

- Internet and Surveillance: The Challenges of Web 2.0 and Social Media*, New York and London: Routledge.
- UNESCO (1980) *Many Voices, One World: Towards a New, More Just and More Efficient World Innovation and Communication Order* (the MacBride Report). Online. Available HTTP: <http://unesdoc.unesco.org/images/0004/000400/040066eb.pdf> (accessed 30 May 2012).
- United Nations (2003) *Declaration of Principles: Building the Information Society—A Global Challenge in the New Millennium*, Document WSIS-03/GENEVA/DOC/4-E. Online. Available HTTP: <http://www.itu.int/wsis/docs/geneva/official/dop.html> (accessed 30 May 2012).
- Van Dijk, G., Minocha, S. and Laing, A. (2007) 'Consumers, channels and communication: Online and offline communication in service consumption,' *Interacting with Computers*, 19(1): 7–19.
- Walk, H. (2008) *Partizipative Governance: Beteiligungsformen und Beteiligungsrechte im Mehrebenenensystem der Klimapolitik*, Wiesbaden: VS Verlag.
- Warschauer, M. (2001) 'Online communication,' in R. Carter and D. Nunan (eds.) *The Cambridge Guide to Teaching English to Speakers of Other Languages*, Cambridge: Cambridge University Press. Online. Available HTTP: [http://www.gse.uci.edu/person/warschauer\\_m/oc.html](http://www.gse.uci.edu/person/warschauer_m/oc.html) (accessed 30 May 2012).
- Weber, R. H. (1999a) *Neustrukturierung der Rundfunkordnung*, Zurich: Schulthess.
- (1999b) 'Information und Schutz Privater,' *Zeitschrift für Schweizerisches Recht*, II: 1–86.
- (2004) 'From "Many Voices One World" to "Information Society",' *Computer Law Review International*, 4: 97–104.
- (2007) *Media Governance und Service Public*, Zurich: Schulthess.
- (2008) 'Transparency and the governance of the Internet,' *Computer Law and Security Report*, 24: 342–348.
- (2009a) *Shaping Internet Governance: Regulatory Challenges*, Zurich: Schulthess.
- (2009b) 'Accountability in Internet governance,' *International Journal of Communications Law & Policy*, 13: 144–159.
- (2011a) 'Accountability in the Internet of Things,' *Computer Law and Security Review*, 27: 133–138.
- (2011b) 'Switzerland: Data protection compliance of Google Street View,' *Computer Law Review International*, 3: 87–89.
- and Grosz, M. (2007) 'Internet governance: From vague ideas to realistic implementation,' *medialex*, 3: 119–135.
- and — (2009a) 'Legal framework for media and democracy,' *Communications*, 34(2): 221–232.
- and — (2009b) 'Legitimate governing of the Internet,' *International Journal of Private Law*, 2: 316–330.
- and Gunnarson, R. S. (2012) 'A constitutional solution for Internet governance.' Online. Available HTTP: [http://user.xmission.com/~kirton/images/News\\_articles/gunnersonsolution.pdf](http://user.xmission.com/~kirton/images/News_articles/gunnersonsolution.pdf) (accessed 30 May 2012).
- and Schneider, T. (2009) *Internet Governance and Switzerland's Particular Role in its Processes*, Zurich: s.n.
- and Weber, R. (2010) *Internet of Things: Legal Perspectives*, Zurich: Schulthess.
- Woorcup (2010) *Internet Censorship 2010 Report*. Online. Available HTTP: <http://woorkup.com/2010/06/27/internet-censorship-report/> (accessed 30 May 2012).
- World Trade Organization (2004) *United States: Measures Affecting the Cross-Border Supply of Gambling and Betting Services (US-Gambling)*, WT/DS285/R, Panel report. Online. Available HTTP: [http://www.wto.org/english/tratop\\_e/dispu\\_e/285r\\_e.pdf](http://www.wto.org/english/tratop_e/dispu_e/285r_e.pdf) (accessed 30 May 2012).
- Young, S. B. (1989) 'Reconceptualizing accountability in the early nineteenth century: How the tort of negligence appeared,' *Connecticut Law Review*, 21: 197–292.

## Self- and co-regulation

### Evidence, legitimacy and governance choice

Michael Latzer, Natascha Just and Florian Saurwein

The combination of globalization, liberalization and the convergence of communications markets have triggered major changes in the governance arrangements of the communications sector, including the growing role of alternative modes of regulation (e.g. self- and co-regulation). These alternatives to traditional statutory regulation are marked by a stronger involvement of non-governmental actors in regulatory processes. Both industry and policymakers consider alternative modes of regulation to have great potential for solving contemporary problems of communications regulation. The increase in alternative regulatory institutions, their potential advantages and disadvantages as compared to state regulation, and challenges of governance choice between available modes of regulation have led to an increasing political and scientific interest in self- and co-regulation. This chapter brings together central findings from research on alternative modes of regulation in the convergent communications sector, focusing on results regarding evidence, legitimacy and governance choice.

#### Communications governance in the regulatory state

Traditionally, national governments have played a pivotal role in the development and control of the electronic communications sector. Strong, sector-specific state regulation, particularly monopoly regulations and public property in market-dominant companies, have characterized both the electronic media and the telecommunications sectors in most developed economies worldwide (Noam 1991, 1992; Latzer 1997; Schneider 2001; van Cuilenburg and McQuail 2003; Bauer 2010). In recent decades, this dominant pattern of government intervention in the electronic communications sectors has eroded, and the emerging new pattern of control is leading to a transformation of statehood in the convergent communications sector (Latzer 1999; Just and Latzer 2004). This new pattern of statehood is characterized by changes in content (policy), institutional structures (polity) and processes (politics). With respect to the institutional dimension of communications governance, the transformation of statehood is reflected in several trends (Latzer 2000), among others by a shift from national regulation to international regulation, by the establishment of independent regulatory agencies (IRAs), by an increase in self- and co-regulation, and by a trend from central regulation

to decentralized, technology-based self-help by individual users. In sum, these trends lead to a redistribution of regulatory responsibilities in the governance arrangement of the communications sector. However, the changing role of the state in general, and self- and co-regulation in particular, are not unique to the communications sector.

Symptoms similar to those identified with the concept of a transformation of statehood in the communications sector are discussed in various other sectors as well. They are generally dealt with as shifts from government to governance (Rosenau and Czempiel 1992; Rhodes 1996), from hierarchical to a cooperative form of government (Mayntz 2003, 2009), from an interventionist/positive state towards a regulatory state<sup>1</sup> (Majone 1996, 1999; Moran 2002), and even a post-regulatory state (Scott 2004). The trends refer to several changes in the institutional formation and the modes of steering and control, for instance to the emergence of responsive regulation (Ayres and Braithwaite 1992; Baldwin and Black 2007) and to new modes of governance (see Hèritier 2002; Treib, Baer and Falkner 2005) that rely on more indirect approaches for achieving behavioral change (Knill and Lenschow 2005).

Today, the institutional governance approach assists scholars of various disciplines in their efforts to analyze the complex patterns of steering and control in contemporary societies (Mayntz 2008). The governance approach extends the traditional, rather narrow focus on national-hierarchical government to the interplay between various levels of control and to the changing division of regulatory responsibilities (Rosenau and Czempiel 1992). It recognizes varieties in institutional steering and control arrangements—that is, the varieties in rules, organizations and actors in their respective roles as controllers and controllees, and the varieties in control mechanisms (Scott 2004). It describes, for example, the vertical and horizontal extension of government (Engel 2004; Mayntz 2009). At the vertical level, there are changing institutional arrangements of regional, national, supranational and international players toward a multilevel governance structure. At the horizontal level, governance expands from governmental regulation to the inclusion of private/societal actors that take over regulatory tasks and form new regulatory networks beyond, and in cooperation with, governmental actors (Streeck and Schmitter 1995; Ronit and Schneider 1999; Rhodes 1996; Scott 2002; Buthe and Mattli 2011). Scholars have also observed and described these trends for governance in the communications sector (e.g. Holznapel and Werle 2004; Raboy and Padovani 2010; Puppis 2010).

These general governance trends often form the wider background for scientific analyses of self- and co-regulation. More narrowly, their analyses are driven by observations and considerations such as: (1) the growth in attention for and trust in alternative regulatory solutions by politics and industry; (2) an increase in the number of alternative regulatory institutions; and (3) the weighting of potential benefits and drawbacks of self- and co-regulation as compared

<sup>1</sup> The emergence of the *regulatory state* is strongly associated with the rise of non-majoritarian institutions (Thatcher and Stone Sweet 2002) in general and independent regulatory agencies (IRAs) in particular. Analyses of the regulatory state therefore focus on the politics of delegation of regulatory powers, the rise of independent regulatory agencies, the state of de facto independence, and the trade-off between efficiency and democratic accountability (Jacint, Levi-Faur and Fernandez 2009; Gilardi 2008, 2007; Maggetti 2007; Hans-Bredow-Institut *et al.* 2011). Independent regulatory agencies, as well as alternative modes of regulation, serve as indicators of the trends from government to governance and from the interventionist to the regulatory state. However, compared to IRAs, self- and co-regulatory arrangements represent a further step away from traditional, politically dominated state institutions towards indirect government.

to state regulation (Latzer, Just, Saurwein and Slominski 2002; 2003). As regards potential advantages, alternative regulatory institutions are expected to:

- i. overcome the problem of information deficits of state regulation because they benefit from greater expertise and special skills within the industry (e.g. of a technical nature);
- ii. be faster and more flexible than state regulation, mostly because they are not bound by statutory procedures to the same extent as state regulation;
- iii. reduce regulatory cost to the state and implementation costs in general, especially because profit-driven companies are supposed to carry out the self-regulatory process more cost-efficiently; and
- iv. be applicable in areas sensitive to state regulation (e.g. in content regulation, where government intervention may conflict with the principle of freedom of expression).

