project to critically assess the invisible or imperceptible impact of media change, if only obliquely, revealing a complex tangle of inversions, reversals, contradictions and unintended consequences. It considers media not solely as discrete devices or platforms, but rather as "environments" that produce and sustain particular forms of connectivity—between individuals, social structures, technologies and/or information. Moreover, these environments are a materialization of the specific spatio-temporal relationships afforded by each complex of media forms.

There are at least two implications emanating from this tradition that cut across the articles in this collection. The first deals with how to best conceptualize the non-neutrality of media technology and, consequently, its impact on the quality/character of information.

<sup>1</sup> Media and Communication Theory and the Regulation of the Networked Society: [https://www.mdpi.com/journal/laws/special\\_issues/media\\_communications](https://www.mdpi.com/journal/laws/special_issues/media_communications) (accessed on 6 October 2021).

<sup>2</sup> Media & Space: The Regulation of Digital Platforms, New Media & Technologies Symposium <https://www.uwindsor.ca/law/media-space> (accessed on 6 October 2021); see ([Morais 2019](#)).

<sup>3</sup> See ([Kahn 2021](#)) (allowing a brief incursion into Mc Luhan's views in his exchanges with former Canadian Prime Minister Pierre-Elliot Trudeau on matters including conceptions of privacy).

Harold Innis, McLuhan's intellectual precursor at the University of Toronto, produced an eclectic set of historical analyses that considered how different media shaped social, economic, juridical, epistemic relations in time and space, producing the "habits of mind" that linked, and often coordinated, individual behavior and social structures (i.e., legal systems). Innis' concept of "bias" (Innis 2007; Innis and Watson 2008) was precisely aimed at better understanding the material effects media have on the quality and character of knowledge. For Innis, technological development in the sphere of information and communication did not provide a straight line towards enlightenment. As Easterbrook (1953) once summarized, Innis's notion of "the bias of communication" was indicative of a lack of balance between "time and space, Church and Empire, stability and change, written and oral traditions, Roman Law and Common Law, force and sanction" (p. 301). Bias stems from the character of media and communications systems that produce singular points of view, shaping habits and attitudes of mind that restrict the possibility of understanding among peoples. Innis would thus warn us to be mindful of the 20th century's emphasis on expansive media environments that produce centralized political and economic power and our growing lack of sensitivity to traditions of speech, religion, and community. Instead, Innis (2007) noted that, "Enormous improvements in communication have made understanding more difficult" (p. 31). This counter-intuitive reversal would constitute one of the methods that McLuhan would later systematize in order to reveal the hidden or implicit impact of media (McLuhan 1988; McLuhan and Lapham 1994). Innis (Innis and Drache 1995) decried what he called the "mechanization of knowledge" (pp. 350–55) that seemed to detach the value and utility of knowledge from lived experiences through the convergence of bureaucratic and technological advances.

Innis, McLuhan and later thinkers such as Postman and Postman (2005) emphasized that the technological sophistication of information and communication could degrade the quality of knowledge (see Meyers 2021), that more information did not mean more knowledge (Comor 2002), that thought itself could be made more difficult with newer technology. Relatedly, Innis noted that media change could also enable the creation of "monopolies of knowledge" whereby information is controlled, accessed and made productive by a relatively elite/privileged strata of society. Hence, the technological mediation of information, and, as a consequence, knowledge itself, are core to the media-theoretical perspective identified by Innis and McLuhan. These approaches offer a corrective to perceptions of technological "neutrality" by emphasizing the process of "mediation". Prevailing notions such as a "marketplace of ideas" or "free flow of information" tend to reflect hegemonic interests while also limiting the purview of legal theory and regulatory frameworks when addressing new or emerging media technology. Considering the non-neutrality of media technology, this line of analysis opens up considerations about how technologies may be shaped by, and exacerbate, inequalities marked by class, gender and race, among others. The concept of media and mediation can help better identify these structural and material "biases" which, in turn, shape the development of digital technologies and thereby better inform regulatory and policy frameworks by making them more sensitive to how these potential biases can impact disparate groups of people (see Miroshnichenko 2021).