However, the literature also refers to a list of potential disadvantages of self-regulation as compared to state regulation. Alternative modes of regulation may:

- i. provide symbolic policy with weak standards, ineffective enforcement, mild sanctions and limited reach, because they often apply only to those who voluntarily participate and not to all members of an industry;
- ii. result in self-service by the industry, with public interests being neglected vis-à-vis private interests—and the outsourcing of regulation may also result in a loss of know-how on the part of regulators, thus exacerbating existing information asymmetries;
- iii. entail the danger of cartels and other anticompetitive behavior, resulting from close cooperation between companies in self- and co-regulatory regimes—and the dominance of large, long-established companies in self- and co-regulation may produce solutions that discriminate against smaller enterprises and newcomers; and
- iv. decrease the democratic quality of regulation, especially owing to lack of accountability, transparency, legal certainty and the like.

The increase in political and industry attention to alternative regulatory solutions, their sharp increase in numbers, and considerations of advantages and disadvantages are often the starting point for case studies. The numerous issues that are dealt with can be grouped into five fields of analysis.

- i. For empirical and theoretical research on alternative modes of regulation, clear definitions and classifications are indispensable. They make it possible to analytically grasp applications and to assess transformation processes.
- ii. Research often concentrates on descriptive analyses of empirical evidence of self- and co-regulation. It tries to identify examples, modes of application and patterns of diffusion that contribute to the transformation of the governance arrangement in communications.
- iii. The rise of alternative regulatory institutions raises major questions about their implications. The danger of a steadily decreasing democratic quality of regulation is leading to a closer look at democratic standards such as participation and accountability (input legitimacy).
- iv. However, legitimacy of alternative regulatory institutions can also derive from valuable contributions to the achievement of public objectives (output legitimacy). Hence performance evaluation is a central, but rather difficult, task for research.

- v. Finally, the growing role of alternative modes of regulation gives rise to major questions about regulatory choice between available governance mechanisms. Research is developing approaches for *ex ante* assessments, and is focusing on the identification of factors that should be included in any effort to predict whether alternative regulatory arrangements are likely to emerge and to be effective.

### Definitions and classifications

Despite rising interest in alternative modes of regulation, definitions of self- and co-regulation vary widely. Even for self-regulation—which is well established in practice and has been subject to research for a long time—there is no “clear picture of its properties as a distinctive organizational form” (Porter and Ronit 2006: 42). Porter and Ronit argue that this is in part because:

... existing studies scattered around the social sciences have chosen to examine self-regulation as one variant of a broader spectrum of regulatory arrangements involving mixes of public and private elements (Grabosky 1995; Sinclair 1997) and analyzed under such diverse historical and contemporary names as gentleman agreements, codes of conduct, ethical guidelines, voluntary agreements, standards, certification schemes, guilds, charters, cartels, regimes, syndicates, networks, alliances, self-governments, private governments, private interest governments, partnerships and a vast variety of other forms. (Porter and Ronit 2006: 42)

On the one hand, there is a common understanding that alternative modes of regulation differ from pure state/governmental regulation, because they are marked by the involvement of non-governmental actors in regulatory processes. On the other hand, alternative modes of regulation are distinct from pure market coordination driven by the private interests of individuals and organizations, because regulation refers to intentional restraints on the conduct of market players with the goal of achieving public objectives. Alternative modes of regulation usually have identifiable institutional forms (norms, organizations) and make use of instruments that relate to at least one of the three stages in the regulatory process: rule-making, enforcement or adjudication. These characteristics constitute alternative modes of regulation as distinctive institutional phenomena.

“Self-regulation” is often referred to as a process in which rules that govern market behavior are developed and enforced by the governed themselves. It is often a collective, voluntary activity, involving market participants who agree to abide by joint rules, much like a club membership (NCC 2000; Gupta and Lad 1983). This standard definition of voluntary industry self-regulation is challenged, because examples point to potential shortcomings of this rather narrow understanding. In practice, not all self-regulatory institutions cover all regulatory stages, from rule-making to enforcement and imposing sanctions. Regulatory responsibilities may be split between state and private institutions along the regulatory process.<sup>2</sup> Alongside collective self-regulation there is also individual self-regulation, which is valid only for single companies. Such individual self-regulation can be referred to as “self-organization” (Puppis *et al.* 2004) and includes, for example, concepts of corporate governance and corporate social responsibility. Other individual forms of self-regulation can

<sup>2</sup> Standardization organizations usually do not provide certain enforcement mechanisms. Internet hotlines for reporting illegal content complement state enforcement, but the definition of what kind of content is illegal is defined in legislation, not by the hotline service providers themselves.

be observed at the user/consumer level. Measures are taken by individuals to protect their interests and rights, thus restricting their own behavior as well as the opportunities of suppliers, for example by means of filter software or privacy-enhancing technologies. These growing modes of individual self-regulation can be referred to as “self-help” (Dam 1999; Latzer and Saurwein 2008), and they often make use of technological architectures and their constraining effects, as pointed out by Lessig (1999).

Self-regulation is often a misnomer, because self-regulation by the industry only rarely exists without a contribution from the state (cf. Sinclair 1997; Price and Verhulst 2000). The relationships between the state and private institutions, the hybrid regulatory constellations involving public and private actors, the role of law and the involvement of government in alternative regulatory arrangements are therefore highlighted frequently in the literature (Michael 1995; Cane 1996; Doyle 1997; Gunningham and Sinclair 1999; Baldwin and Cave 1999; Ogun 2001; Black 2001, 1996; Engel 2004; Levi-Faur 2010). Many analytical classifications suggest analysis of alternative regulatory arrangements according to varying modes and degree of state involvement (Gunningham and Rees 1997; Latzer, Just, Saurwein and Slominski 2002, 2006; Bartle and Vass 2007). Many of these classifications are based on the term “self-regulation” but, by means of extensions in terminology, they also take into account forms of governmental involvement, such as enforced self-regulation (Braithwaite 1982; Price and Verhulst 2000), audited self-regulation (Michael 1995), mandated self-regulation (Gunningham and Rees 1997), regulated self-regulation (Hoffmann-Riem 2000; Schulz and Held 2002), or self-regulation in a wide sense (Latzer, Just, Saurwein and Slominski 2002). From an institutional perspective, regulation takes place on a continuum between pure state regulation, on the one hand, and pure self-regulation, on the other; this can generally be understood as a closely interlinked combination of state/public and societal/private contributions (Gunningham and Rees 1997; Sinclair 1997; Lehmkuhl 2008).

Another term that refers to the shared responsibility and partnership between industry and the state is “co-regulation,” which is used increasingly, but not consistently, in politics and research. In general, the “co-” points to the involvement of both governmental and private actors in the regulatory arrangement. Definitions of co-regulation sometimes specify the regulatory instruments with which governmental players define the formal basis for cooperation with private actors (e.g. by means of legislative acts and formal delegation of regulatory powers—see Latzer, Just, Saurwein and Slominski 2002). Broader concepts of co-regulation build on the “legal link” between private and state contributions to the regulatory arrangement (HBI and EMR 2006a). Others define co-regulation by structuring the distribution of responsibilities between governmental and private actors within the regulatory process (Ofcom 2006).

These classifications often focus on formal state contributions in alternative regulatory arrangements; they prove useful for the classification of regulatory institutions, for identifying formal state involvement in alternative regulatory arrangements and for monitoring institutional changes. In addition, it is important to consider less formalized state action, which is a more implicit, but nevertheless crucial, ingredient in the formation of governance arrangements. Bartle and Vass (2007: 894) propose a category called “tacitly supported self-regulation,” and Birnhack and Elkin-Koren (2003) point to the relevance of “invisible handshakes” between public authorities and private actors. State authorities can draw on a range of instruments to support alternative regulatory institutions, to make active use of them and to control them. These may be applied in a differentiated manner along different stages of the policy cycle, from agenda-setting and problem identification via organization-building and rule-making, to implementation/enforcement and evaluation (Porter and Ronit 2006). Various forms of the “shadow of hierarchy” (Héritier and Lehmkuhl 2008; Héritier and Eckert 2008) are marked by

varying degrees of intensity of state involvement, with measures ranging from soft forms of symbolic support to direct control in a co-regulatory framework (Latzer and Saurwein 2008).

### Evidence: Patterns of application

A growing body of literature depicts institutional changes in the governance arrangement to demonstrate evidence for emerging governance patterns. This calls for *descriptive analyses* of where and how alternative modes of regulation are applied in practice (and where not), and how alternative regulatory arrangements emerge, disappear and change over time. For analyses of patterns of application and transformation in communications, the first challenge is the definition of the communications sector. Should analyses be limited to mass communication services or should they also encompass services for individual and group communication? Is the focus on media content or should analyses be expanded to regulatory arrangements for communications infrastructure and transaction services such as e-commerce? Answers to these questions are not a matter of right or wrong, but strongly dependent on research interests and available resources. The convergence of communications sectors (broadcasting, telecommunications, print, Internet) and the changes of the techno-social communication systems toward mediamatics (see Latzer 1997) call for an integrated perspective (Latzer 2009), but comprehensive, all-embracing analyses of alternative modes of regulation in communications are an exception (Latzer, Just, Saurwein and Slominski 2002; PCMLP 2004). A review on mostly sectoral analyses reveals that alternative modes of regulation are applied in many subsectors of the communications market, and that many regulatory challenges overlap. Moreover, one can observe a strong increase of alternative regulatory institutions in communications since the mid-1990s, which is leading to challenging additional questions regarding their legitimacy, performance and governance choice.

In the press sector, the traditional regulatory structure is characterized by self-regulation, on the one hand, and a general legal framework, on the other. For professional ethics, there is a tradition of voluntary self-regulation of the press, while state authorities exert no appreciable influence. For this reason, there are very few co-regulatory systems that have been developed especially for the press (HBI and EMR 2006a; Puppis 2009). The self-regulatory practice has been institutionalized for the press by a large number of ethical guidelines and mediation services. It comprises both self-organization at the company level and collective self-regulation in the form of press councils. With comparative analysis, PCMLP (2004a; 2004c) finds that nine of fifteen EU states have press councils. Puppis (2009) describes twenty-three press councils in EU and European Free Trade Agreement (EFTA) countries. Europe's oldest press council is the Swedish Pressens Opinionsnämnd, which was established in 1916. The majority of "press" councils are responsible for journalism in different media (Puppis 2009), and in a reaction to online publishing many councils have extended their scope to online journalism.

Broadcasting is traditionally more strictly regulated by law than the press sector. Of traditional importance in Europe is the regulatory regime for public service broadcasting (PSB). Control of PSB is sometimes referred to as co-regulation, because it combines a legal framework with self-organization in the operational practice intended to foster PSB's independence from politics and state authorities. While collective broadcasting self-regulation was introduced early in the United States by the National Association of Broadcasting (Campbell 1999), it does not have a long tradition in European broadcasting. Only in recent times, with the liberalization of broadcasting in Europe, have self-regulatory institutions for commercial broadcasters emerged. These "self-regulation islands" operate within regulatory arrangements that are traditionally controlled by state regulatory institutions in a narrow sense and, to an increasing extent, by independent regulatory agencies (IRAs). Alternative modes of

regulation in European broadcasting more often take the form of co-regulation (e.g. Freiwillige Selbstkontrolle Fernsehen, or FSF, in Germany) than of self-regulation. One of the major fields of application of alternative modes of regulation in broadcasting is parental control, such as by means of program rating (PCMLP 2004a: 29f), combined with watershed regulations or filtering, which was introduced with the V-chip for analog television (Price 1998; Price and Verhulst 2002; PCMLP 2004a: 29f). Forms of alternative regulation in the broadcasting sector are not, however, restricted to programming. Developments on the television market are largely influenced by technical standards that are developed in industrial consortiums and in recognized standards bodies—the standards for digital broadcasting, for example, in the Digital Video Broadcasting (DVB) Project. Moreover, broadcasting governance is also influenced by alternative regulatory institutions in the film and advertising sectors.

The film industry is also controlled by varied regulatory institutions for age classification of movies (rating), which are carried out by public or private regulatory organizations. In the United States, for example, the Motion Picture Association of America has been operating a self-regulatory scheme since 1968. The German Freiwillige Selbstkontrolle der Filmwirtschaft (FSK), in contrast, is embedded in a co-regulatory framework. Many countries have a legal basis for film classification (see Olsberg/SPI *et al.* 2003), but specifications differ, among other things, according to whether they apply to cinema performances only or also include other presentation media (DVD, video, broadcasting). Leeway for self-regulation initiatives is created where downstream opportunities for exploiting the media are only marginally covered by governmental regulation. This flexibility is in some cases used in practice, for example in the UK by the Video Standards Council (VSC), in which a code of practice for promoting higher standards in the video industry has been developed. The Netherlands follows an integrated co-regulatory classification approach, with a rating scheme (*Kijkwijzer*) that covers movies, videos, DVDs and television programs, including music videos and some mobile services (NICAM 2007).

In contrast to the film and broadcasting industry, the electronic games industry (video, console and computer games) is comparatively young. Debates about the need for regulation started correspondingly late, and neither governmental regulation nor self-regulation has a long tradition here. In the United States, the Entertainment Software Association (ESA) established the Entertainment Software Rating Board (ESRB) as a non-profit, self-regulatory body in 1994. It assigns computer and video game content ratings, and enforces industry-adopted advertising guidelines for the interactive entertainment software industry. In many European countries where self-regulation is important, recourse is made to the Pan-European Game Information System (PEGI), launched in 2003 by the Interactive Software Federation of Europe (ISFE). Recently, PEGI has even replaced a few existing national age-rating systems. In Germany, rating of electronic games is carried out by the Unterhaltungssoftware Selbstkontrolle (USK), which is embedded in the co-regulatory arrangement provided by the Youth Media-Protection State Agreement.

Alternative regulatory institutions have also been established at international, European and national levels for advertising, marketing and public relations (PR). There are a large number of ethical guidelines and organizations for collective self-regulation (e.g. advertising councils), some with a long tradition (see Boddewyn 1985, 1988). The Advertising Code of the International Chamber of Commerce (ICC), for example, was adopted as early as 1937. In Europe, advertising self-regulation is coordinated by the European Advertising Standards Alliance (EASA). In many European countries, there is a dual system for advertising regulation, with both legal regulations and self-regulatory advertising codes and councils. But advertising is also one of the subjects recommended for co-regulation (HBI and EMR 2006a) and co-regulation has been applied successfully in the UK (Brown 2006). The diversification

of marketing and PR instruments that accompany technological developments in the communications sector (e.g. telemarketing, email marketing, and behavioral targeting) also results in new self-regulatory initiatives. Codes of conduct are developed for email marketing, such as in the German Dialog Marketing Association (DDV). At the international level, the Interactive Advertising Bureau Europe (IAB Europe) recently launched a self-regulatory scheme for better privacy and data protection in online media. In the future, privacy-enhancing technologies (PETs) are also expected to gain importance, and implementation responsibilities will shift to the individual user.

The telecommunications industry in most developed economies was for a long time characterized by strong sector-specific state regulation, particularly monopoly regulations and public property in market-dominant companies (Bauer 2010). Alternative modes of regulation did not play a major role, apart from technical standardization (Werle 2001), for example by the European Telecommunications Standards Institute (ETSI). With the liberalization of telecommunications sectors, the governance arrangement has changed. Alternative modes of regulation have gained in importance for selected governance issues in telecommunications. Examples are the coordination of administration for interconnection, transparency regulations for premium telecommunications services (e.g. ICSTIS in the UK and DVTM in Germany), coordination of decisions on antenna positions, and protection of minors from access to harmful content on mobile devices. Content regulation is a new challenge to the telecommunications industry. The first self-regulatory reactions were observed in the UK and Germany in 2004–05. In 2004, UK mobile operators announced a joint code of practice for the self-regulation of new forms of content on mobile phones and subsequently established the British Independent Mobile Classification Body (IMCB), an independent organization for classifying content that is distributed via mobile phones. The classification system is based on a self-rating procedure implemented by the content providers. The IMCB examines complaints about incorrect assignments. In Germany, mobile operators agreed on a code of conduct for the protection of minors in 2005. One year later, the mobile initiative merged into the Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V. (FSM). More recently, at the European level, the European Commission has initiated the European Framework for Safer Mobile Use by Young Teenagers and Children. The framework describes principles and measures that the signatories committed themselves to implement at a national level throughout Europe, including access control for adult content, awareness-raising campaigns for parents and children, the classification of commercial content according to national standards of decency and appropriateness, and the fight against illegal content on mobiles.

Many of these examples show how traditional sectors are expanding into the Internet realm and how established regulatory institutions are extending their scope to Internet issues, which leads to regulatory convergence (Latzer 2009). Internet diffusion has also led to the establishment of new organizations and standards (PCMLP 2004b; Tambini, Leonardi and Marsden 2008). These cannot look back on any historical traditions, but, right at the beginning of the Internet's development, models of self-regulation were strongly promoted to protect "the Net" against interference from governmental institutions and legislative regulation—"Keep your laws off our Net!" was the slogan (Boyle 1997: 189). This normative claim, combined with the need for substantial technical expertise, might have been an important lesson why essential technical standardization of the Internet is carried out by expert bodies such as the Internet Engineering Task Force (IETF), the Internet Architecture Board (IAB) and the World-Wide-Web Consortium (W3C) with hardly any formal governmental involvement. The standardization bodies are characterized as open, collaborative organizations, "resembling a fluid and loosely linked network of individuals and institutions under a

common structural framework" (Dutton and Peltu 2005). Stronger (inter-)governmental involvement is evident for regulation of the domain name system by the Internet Cooperation of Assigned Names and Numbers (ICANN). ICANN assumed regulatory responsibilities under a US Department of Commerce contract and established the Governmental Advisory Committee (GAC). Yet the relationship between users at large, governments, and technical and business communities is still a process of continued redefinition of roles, rights and duties (Dutton and Peltu 2005).

Informal social standards for Internet users (Netiquette), formal technical standards (protocols, codes) and organizations for domain-name administration are increasingly being supplemented by other self- and co-regulatory institutions for Internet issues. Since the mid-1990s, for example, national Internet service providers associations (ISPAs) have been set up, which take over self-regulatory tasks and develop codes of conduct (PCMLP 2004a, 2004b). Hotlines for illegal Internet content are also being installed, such as the Meldpunt ter bestrijding van Kinderpornografie op Internet in the Netherlands and the Internet Watch Foundation (IWF) in the UK. They use "notice and takedown procedures" to support governmental agencies in combating illegal content. In addition to the initiatives of cross-industry associations, various sectoral initiatives have been started at the Internet content provider (ICP) level. For example, the mid-1990s saw the foundation of the Health on the Net Foundation (HON) and the adoption of a HON code of conduct for the sensitive medical and healthcare information sector on the Internet (Boyer *et al.* 1998; Boyer and Geissbuhler 2005).

The growth of Internet content and sites and the resulting increase in importance of providers of search services has led to self-regulation. There are forms of individual self-regulation (self-organization) by operators of search engines, such as Google's Code of Conduct (2004) and Yahoo's Corporate Governance Guideline (2006). In 2005, the German search engine providers formed the first worldwide collective initiative. The Selbstkontrolle Suchmaschinen was established under the umbrella of the Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V. (FSM) and adopted its Subcode of Conduct for the Search-Engine Providers.

Another major policy field for self- and co-regulatory approaches on the Internet is the protection of children by content rating and filtering (Keller and Verhulst 2001; Lievens, Dumortier and Patrick 2006; Latzer and Saurwein 2008; Lievens 2010). Complex regulatory systems with major industry participation are emerging for rating and filtering digital content. Forms of collective self-regulation are found in both the development of rating systems and in the technical standardization of filter software. However, so far, a couple of more or less ambitious initiatives for content rating have failed, most prominently the Internet Content Rating Association (ICRA) (Archer 2009). Internet rating and filtering models are often based on a self-rating approach in which producers or providers of the content rate it themselves. Here, individual self-restriction sees them comply with the standardized criteria agreed upon beforehand in the context of collective self-regulation. Categorization of content that is possibly harmful or unsuitable for minors, e.g. through rating and labeling in combination with technical solutions, such as filtering and access control, is frequently mentioned in the various alternative regulatory initiatives.