The second implication we want to highlight deals with how media theory adds unique insights to considerations of borders and "borderization" (Mbembe 2019) within a global networked society. Is the post-1989 dream of a borderless world now turned upside down? Sandro Mezzadra and Brett Neilson's *Border as Method* (Mezzadra and Neilson 2013) suggests that the expansion of borders after 1989 was a means of holding ideas of citizenship and sovereignty in crisis. When we held the Media and Space Symposium in Fall 2019, or shortly thereafter, the world was gripped with compounding changes and challenges to border regions: the Canada/USA border had closed to passenger travel but remained open to commercial flows; the United Kingdom and European Union were grappling with the results of the Brexit vote; migration between North Africa, the Middle East and Europe was straining relationships with the EU; and the Trump administration was simultaneously challenging the NAFTA agreement and proposing to erect a US–Mexican border wall.

Alongside their legal frameworks, borders can also be thought of as medial and material forces that span historical divides, political upheavals, as well as colonial and racialized experiences of nation and space.

Borders and boundaries not only apply to geopolitical matters, but also in a sociological sense, as in the shifting spatio-temporal boundaries between work and leisure, or private and public (see [Kahn 2021](#)). The introduction of new media suggests the creation or transformation of existing boundaries (political, social, cultural and geopolitical); at a conceptual level, media theory can inform how boundaries are challenged or reasserted through digital technologies (see [Chapdelaine and McLeod Rogers 2021](#)). How are media and material conditions implicated in regulating and shaping borderland regions as well as human narratives of these places? The tradition of McLuhan's media theory is particularly well suited to consider borders and boundaries as contradictory points of connection and disconnection, what he would refer to as "intervals of resonance" ([McLuhan 1977](#), p. 226), emphasizing forms of mutual irritation between cultures, traditions, institutions and forms of governance (see [Chrystal 2021](#)). In an era where borders are central mediating points in the global economy, a vast array of disciplines can benefit from thinking about borders in "media-theoretical" terms—emphasizing circulation, movement and temporality as core factors in considering regulatory stakes for future media technologies. As we now publish these articles, the world has continued to face the challenges of the COVID-19 pandemic after so many closures of national borders. All these political and social concerns invite us to consider the legal and material infrastructures of borders in the future. What might we predict about the future of vaccine requirements and passports as a mediating factor in who can traverse border regions? How will we address questions of equity if vaccine passports are accessible only through specific technologies such as smartphones?

## 2. Networks

Media and globalization are interwoven, a fact McLuhan captured in his concept of the "global village." However, this awareness has a much longer intellectual tradition. Indeed, the creation of a global "network" society has been a goal intrinsic to European modernity, a process itself facilitated by colonial exploitation. [Mattelart \(2000, 2003\)](#) identifies the various ways European Enlightenment thought, including key philosophical and economic thinkers, laid the groundwork for a project of "networking the world" (2000) in order to create a utopian global market. With each new wave of information and communication technologies—telegraph, telephone, broadcasting, satellite, Internet—new political and economic energies are mobilized to attain a utopian global society that would realize a specifically European set of Enlightenment ideals for human sovereignty and collective life (see [Meyers 2021](#)).

The creation of a global economy premised on the power of networks reaches its 20th century iteration in the works of [Bell \(1976\)](#), but especially the sociologist Manuel Castells, whose *Rise of the Network Society* (1996) offered the blueprint for conceptualizing and anticipating the effects of networks on a global scale. In the 1990s, the centrality of the "network" as a key term used to evaluate the emergence of a prospectively new type of society—"the network society"—meant understanding this term as a mediating function of the *infrastructure* and infrastructure; the network, which comprises a set of structured relations between nodes, connected by relays. "Networks" and the "Network Society" are terms that capture the "spirit of the age" ([Barney 2004](#)).

The project of creating a global order based on ICT networks lives on to this day within regulatory bodies such as the International Telecommunications Union (motto: "committed to connecting the world") and ICANN (motto: "one world, one Internet"). Similarly, the failed New World Information and Communication Order (NWICO), and the World Summit on the Information Society (WSIS), were initiatives to envision and coordinate, at least in principle, a more equitable and integrated global network society.