Increasing user-generated content (UGC) and the rapid growth of social network services are accompanied by self-organization and self-regulation. IDATE, TNO and IViR (2008) found eighteen codes and guidelines for UGC in different industries. A frequently addressed issue in the codes and guidelines is the infringement of intellectual property (IP) rights by online services and on UGC platforms. Several initiatives have been set up especially to fight



IP infringements. Many codes also address issues such as illegal content, hate speech and obscenity, as well as unsuitable or undesirable content that is not necessarily illegal. The origin of these codes and guidelines varies from initiatives that have some level of government involvement, to collective self-regulatory initiatives of the industry or individual companies. Thanks to their "wiki" nature, some self-regulatory initiatives even give individual users a hand in making the codes (IDATE, TNO and IViR 2008: 57). At the European level, in 2009 the European Commission initiated the Safer Social Networking Principles for the EU.

Finally, alternative modes of regulation on the Internet are also applied in the context of e-commerce (de Bruin *et al.* 2005). They focus on transactions and they have been established to enhance consumer protection and to increase consumer confidence in e-commerce services (OECD 1999). Alternative regulatory institutions typically operate with codes of conduct, trustmarks/quality seals, or alternative dispute resolution (ADR) systems such as ombudsman schemes. Following the Internet euphoria of the late 1990s, numerous trustmarks and online dispute resolution schemes (ODR) were established, but only a few trustmarks have achieved significance in the marketplace (Calliess 2007) and many ODR systems have already ceased (*ibid.*). Webtrust and Eurolabel are among the bigger initiatives that operate on an international scale, but quality seals and dispute resolution systems are also offered by many national trade associations and private companies. Transaction-related self-regulation in order to increase consumer trust has also emerged in the field of online gambling. The E-Commerce and Online Gaming Regulation and Assurance (eCogra) operates a control scheme under which more than 140 online gambling services have been certified. The interactive communication capabilities of the Internet have also enabled other alternative modes of governance in e-commerce, such as the establishment of large-scale reputation mechanism systems, including collaborative ratings and personalized evaluation (Zacharia, Moukas and Maes 2000; Dellarocas 2003). These decentralized mechanisms complement both state and industry self-regulation in e-commerce.

This brief overview of examples of self- and co-regulation in communication markets shows a variety of applications and some patterns of diffusion. Self-regulation already has a long tradition in the communications sector. Above all, there is a long history of institutions for technical standardization in communications, as well as ethical guidelines for journalism and advertising (press and advertising codes and councils). In the convergent communications sector, applications were extended to areas such as (mobile) telephony and Internet-based services, and the rapid growth of the Internet, in particular, has led to a significant increase in new self-regulatory institutions. With their wide range of initiatives (codes of conduct, rating/filter systems, hotlines, quality seals), they contribute to the implementation of public interest in the convergent communications sector and complement existing state regulatory institutions. A variety of regulatory goals are being pursued by means of self- and co-regulation, ranging from consumer protection (e.g. e-commerce) to the promotion of effective competition and market development (e.g. Internet domain-name administration), to content-related goals such as the protection of minors from harmful content. The increase in alternative regulatory institutions is leading to questions regarding their legitimacy, performance and governance choice.

### Legitimacy

The rise of alternative forms of regulation is often accompanied by concerns regarding potential risks. One of the dangers is that the growing application of self- and co-regulation may result in a steady decrease in the democratic quality of regulation—that is, a decline in

legitimacy, accountability and control of the regulatory arrangement (see Parker 2002). In "free" economies and societies, regulatory institutions that restrict market behavior need to justify their market interventions, legitimacy of authority, and adequate modes of control (e.g. to counter abusive practices). Justifications for market interventions via private or public regulation include usually potential market failures, and the goal of pursuing public social and economic objectives in a sector. Regarding legitimacy and control, the picture is more complex. State regulatory institutions acquire their legitimacy from public elections, political responsibility and parliamentary control. Independent regulatory agencies, as well as co- and self-regulatory institutions, operate at a distance from traditional governmental institutions, and they are not bound by the mechanisms and standards of the traditional parliamentary-representative model. Hence scholars and politicians alike fear insufficient democratic control, a lack of accountability and an unbalanced representation of interests (e.g. the absence of proper stakeholder involvement in alternative regulatory arrangements). Since parliamentary representative modes of control are hardly applicable to alternative regulatory institutions, the shift from an interventionist to a regulatory state is accompanied by the search for standards by which the democratic quality of alternative modes of regulation may be assessed.

There is a rich literature on normative democratic standards for regulatory institutions. Measures to promote democratic quality include clear objectives, due process, contestability of decisions and transparency. Adequate stakeholder involvement, in particular, is considered essential to counter self-service and unbalanced representation in an alternative regulatory arrangement. The institutional setting is supposed to ensure that no single institution controls the entire decision-making process. In terms of input legitimacy, relevant stakeholders are to be empowered to express their views and concerns and to participate in the regulatory process on an equal basis. For independence from interference by single interested parties, the rules of appointment and the sources of funding are additional relevant organizational factors that may promote or inhibit the balance of interests.

Assessments of alternative regulatory institutions against these criteria often show deficits in meeting the standards. Empirical analysis of the institutional design of more than twenty organizations in the Austrian convergent communications sector showed that criteria such as openness and stakeholder involvement are met only partly (Latzer, Just, Saurwein and Slominski 2006: 163f.). In particular, there are high barriers to participation, because many alternative regulatory institutions are either fully closed in respect to participation by outsiders, or characterized by significant access barriers (e.g. financial barriers) or narrowly defined target groups, where admission is subject to special criteria (e.g. compulsory industry membership or special expertise). Analysis also shows that the openness to participation in alternative regulatory institutions, as well as the *de facto* involvement of stakeholders, rises with increasing state involvement. Stakeholders are more often involved in co-regulatory arrangements than in self-regulatory schemes. However, analyses of the Hans-Bredow-Institute and the Institute for European Media Law (HBI and EMR 2006a) point out that openness and stakeholder involvement are considered too weak even in co-regulatory systems. This has to be stressed, because the legal demand for adequate stakeholder involvement is a potential technique in co-regulatory schemes, in which a regulatory organization may not gain accreditation without appropriate stakeholder involvement.

"Multi-stakeholderism" is heavily promoted, especially for regulatory approaches in the Internet realm (e.g. Cave, Marsden and Simmons 2008). However, a more in-depth analysis reveals that the involvement of non-industry members is a highly controversial topic both in theory and practice. The UK National Consumer Council (NCC) recommends that up to 75 percent of a co-regulatory organization's governing body should be made up of

independent representatives (NCC 2000). From a theoretical point of view, Ofcom (2004) points out that there is a clear tension between the desirability of achieving independence and the objective of introducing industry expertise.<sup>3</sup> Investigations show that there is no standard pattern for the involvement of non-industry members in alternative regulatory institutions (Latzer *et al.* 2007). The modes of involvement differ depending on the institutional structure of the organizations (involvement in supervisory bodies, governing bodies, complaints boards, appeals units). Adequate involvement of non-industry members does not necessarily depend on significant involvement of non-industry members in each single decision-making unit, but on an appropriate overall mix of industry and non-industry members to allow for the balancing of interests. However, stakeholder involvement is not the only way in which to control alternative regulatory organizations and to counter industry self-service. Under certain circumstances, non-industry groups may fulfill a critical watchdog function (even better) from outside the alternative regulatory institution, for example via criticism of industry schemes and periodic critical review (Latzer, Just, Saurwein and Slominski 2007).

Finally, there are doubts that all alternative regulatory institutions should be measured against the same standards. Not all alternative regulatory institutions are equipped with the same regulatory powers, and it could be argued that the demand for democratic quality increases with the amount of regulatory power that an institution holds. Factors that have to be taken into account are the status of the regulatory institution in the respective branch and policy field, the intensity of intervention in terms of enforcement and sanction powers (Latzer, Just, Saurwein and Slominski 2002), and the impact of regulatory measures on third parties that are not voluntarily participating in the alternative regulatory scheme (Saurwein 2011). The latter is evident (and problematic), for example, for technology-based regulatory solutions that restrict access to particular services and content (Tambini, Leonardi and Marsden 2008; IDATE, TNO and IViR 2008; Marsden 2010; Deibert *et al.* 2008; McNamee 2011). In addition, ICANN illustrates the precarious status of a self-regulatory institution's democratic credentials. As a result of its central status, far-reaching competencies and high intensity of intervention, the institutional design of ICANN has been the target of extensive criticism (Mueller 1999; Weinberg 2000; Froomkin 2000).

If it is unsuitable to judge every small trustmark or ombudsman scheme against the same standards, as, for instance, in the case of ICANN, evaluation schemes should allow for gradual and differentiated adaptations of standards according to relevant factors such as status, intensity of intervention and impact on third parties.<sup>4</sup> In any scheme, transparency forms the *conditio sine qua non* because it is the precondition for *ex post* evaluation of an alternative regulatory solution by any affected or interested third party. Empirical evidence demonstrates that this basic requirement is hardly fulfilled in European co-regulatory institutions (HBI and EMR 2006a).

3 "The former would suggest reliance on expertise drawn from outside the industry being regulated; the latter would clearly work in the opposite direction. Consequently a system involving a mixture of lay and industry members will often be appropriate, if possible allied to a genuinely independent review and appeals mechanism" (Ofcom 2004: 10f).

4 However, even if alternative regulatory institutions lack status, powers of intervention and third-party impact, they may prove meaningful in keeping democratic quality to a high standard, because this not only enhances the legitimacy of a given regulatory measure, but also tends to be enforced more efficiently because of a higher degree of acceptance.

## Performance

Alternative regulatory institutions may also derive legitimacy from their performance and their contribution to the achievement of public goals (output legitimacy). Central questions related to performance include: how can we evaluate performance, output, outcome or impact of alternative regulatory solutions? What is their contribution to the achievement of public goals? Where do self- and co-regulation succeed, where do they fail and how can success and failure be explained?

Research has started to develop assessment approaches, but evaluation of alternative modes of regulation in communications is still in its infancy. Latzer, Just, Saurwein and Slominski (2002) try to identify evaluation indicators for alternative regulatory institutions in the communications sector, but they do not provide performance evaluations. Schulz and Held (2002) distinguish the levels of "adequacy" and "compliance" for the assessment of alternative regulatory institutions. "Adequacy" refers to the question of whether the written law (acts, state agency guidelines, self-regulatory codes) is appropriate and sufficient to fulfill the regulatory tasks. "Compliance" entails the observance of rules enacted, but Schulz and Held do not provide an empirical compliance assessment. HBI and EMR (2006a) develop a cost-benefit approach for evaluation and assess selected performance criteria by means of an expert survey and desk research. Latzer *et al.* (2007) propose a "4A" approach for the assessment of alternative regulatory institutions, under which the performance of regulatory schemes is to be determined by: (1) the processes of adoption of the regulatory scheme; (2) the awareness of the citizens and institutional players; (3) the public attitude towards the scheme, including acceptance and appreciation of the regulatory institutions and their rules/processes; and (4) the actions undertaken by those who regulate, who are regulated or affected by regulations. Performance is thus a nuanced concept, involving both direct impact on the industry and the perceptions of ways in which the various schemes are working. The approach provides basic assessment criteria that can be applied for performance analyses of different cases in various sectors. These, however, have to be complemented by criteria derived from public objectives in the respective policy field.

In general, performance assessments are rather difficult for many reasons (for an overview, see HBI and EMR 2006a). There are no one-size-fits-all evaluation concepts, because every evaluation has to be tailored according to public policy goals in the respective policy field, and according to the particular goals of a regulatory institution. In the communications sector, many regulatory issues, goals and performance can hardly be measured by numeric indicators. Even if a measurement is possible, it is often impossible to isolate the particular contribution of individual institutions to an evident progress in performance. Notwithstanding these difficulties, an increase in evaluations of alternative regulatory institutions can be observed. Many are carried out on behalf of national authorities and the Directorates-General of the European Commission (Cave, Marsden and Simmons 2008), which financially support alternative regulatory institutions. Results of these evaluations are fragmented, however, and hardly provide any general answers on the success and failure of alternative modes of regulation, as a brief overview of selected findings shows.

Significant steps have been taken to grasp the adoption assessment criterion. Descriptive analyses show where alternative regulatory institutions are established in different countries and industries in reaction to a variety of regulatory issues. Recent implementation reports for the European Commission, for instance, analyze the extent to which social network service providers adopted principles and measures in relation to privacy and illegal and harmful content (Donoso 2011). Haraszti (2008) compiles an overview on press councils among the Organization for Security and Co-operation in Europe (OSCE) states. In his analysis, he not

only identifies the established councils, but also the countries in which no press councils exist, or where they have ceased to function. Systematic comparative analyses make it possible to identify such gaps and to ask questions regarding the reasons for adoption failures. Haraszti considers political, economic, legal and cultural reasons for the lack of councils.<sup>5</sup>

The awareness performance indicator is more difficult to assess, because it either demands representative consumer surveys, or at least surveys among relevant stakeholders. Cave, Marsden and Simmons (2008) do not conduct such a survey, but suspect significant gaps in public knowledge of even the best-resourced and most well-known examples of information society self-regulation: "Most members of the public appear to continue to believe that content should be reported to the police, government regulator or ISPs, for instance, rather than the various alternative regulatory institutions" (ibid.: 26). Outdated but representative data are available for e-commerce. According to the Special Eurobarometer on issues relating to business and consumer e-commerce (EEIG 2004), only "one in ten EU15 citizens had heard of Internet trust marks" (ibid.: 20). In reaction to awareness deficits, several alternative regulatory institutions in different policy fields are enhancing their attempts to raise outreach.

For the assessment of the attitude performance indicator, it is appropriate to conduct interviews with relevant stakeholders (e.g. members, internal and external experts including critics of established schemes). HBI and EMR (2006a), for instance, conducted an expert survey and found a mixed picture. On the one hand, respondents criticize the lack of transparency of several co-regulatory institutions; on the other hand, they estimate a high level of performance in terms of satisfaction regarding the protection of minors from inappropriate content that seems to be rarely transmitted in film, video and broadcasting in Germany, Austria and the Netherlands. The estimates by internal and external experts are related to compliance, but they are more likely to display the individual, subjective attitudes towards a scheme and satisfaction with interaction within a scheme rather than an impartial/objective compliance indicator.

Cave, Marsden and Simmons (2008) suggest that a test of alternative regulatory organizations' effectiveness must be whether it has "shown its teeth" to a member through some type of sanction (withdrawal of membership, censure for non-compliance, or an increased market use of, and adherence to, the standards of the technique used). However, Cave, Marsden and Simmons (2008) do not provide an enforcement evaluation and state that more extensive quantitative and qualitative research is needed into the methods and techniques used by alternative regulatory organizations. One of the reasons why assessments of action-related criteria such as compliance are difficult is a lack of data (e.g. compliance reports), which partly results from the fact that many alternative regulatory institutions simply have not adopted an enforcement/compliance mechanism. In a comprehensive comparative analysis, IDATE, TNO and IViR (2008) found eighteen codes and guidelines for UGC in different industries, but "only a few initiatives provided for a compliance mechanism including sanctions in the event of noncompliance of a member or signatory of the initiative" (ibid. 58). De Bruin *et al.* (2005) point to deficits in self-regulation in the domain of e-commerce. Comparative analysis of ten trustmark schemes showed that a majority have a negative average evaluation on proactive monitoring measures and the enforcement system.

<sup>5</sup> For example, in countries where governments strive to censor the media, or where there are press and electronic media laws dealing with issues of ethics and accuracy; countries where the media are used solely to make money or maintain the interests of business and political elites, or where the media market is too small; and countries where media professionals oppose self-regulation. The reasons mentioned by Haraszti (2008: 49) point to contextual conditions for alternative modes of regulation discussed in the section below.

Finally, the question of the wider social impact of alternative regulatory institutions in communications has, so far, not been assessed at all. For newer institutions in the Internet sector, it seems simply too early to take any meaningful assessments. But even for the well-established institutions in the domain of media accountability, it is stressed that "the impact of media accountability is often debated but rarely studied systematically" (Fengler, Eberwein, and Leppik-Bork 2010: 13f). Only very few small-scale and outdated research projects have at least partly tackled the impact of (established) media accountability institutions on media professionals, but not on the wider implications, for instance, for the public sphere.

The difficulties and lack of large-scale evaluations does not mean that there are no assessments at all. These are, however, often devoted to single organizations, most notably to identifying and describing best practice. The media content-rating system in the Netherlands, Kijkwijzer, run by the Netherlands Institute for the Classification of Audiovisual Media (NICAM), is frequently referred to as a role model and an effective example of co-regulation in the communication sector (COM 2001; HBI and EMR 2006a; Schulz 2007). There is a very high public awareness, understanding and satisfaction regarding Kijkwijzer, and strong industry support in terms of adoption of the rating system. There is a coherent and transparent enforcement process, and complaints procedures are widely used by the public. There is also close involvement and support for NICAM by parliament and the Dutch Media Authority (Latzer *et al.* 2007). Empirical analysis, however, has also revealed that the system fails on the shop-floor level of cinemas, libraries and media vendors when it comes to preventing the sale, rental and display of harmful media to ineligible minors (Dorbeck-Jung *et al.* 2010). Findings suggest that enforcement failures seem to be induced mainly by the wait-and-see attitude of the regulators involved, who do not take responsibility for monitoring and evaluating the performance of regulatory activities (ibid.).

The results of evaluations not only point to the relevance of performance assessments, but also to the fact that different evaluation approaches lead to differences in findings (e.g. expert interviews vs. compliance tests). Moreover, they point to a lack of large-scale evaluations that compare and contrast alternative regulatory solutions. Because research has so far concentrated on established organizations and "best practice" examples, the rich resources of adoption and performance deficits have hardly been exploited so far. The failures of initiatives such as ICRA for content rating on the Internet (Archer 2009)<sup>6</sup> or WebTrader in the e-commerce area could serve as valuable case studies from which to draw conclusions regarding success factors for alternative modes of regulation.

### Governance choice

The increase in alternative regulatory institutions also gives rise to major questions about (rational) governance choice between available governance mechanisms. For the communications sector, Cuilenburg and McQuail (2003) note that the choice of policy instruments is one of numerous dilemmas and unanswered questions for policymakers, but the difficulties of governance/regulatory choice are not unique to communications policies (Schuppert 2005).

<sup>6</sup> Also, former efforts to develop Internet content rating schemes either failed or were absorbed by other initiatives. In 1996, the Recreational Software Advisory Council on the Internet (RSACi) announced the launch of a content-labeling advisory system to empower parents and consumers to make informed choices. W3C began to develop the Platform for Internet Content Selection (PICS) in the mid-1990s in response to the Communications Decency Act (CDA) 1996 and the threat of more strict regulatory action against illegal and harmful material on the Internet.



In the last decade, public administrations have increased their efforts to structure regulatory choice processes and policy evaluations by introducing regulatory impact assessments (RIA). The spread of RIA in the context of good governance and better regulation initiatives has been almost universal, although different practices are found under the same label in different countries (Radaelli 2004). RIA guidelines often contain provisions for the assessment of multiple regulatory options, including the zero option of no intervention, market-friendly alternatives to regulation, soft law, voluntary agreements and traditional command-and-control regulation (Radaelli 2005). Altogether, the RIA initiatives aim at more informed, evidence-based policymaking and improved regulatory effectiveness and legitimacy. RIA guidelines typically suggest the assessment of alternative modes of regulation such as self- and co-regulation, but they have—with some exceptions—hardly specified the criteria against which the suitability of alternative regulatory institutions can be scrutinized in the early stages of the regulatory choice process (*ex ante* evaluation) and in the course of performance review once alternative regulatory organizations have been established (*ex post* evaluation).