The supra-national global networks supporting the "free flow of information" doctrine ([Schiller 1975](#))—a doctrine that still persists, if informally, in the data monetization

strategies of major tech firms—provide new challenges to both the concept of borders (and borderization), while also challenging regulators to try and balance goals of national sovereignty against the principle of “immediacy” (i.e., information services and network connectivity are available everywhere, at any time) upon which contemporary globalized industry, commerce and culture depends. The network form, as Castells presciently identified, reshaped the operation of corporations, public institutions, global supply chains and social relationships. Similarly, networked social movements (environmental, anti-capitalist) or security threats (terrorism, cybercrime, cyberwar) have emerged to exploit/leverage the power of networks (see [Nixon et al. 2021](#)). [Dyer-Witheford \(1999\)](#) has argued that digital networks have further accelerated the circulation of social movements and struggles for justice globally (see [Meyers 2021](#)). Networks are also central to thinking about “virality,” not only with respect to a global pandemic whose routine surveillance depends upon a kind of network analysis, but also in the propagation and remixing of viral media content—including disinformation, fake news, clickbait, memes—through social networks.

### 3. Pandemics and Environmental Crises

Theorizing media has much to offer in an era grappling with global environmental crises (see [Nixon et al. 2021](#)) and pandemics. McLuhan identified a heterogeneous “media environment” bound by its materiality and used terminology suggestive of the *real* costs and impact of digital media technologies on or for the environment (for example, in the use of resources such as water and energy or in the production of e-waste). Yet, these very media are directly implicated in any collective response to environmental crises. As an urgent newsworthy story of global public interest, news of the environmental crisis must also struggle for representation within a competitive attention economy that incentivizes clickbait, disinformation and infotainment.

Itself a symptom of multiple global environmental crises, the pandemic has catalyzed a deeper dependence on media technologies, making ubiquitous connectivity an essential infrastructural requirement for everyday life—giving rise to seemingly contradictory fights over the right to connect (or be connected) and the right to disconnect (from, e.g., work). Tracking apps, vaccine passports, public health surveillance, all exacerbate surveillance trends that pre-exist the pandemic, but gives them a new urgency, particularly around concerns over potential overreach and abuse. Privacy concerns amidst growing surveillance practices (for example, in the form of contact tracing or the usage of vaccine passports) provide an urgency at the regulatory level that require a nuanced understanding of the tensions and contradictions that inhere in the media environment more broadly. The convergence of a global pandemic and cascading environmental crises has amplified all prior urgencies related to forward-looking regulatory approaches to digital media and platforms.

### 4. Regulation

The interdisciplinarity of this Special Issue between law, media and communication theory brings together many understandings of regulation. Perhaps more than other junctures, the encounter of these disciplines lays bare the limitations of traditional understandings of regulation as relating to a state or other authority dictating rules of conduct. Media, algorithms, network and digital platform architectures also dictate less conspicuous, but no less real, rules that shape organizations’ conduct and human behavior.

In its more traditional understanding, and the one commonly shared by legal scholars, *regulation* refers to “an official rule made by a government or some other authority” ([Oxford Learners Dictionary 2021](#); see [LEXICO](#); [Hamilton and Robinson 2019](#), p. 16; [McQuail 2010](#), para. 1). While regulation is predominantly linked to some form of rules of conduct emanating from the legislative arm of the state (statutes, regulations) or government (specialized) bodies’ orders or directives, other forms of rules emanating from international or industry specific organizations (e.g., standard setting, self-governance or voluntary best practices) are also often referred to as a non-binding or non-coercive form of *regulation*.

For media and communication theorists, other forms of rules dictating conduct deserve as much, if not more, attention. While the idea is not new that software code and algorithms set important unwritten rules or *lex informatica* (Reidenberg 1997) that dictate conduct or behavior equivalent to legal rules, many facets of the networked society intensify exponentially the manner in which algorithms regulate the conduct of organizations or individuals. Transnational digital platforms and their architectures, network effects, market dominance, the expanded extraction of users' and other big data, the personalization of information and services call in question the purposefulness and efficacy of state regulation at its core (Cohen 2017).

When combining law, media and communication theory together, the subject matters of regulation that quickly come to mind include media content or speech regulation and, not surprisingly, these are integral to this Special Issue (see Chapdelaine and McLeod Rogers 2021; Miroshnichenko 2021; Meyers 2021). Furthermore, the potential areas of friction between the content people engage with online, and what happens to their personal data and privacy when they do so, raises issues of regulation that are also tackled in this collection (see Chapdelaine and McLeod Rogers 2021).