In academic research, many efforts have been made to identify assessment criteria, but there is no single theory that allows for performance predictions. There are numerous partly complementary, but also contradictory, assessment approaches. This heterogeneity provides a challenge for scholars and for regulators who have to decide on regulatory arrangements in practice. From a public policy perspective, the central questions in the context of governance choice are: (a) whether the adoption of an alternative regulatory solution by private actors is feasible at all; (b) whether a potential arrangement is durable and effective in meeting the public interest; and (c) whether there are needs and options to stimulate adoption or enhance performance of a private regulatory solution by means of state involvement. Economic, institutional/organizational and macro-systemic conceptions are provided to approach the questions (see, among many others, Garvin 1983; Gupta and Lad 1983; Ostrom 1990; Pattberg 2005; Saurwein 2011). These approaches identify a multitude of intertwined factors related to macro, meso and micro levels of alternative regulatory schemes, which have an influence on the success and failure of self- and co-regulatory solutions.

Such influencing factors are frequently mentioned in the academic literature and partly considered in the practice of regulatory governance (e.g. Ofcom 2008). Most are drawn from theoretical analyses on private regulatory regimes and from lessons of *ex post* evaluations of successful and unsuccessful examples of self- and co-regulation. Based on a comprehensive review of the literature, Latzer *et al.* (2007) developed an approach for the systematic assessment of alternative modes of regulation to facilitate governance choice. The approach starts from the basic assumption that the performance of alternative regulatory schemes is influenced by the specific organizational design of a regulatory entity (institutional/organizational success factors) and by the particular market and regulatory environment (enabling contextual factors). The performance of regulatory schemes is determined by the “4A” approach (adoption, awareness, attitude, action). On the one hand, performance is influenced by institutional/organizational success factors that can be designed or modified at the organizational level of self- and co-regulation (endogenous factors). They include, for example, the modes of stakeholder involvement and adequate enforcement powers. On the other hand, performance is influenced by enabling contextual factors that are related to the type of the regulatory challenge, the characteristics of industries involved and the characteristics of the regulatory environment. Contextual factors include the risks and potential impact in case of regulatory failure, and conflicts between public and private interests. In contrast to institutional/organizational success factors, contextual factors cannot be modified at the organizational level of an alternative regulatory institution (exogenous factors). If at all, they

can be affected by reforms in the regulatory environment. In combination, they can provide a more or less enabling context for alternative regulatory institutions. They affect the possibilities and probabilities of their adoption (e.g. incentives to cooperate), as well as the performance of already-established institutions (e.g. effectiveness in reducing market failure). Table 21.1 summarizes three dimensions for evaluations and criteria for systematic theoretical or empirical assessments.

Table 21.1 Template for governance choice: Overview of evaluation criteria

*Performance criteria*

- (a) Awareness: Knowledge and understanding of schemes
- (b) Adoption: Concurrence with schemes and enduring acceptance of authority
- (c) Attitude: Perception in terms of trust, credibility and legitimacy
- (d) Action: Compliance with schemes, complaints received, disputes handled, governmental engagement

*Enabling contextual factors*

- (a) Direct benefits for the industry
- (b) Reputational sensitivity of the industry
- (c) Intervention capacity of governmental actors
- (d) Impact of regulatory failure and need for uniform and binding minimum standards
- (e) Intensity of required regulatory intervention
- (f) Conflicts of public and private interests in a regulatory question
- (g) Number of market participants and market fragmentation
- (h) Intensity of competition
- (i) Availability of organizations that could take over regulatory tasks
- (j) Support for public policy objectives by the existing industry culture
- (k) Involvement of governmental actors

*Institutional/organizational success factors*

- (a) Rule-making: Clearly defined remit, intelligible objectives and (measurable) standards that go beyond governmental regulatory requirements
- (b) Enforcement: Adequate, proportionate enforcement mechanisms
- (c) Adjudication: Adequate sanction power in case of malpractice (effective, credible, commercially significant sanctions)
- (d) Review: Periodic internal and external review (control, evaluation, monitoring, auditing)
- (e) Resources: Adequate resources to assure that objectives are not compromised
- (f) Participation and representation: Balanced representation, involvement of stakeholders, independence from interference by interested parties
- (g) Transparency: Transparent institutional design and regulatory processes
- (h) International involvement: Appropriate measures to contribute to international efforts for the solution of transnational regulatory problems
- (i) Coherence with the established governance architecture
- (j) Accountability: Clear distribution of regulatory responsibilities between private/industry and public/state regulatory organizations involved in the regulatory process
- (k) Adequate intensity and modes of involvement of governmental actors

*Acknowledgement:* The categories and indicators for empirical analysis are derived from in-depth literature reviews on the evaluation of alternative modes of regulation (Latzer, Just, Saurwein and Slominski 2002) and have been adapted and reapplied to various regulatory issues in communications (see Latzer *et al.* 2003; Latzer and Just 2004; Latzer *et al.* 2006; Just, Latzer and Saurwein 2007; Latzer 2007; Latzer and Saurwein 2008). A comprehensive template for regulatory choice, with numerous indicators for the empirical evaluation of each of these criteria/factors, was developed in an evaluation project for Ofcom (Latzer *et al.* 2007; Saurwein and Latzer 2010). A comprehensive discussion of contextual factors is provided by Saurwein (2011).

Taking into account the interrelations between context, organizational design and performance, the template provides a conceptual framework for *ex ante* assessments and *ex post* evaluations of alternative regulatory arrangements. Application of the approach for empirical *ex post* evaluation makes it possible to assess the performance of an alternative regulatory institution and to explain whether and how success and failure of self- and co-regulatory schemes result from the institutional/organizational design of an alternative regulatory scheme and/or by industry characteristics and the particular regulatory environment. Findings of empirical analysis on reasons for failures may be used as a basis for governance reform, either at the organizational level of an alternative regulatory institution or, if possible, for reforms in the regulatory environment. The application of this approach for *ex ante* assessments cannot start with empirical investigations on performance. It therefore concentrates on analysis of the regulatory challenge/problem and given contextual conditions, and it aims at prognoses on the feasibility of adoption and the effectiveness of an alternative regulatory solution. It makes it possible to derive conclusions regarding the question of whether a problem can be solved by market players or there is the need for governmental involvement. Moreover, it may be used to draw conclusions regarding the adequate and effective institutional/organizational designs in reaction to unfavorable contextual conditions (e.g. to take organizational measures to counter freeriding if assessment of contextual conditions predicts a potential freerider problem). The framework therefore is a helpful tool when it comes to comparing governance options in the framework of a regulatory impact assessment (RIA).

Practical applications of the approach in pilot studies yield a number of interesting findings that demonstrate the value of the analytical approach for research and policymaking. The framework, for example, was applied for an assessment of content rating schemes in the audiovisual industry (Latzer *et al.* 2007; Saurwein and Latzer 2010). Findings of theoretical analyses on contextual conditions suggest the suitability of a regulatory arrangement with significant industry involvement in the rating practice, combined with some degree of public oversight. Freedom of speech concerns, high costs of rating content, and little demand for uniform and binding minimum standards support the suitability of alternative modes of regulation for content rating. However, the lack of direct economic benefits for the industry, sharp conflicts between public and private interests, incentives for freeriders, the potentially major economic impacts of a rating, and increasing fragmentation of the audiovisual market indicate that content rating is not suitable for pure, unlimited industry self-regulation.

Moreover, the body of literature on alternative modes of regulation in communications suggests further lessons on the suitability of self- and co-regulatory solutions, underlining the explanatory strengths of the developed approach. HBI and EMR (2006b) argue that co-regulatory schemes are well suited for advertising content regulation and the protection of minors. According to HBI and EMR, this suitability is caused by the rapid changes in programming and advertising, by the inherent weaknesses of external content control and by the flexibility to adjustments in established alternative regulatory organizations: "New concepts of regulation can tie in with existing professional ethics or even self-regulatory organizations that already deal with media content-matters on a voluntary basis" (*ibid.*: 123). Moreover, HBI and EMR's findings suggest that co-regulatory schemes perform better in countries that "are known for innovative regulatory concepts which are worked out in collaboration with industry" (*ibid.*: 119), such as the UK, Netherlands, and, to some extent, Germany. Assessment thus points to the relevance of a regulatory culture/tradition within a state or in the industry within the respective branch. But differences in the applicability of alternative modes of regulation also have to be considered. For broadcasting, industry

commitment and incentives for participation are relatively high, because the move towards co-regulation will often entail a relaxation of regulation in a former heavy-handed, state-regulated industry environment. Additional contextual conditions in favor of alternative modes of regulation in broadcasting comprise the small set of well-organized and sufficiently resourced industry actors that are able to enter into joint decisions and who can afford the establishment of co-regulatory structures. For non-linear online services, decentralized solutions may be more effective, because the large number of online services would hamper co-regulatory approaches that require submission of all material for rating to a central organization: "Pre-clearing by the providers themselves—within a regulatory framework—might be an attractive option to cope with the huge amount of fast-changing material in the web" (*ibid.*: 125). Hence industry fragmentation is one of the reasons why different models of co-regulation for different sectors might be preferable, and why one can also find different approaches in the regulatory practice regarding online services, broadcasting, film and video games.

### Conclusion: Questions and challenges for further research

Empirical analyses show a significant increase in alternative regulatory institutions with a wide variety of initiatives and instruments (e.g. codes of conduct, rating/filter systems, hotlines, trustmarks) in the convergent communications sector. But little is known about the impact of these developments on the governance arrangement for communications as a whole. Do alternative regulatory approaches only complement existing state regulation, or do regulatory powers in fact shift from the state to the private sector? Are we observing the emergence of a more efficient state that exploits the advantages of self- and co-regulation, or a powerless state that is forced to rely on private regulatory initiatives? Only large-scale analyses that comprise and compare state and private regulatory responsibilities and powers would make it possible to answer this general question.

The rise of self- and co-regulation is accompanied by concerns regarding a decrease in the democratic quality of regulation. Alternative regulatory institutions are not bound by the traditional mechanisms and standards of democratic political control. But the standards for evaluation of the democratic quality of alternative modes of regulation are not completely clear. "Multi-stakeholderism" is an oft-mentioned, but not always practicable, principle. A major challenge for research is the development of frameworks that can be applied for assessments in a graduated and differentiated manner depending on the degree of power that an alternative regulatory institution holds. Status, intensity of intervention and impact on third parties are factors that have to be taken in consideration for evaluation. Impact on third parties is of particular relevance, for instance, in the case of technology-based regulatory solutions that restrict access to particular services and contents.

Owing to a range of methodological difficulties, there are major research gaps in the evaluation of performance and outcomes of alternative modes of regulation. Research has started to develop assessment approaches, but the evaluation of alternative modes of regulation in communications is still in its infancy. As a consequence, knowledge about the contribution of self- and co-regulation to the achievement of public goals is limited. Moreover, evaluations focus largely on the analysis of existing "best practice" examples and organizational designs of successful institutions. This scope is too limited to explain and predict when alternative regulatory arrangements are likely to emerge and when they are more likely to fail. The enabling and constraining contextual conditions that shape the adoption of alternative regulatory institutions also need to be taken into consideration. Exploring failed

examples ("flop analysis") and the reasons for these failures will contribute to the development of more comprehensive evaluation frameworks comprising organizational success factors and enabling contextual factors.

## References

- Archer, P. (2009) 'ICRAfail. A lesson for the future.' Online. Available HTTP: <http://www.philarcher.org/icra/ICRAfail.pdf> (accessed 11 October 2011).
- Ayres, I. and Braithwaite, J. (1992) *Responsive Regulation: Transcending the Deregulation Debate*, New York and Oxford: Oxford University Press.
- Baldwin, R. and Black, J. (2007) 'Really responsive regulation,' LSE Legal Studies Working Paper No. 15. Online. Available HTTP: <http://ssrn.com/abstract=1033322> (accessed 17 August 2010).
- and Cave, M. (1999) *Understanding Regulation: Theory, Strategy and Practice*, Oxford: Oxford University Press.
- Bartle, I. and Vass, P. (2007) 'Self-regulation within the regulatory state,' *Public Administration*, 85(4): 885–905.
- Bauer, J. (2010) 'Changing roles of the state in telecommunications,' *International Telecommunications Policy Research*, 17(1): 1–36.
- Birnhack, M. and Elkin-Koren, N. (2003) 'The invisible handshake: The reemergence of the state in the digital environment,' *Virginia Journal of Law and Technology*, 8(6). Online. Available HTTP: [http://works.bepress.com/michael\\_birnhack/](http://works.bepress.com/michael_birnhack/) (accessed 11 October 2011).
- Black, J. (1996) 'Constitutionalising self-regulation,' *The Modern Law Review*, 59(1): 24–55.
- (2001) 'Decentering regulation: The role of regulation and self-regulation in a "post-regulatory world",' *Current Legal Problems*, 54(1): 103–146.
- Boddewyn, J. J. (1985) 'Advertising self-regulation: Organization structures in Belgium, Canada, France and the United Kingdom,' in W. Streeck and P.C. Schmitter (eds.) *Private Interest Government. Beyond Market and State*, London: Sage.
- (1988) *Advertising Self-regulation and Outside Participation: A Multinational Comparison*, New York: Quorum.
- Boyer, C. and Geissbuhler, A. (2005) 'A decade devoted to improving online health information quality,' *Studies in Health Technology and Informatics*, 116: 891–896.
- , Selby, M., Scherrer J. R. and Appel, R. D. (1998) 'The health on the net code of conduct for medical and health websites,' *Computers in Biology and Medicine*, 28(5): 603–610.
- Boyle, J. (1997) 'Foucault in cyberspace: Surveillance, sovereignty, and hardwired censors,' *University of Cincinnati Law Review*, 66: 177–205.
- Braithwaite, J. (1982) 'Enforced self-regulation: A new strategy for corporate crime control,' *Michigan Law Review*, 80: 1466–1507.
- Brown, A. (2006) 'Advertising regulation and co-regulation: The challenge of change,' *Economic Affairs*, 26(2): 31–36.
- Buthe, T. and Mattli, W. (2011) *The New Global Rulers: The Privatization of Regulation in the World Economy*, Princeton, NJ: Princeton University Press.
- Calliess G.-P. (2007) 'Transnational consumer law: Co-regulation of B2C-E-Commerce,' CLPE Research Paper 3/2007. Online. Available HTTP: <http://ssrn.com/abstract=988612> (accessed 11 October 2011).
- Campbell, A. J. (1999) 'Self-regulation and the media,' *Federal Communications Law Journal*, 51: 711–771.
- Cane, P. (1987) 'Self-regulation and judicial review,' *Civil Justice Quarterly*, 6: 324–347.
- Cave, J., Marsden, C. and Simmons, S. (2008) *Options for and Effectiveness of Internet Self- and Co-Regulation*, Research report prepared for the European Commission, DG INFSO.
- Dam, K. W. (1999) 'Self-help in the digital jungle,' John M. Olin Law and Economics Working Paper No. 59, Chicago, IL: The Law School of the University of Chicago.
- de Bruin, R., Keuleers, E., Lazaro, C., Poulet, Y. and Viersma, M. (2005) *Analysis and Definition of Common Characteristics of Trustmarks and Web Seals in the European Union*, Research report. Online. Available HTTP: <http://www.crid.be/pdf/public/5026.pdf> (accessed 19 October 2011).
- Deibert, R., Palfrey, J., Rohozinski, R. and Zittrain J. (eds.) (2008) *Access Denied: The Practice and Policy of Global Internet Filtering*, Cambridge, MA: MIT Press.
- Dellarocas, C. (2003) 'The digitization of word-of-mouth: Promise and challenges of online feedback mechanisms,' MIT Sloan Working Paper No. 4296–03. Online. Available HTTP: <http://ssrn.com/abstract=393042> (accessed 11 October 2011).
- Donoso, V. (2011) *Assessment of the Implementation of the Safer Social Network Principles for the EU on 9 Services: Summary Report*, Luxembourg: European Commission, Safer Internet Programme.
- Dorbeck-Jung, B. R., Oude Vrielink, M. J., Gosselt, J. F., Van Hoof, J. J. and de Jong, M. D. T. (2010) 'Contested hybridization of regulation: Failure of the Dutch regulatory system to protect minors from harmful media,' *Regulation and Governance*, 4(2): 154–174.
- Doyle, C. (1997) 'Self-regulation and statutory regulation,' *Business Strategy Review*, 8(3): 35–42.
- Dutton, W. and Peltu, M. (2005) 'The emerging Internet governance mosaic: Connecting the pieces,' OII Forum Discussion Paper No. 5, Oxford Internet Institute, University of Oxford.
- Engel, C. (2004) 'A constitutional framework for private governance,' *German Law Journal*, 5 (3): 197–237.
- European Opinion Research Group (EEIG) (2004) 'Issues relating to business and consumer e-commerce,' EBS 201. Online. Available HTTP: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_201\\_executive\\_summary.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_201_executive_summary.pdf) (accessed 11 October 2011).
- European Commission (2001) *Evaluation Report from the Commission concerning the Protection of Minors and Human Dignity*, COM(2001) 106. Online. Available HTTP: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001DC0106:EN:NOT>
- Fengler, S., Eberwein, T. and Leppik-Bork, T. (2011) 'Mapping media accountability—in Europe and beyond,' in T. Eberwein, S. Fengler, E. Lauk and T. Leppik-Bork (eds.) *Mapping Media Accountability—in Europe and Beyond*, Köln: Herbert von Halem Verlag.
- Froomkin, M. (2000) 'Semi-private international rulemaking: Lessons learned from the WIPO domain name process,' in C. T. Marsden (ed.) *Regulating the Global Information Society*, London: Routledge.
- Garvin, D. A. (1983) 'Can industry self regulation work?' *California Management Review*, 25(9): 48–63.
- Gilardi, F. (2007) 'The same, but different: Central banks, regulatory agencies, and the politics of delegation to independent authorities,' *Comparative European Politics*, 5: 303–327.
- (2008) *Delegation in the Regulatory State: Independent Regulatory Agencies in Western Europe*, Cheltenham: Edward Elgar.
- Grabosky, P. (1995) 'Regulation by reward: On the use of incentives as regulatory instruments,' *Law and Policy*, 17(3): 256–281.
- Gunningham, N. and Rees, J. (1997) 'Industry self-regulation: An institutional perspective,' *Law and Policy*, 19(4): 363–414.
- and Sinclair, D. (1999) 'Integrative regulation: A principle-based approach to environmental policy,' *Law and Social Inquiry*, 24(4): 853–896.
- Gupta, A. K. and Lad, L. J. (1983) 'Industry self-regulation: An economic, organizational, and political analysis,' *Academy of Management Review*, 8(3): 416–425.
- Hans-Bredow-Institut [HBI], Interdisciplinary Centre for Law and ICT (ICRI), Center for Media and Communication Studies (CMCS) and Cullen International (eds.) (2011) *Indicators for Independence and Efficient Functioning of Audiovisual Media Services Regulatory Bodies for the Purpose of Enforcing the Rules in the AVMS Directive (INDIREG)*, Final report, SMART 2009/0001.
- HBI and EMR—Hans-Bredow-Institut and Europäisches Institut für Medienrecht (2006a) 'Studie über Co-Regulierungsmaßnahmen im Medienbereich (Endbericht)', Studie für die Europäische Kommission, Generaldirektion Informationsgesellschaft und Medien, Abt. A1 Audiovisuelle Politik und Medienpolitik.' Online. Available HTTP: [http://ec.europa.eu/avpolicy/docs/library/studies/coregul/final\\_rep\\_de.pdf](http://ec.europa.eu/avpolicy/docs/library/studies/coregul/final_rep_de.pdf) (accessed 11 October 2011).
- Hans-Bredow-Institut (HBI) and Institute of European Media Law (EMR) (2006b) 'Study on co-regulation measures in the media sector.' Online. Available HTTP: [http://ec.europa.eu/avpolicy/docs/library/studies/coregul/final\\_rep\\_en.pdf](http://ec.europa.eu/avpolicy/docs/library/studies/coregul/final_rep_en.pdf) (accessed 17 August 2010).
- Haraszti, M. (2008) *The Media Self-Regulation Guidebook*, Vienna: Office of the Representative on Freedom of the Media—Organization for Security and Co-operation in Europe (OSCE).
- Héritier, A. (2002) 'New modes of governance in Europe: Policy making without legislating?' in A. Héritier (ed.) *The Provision of Common Goods: Governance across Multiple Arenas*, Lanham, MD: Rowman and Littlefield.
- and Eckert, S. (2008) 'New modes of governance in the shadow of hierarchy: Self-regulation by industry in Europe,' *Journal of Public Policy*, 28: 113–138.
- and Lehmkuhl, D. (2008) 'The shadow of hierarchy and new modes of governance: Sectoral governance and democratic government,' *Journal of Public Policy*, 28: 1–17.