The dialogue enabled by the Special Issue's interdisciplinarity will invite or remind law makers, legal scholars to rethink the role and capacity of state regulation. It may also solicit media and communication scholars to explore how research on media environments or network effects could be put at the service of smarter state regulation when the latter is deemed necessary.

## 5. Interdisciplinarity as it Connects to Law and Regulation

Interdisciplinarity contends with borders—a central theme of this Special Issue—here, the ones that are erected around law, communication, media, anthropology, archives theory, etc. Seeking new insights, connecting and cutting across disciplines, interdisciplinary scholarship requires the identification and (self)awareness of how and why we draw boundaries within and between the disciplines we examine (see Baron 1999, p. 1061).

There is a wealth of interdisciplinary scholarship as it relates to law. Many of the articles that form part of this collection reflect a *Law and Society* approach, whereby laws and court decisions need to be understood within their context as opposed to a self-contained, autonomous body of binding rules (Mather 2011) (see Meyers 2021; Chapdelaine and McLeod Rogers 2021; Miroshnichenko 2021). As a subset to this approach, the Special Issue engages with the *Law and Literature* theoretical approach, under which literature, “sheds light on law's gaps, rhetoric, and moral stance” while providing useful interpretive methodology applied to fictional literature. (Baron 1999, p. 1060). One contributor to the Special Issue reflects on how fictional works may provide valuable sources and norms to law makers in the morass of (mis)information facilitated by social media and transnational digital platforms (see Meyers 2021). Other contributors build on the rich scholarship of law and communication theory which examines the ongoing challenges of communication, broadcasting and Internet regulation (Hamilton and Robinson 2019; Bannerman 2020) (see Chapdelaine and McLeod Rogers 2021).

There is a somewhat subversive nature to interdisciplinarity when it relates to law. The doctrinal approach to law, the one applied by judges and legal practitioners and to a large extent, the one taught in law schools, rests upon hierarchical, prescribed legal principles (such as the supremacy of legislation over case law) and of rules, e.g., *stare decisis*, statutory or contract interpretation. These principles and rules constitute law's own embedded *methodology* and, to some, one that should remain self-contained and autonomous and follow its own logic, unconcerned with broader social policy goals or aspirations. As such, this *methodology* intrinsic to law and its practice, and the notion that law is a self-contained body of binding rules and norms, are at odds or even incompatible with interdisciplinarity.

The tensions between, on the one hand, interdisciplinary or other critical theoretical approaches to law and, on the other hand, a more traditional doctrinal approach to law are palpable in this Special Issue. These tensions are apparent in how different disciplines



(or theoretical approaches within those disciplines) shape our understanding of the nature and effects of regulation on media, communications and the internet.

A media theory approach might view regulation as one among several social phenomena that may fall prey at par with other phenomena, e.g., to the uncontrollable powers of social media and their platforms. For instance, one contributor approaches the regulation of Facebook and other similar transnational internet platforms from an ecological theory perspective of media and raises skepticism about any possibility to successfully regulate such entities (see [Miroshnichenko 2021](#)).

A strict legal approach to regulation may assume, in large part, that legislative reform will lead to its intended consequences given the coercive powers that laws generally confer to the state. This explains, for instance, why Bill C-10 proposal to amend the outdated Canadian Broadcasting Act was recently fought tooth and nail. One of the articles' law and media interdisciplinary approach highlights the real effects of regulation (sometimes unintended) and the dislocation of vested interests that any regulatory reform might entail, while also critiquing top-down state regulation of internet broadcasting (see [Chapdelaine and McLeod Rogers 2021](#)).

The dialogue engendered by diametrically opposed views on the nature and effects of regulation of media and, more generally, the internet, illustrates the value of transgressing borders and cutting across disciplines (even if one succeeds only marginally in doing so). A media studies or sociological approach to regulation may leave some legal scholars, legal practitioners or law students skeptical about the outcome of such endeavors. Conversely, beliefs in the capacity of regulation to tackle the borderless internet may be viewed by media or communication theorists as misguided or utterly naïve. Whatever views one may have about the regulation of media and communication, our hope is that the encounters facilitated through the discipline-border crossing of this Special Issue will create some points of resonance that will encourage further scholarship on the themes covered in this collection. *Bonne lecture!*

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