- Hoffmann-Riem, W. (2000) *Regulierung der dualen Rundfunkordnung*, Nomos: Baden-Baden.
- Holznagel, B. and Werle, R. (2004) 'Sectors and strategies of global communications regulation,' *Knowledge, Technology, and Policy*, 17: 19–37.
- IDATE, TNO and IviR. (2008) *User-Created Content: Supporting a Participative Information Society*, Final report, SMART 2007/2008.
- Jordana, J., Levi-Faur, D. and Fernández i Marín, X. (2009) *The Global Diffusion of Regulatory Agencies: Channels of Transfer and Stages of Diffusion*. Online. Available HTTP: <http://poli.haifa.ac.il/~levi/jlx.pdf> (accessed 17 August 2010).
- Just, N. and Latzer, M. (2004) 'Self- and co-regulation as indicators of a transformed statehood in the mediamatics sector,' in S. Puntischer Riekmann, M. Mokre and M. Latzer (eds.) *The State of Europe: Transformations of Statehood from a European Perspective*, Frankfurt and New York: Campus Verlag.
- , — and Saurwein, F. (2007) 'Communications governance: Entscheidungshilfe für die wahl des regulierungsarrangements am beispiel spam,' in P. Donges (ed.) *Von der Medienpolitik zur Media Governance?* Köln: Herbert von Halem Verlag.
- Keller, D. and Verhulst, S. G. (2000) *Parental Control in a Converged Communications Environment. Self-Regulation, Technical Devices and Meta-Information*, Report commissioned for the DVB Regulatory Group. Online. Available HTTP: <http://ec.europa.eu/avpolicy/docs/reg/minors/dvbgroup.pdf> (accessed 20 November 2010).
- Knill, C. and Lenschow A. (2004) 'Modes of regulation in the governance of the European Union: Towards a comprehensive evaluation,' in J. Jordana and D. Levi-Faur (eds.) *The Politics of Regulation*, Cheltenham and Northampton, MA: Edward Elgar.
- Latzer, M. (1997) *Mediamatik: Die Konvergenz von Telekommunikation, Computer und Rundfunk*, Opladen: Westdeutscher Verlag.
- (1999) 'Transformation der Staatlichkeit im Kommunikationssektor: Regulierungsansätze für die Mediamatik,' in K. Imhof, O. Jarren and R. Blum (eds.) *Steuerungs- und Regelungsprobleme in der Informationsgesellschaft*, Opladen: Westdeutscher Verlag.
- (2000) 'Transformation der Staatlichkeit: Schlussfolgerungen für die Politik,' in M. Latzer (ed.) *Mediamatikpolitik für die Digitale Ökonomie*, Innsbruck and Wien: Studien-Verlag.
- (2007) 'Regulatory choice in communications governance, communications,' *The European Journal of Communication Research*, 32(3): 399–405.
- (2009) 'Convergence revisited: Toward a modified pattern of communications governance convergence,' *The International Journal of Research into New Media Technologies*, 15(4): 411–426.
- and Saurwein, F. (2008) 'Vertrauen in die Industrie: Vertrauen in die Nutzer,' in W. Schulz and T. Held (eds.) *Mehr Vertrauen in Inhalte: Das Potenzial von Ko- und Selbstregulierung in digitalen Medien*, Berlin: Vistas.
- , Just, N., Saurwein, F. and Slominski, P. (2002) *Selbst- und Ko-Regulierung im Mediamatiksektor: Alternative Regulierungsformen zwischen Staat und Markt*, Wiesbaden: Westdeutscher Verlag.
- , —, — and — (2003) 'Regulation remixed: Institutional change through self- and co-regulation in the mediamatics sector,' *Communications and Strategies*, 50: 127–157.
- , —, — and — (2006) 'Institutional variety in communications regulation classification scheme and empirical evidence from Austria,' *Telecommunications Policy*, 30(3–4): 152–170.
- , Price, M. E., Saurwein, F. and Verhulst, S. G. (2007) *Comparative Analysis of International Co- and Self-Regulation in Communications Markets*, Research report commissioned by Ofcom, Vienna: ITA.
- Lehmkuhl, D. (2008) 'Control modes in the age of transnational governance,' *Law and Policy*, 30: 336–363.
- Lessig, L. (1999) *Code and Other Laws of Cyberspace*, New York: Basic Books.
- Levi-Faur, D. (2010) 'Regulation and regulatory governance,' Jerusalem Papers on Regulation and Governance No. 1. Online. Available HTTP: <http://levifaur.wiki.huji.ac.il/images/Reg.pdf> (accessed 11 October 2011).
- Lievens, E. (2010) *Protecting Children in the Digital Era: The Use of Alternative Regulatory Instruments*, Leiden and Boston, MA: Martinus Nijhoff Publishers.
- , Dumortier, J. and Ryan, P. S. (2006) 'The co-protection of minors in new media,' *U.C. Davis Journal of Juvenile Law and Policy*, 10(1): 97–151.
- Maggetti, M. (2007) 'De facto independence after delegation: A fuzzy-set analysis,' *Regulation and Governance*, 1(4): 271–294.
- Majone, G. (ed.) (1996) *Regulating Europe*, New York and London: Routledge.
- (1999) 'The regulatory state and its legitimacy problems,' *West European Politics*, 22(1): 1–24.
- Marsden, C. T. (2010) *Net Neutrality: Towards a Co-regulatory Solution*, London, New York: Bloomsbury Academic.
- Mayntz, R. (2003) 'From government to governance: Political steering in modern societies,' Paper presented at the Summer Academy on IPP, 7–11 September, Wuerzburg.
- (2008) 'Von der Steuerungstheorie zu Global Governance,' in G. Folke Schuppert and M. Zürn (eds.) *Governance in einer sich wandelnden Welt*, Wiesbaden: VS-Verlag.
- (2009) *Über Governance: Institutionen und Prozesse politischer Regelung*, Frankfurt: Campus.
- McNamee, J. (2011) 'The slide from 'self-regulation' to corporate censorship,' Edri Discussion Paper 2011/1. Online. Available HTTP: [www.edri.org/files/EDRI\\_selfreg\\_final\\_20110124.pdf](http://www.edri.org/files/EDRI_selfreg_final_20110124.pdf) (accessed 11 October 2011).
- Michael, D. C. (1995) 'Federal agency use of audited self-regulation as a regulatory technique,' *Administrative Law Review*, 47: 171–253.
- Moran, M. (2002) 'Review article: Understanding the regulatory state,' *British Journal of Political Science*, 32(2): 391–413.
- Mueller, M. (1999) 'ICANN and Internet governance: Sorting through the debris of "self-regulation",' *info*, 1(6): 497–520.
- National Consumer Council (NCC) (2000) *Models of Self-Regulation: An Overview of Models in Business and the Professions*, London: NCC. Online. Available HTTP: [http://www.talkingcure.co.uk/articles/ncc\\_models\\_self\\_regulation.pdf](http://www.talkingcure.co.uk/articles/ncc_models_self_regulation.pdf) (accessed 11 October 2011).
- NICAM (2007) 'Kijkwijzer: The Dutch rating system for audiovisual productions.' Online. Available HTTP: [http://www.kijkwijzer.eu/upload/download\\_pc/24\\_Overview\\_Kijkwijzer\\_version\\_41\\_eng.pdf](http://www.kijkwijzer.eu/upload/download_pc/24_Overview_Kijkwijzer_version_41_eng.pdf) (accessed 11 October 2011).
- Noam, E. (1991) *Television in Europe*, New York and Oxford: Oxford University Press.
- (1992) *Telecommunications in Europe*, New York and Oxford: Oxford University Press.
- Ofcom (2004) 'Criteria for promoting effective co and self-regulation: Statement on the criteria to be applied by Ofcom for promoting effective co- and self-regulation and establishing co-regulatory bodies.' Online. Available HTTP: [http://stakeholders.ofcom.org.uk/binaries/consultations/co-reg/statement/co\\_self\\_reg.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/co-reg/statement/co_self_reg.pdf) (accessed 11 October 2011).
- (2006) 'Online protection: A survey of consumer, industry and regulatory mechanisms and systems.' Online. Available HTTP: <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/report.pdf> (accessed 11 October 2011).
- (2008) 'Identifying appropriate regulatory solutions: Principles for analysing self- and co-regulation.' Online. Available HTTP: <http://stakeholders.ofcom.org.uk/binaries/consultations/coregulation/statement/statement.pdf> (accessed 11 October 2011).
- Ogus, A. (2001) *Regulation, Economics and the Law*, Cheltenham: Edward Elgar.
- Olsberg SPI et al. (2003) 'Empirical study on the practice of the rating of films distributed in cinemas television DVD and videocassettes in the EU and EEA member states.' Online. Available HTTP: [http://ec.europa.eu/avpolicy/docs/library/studies/finalised/studpdf/rating\\_finalrep2.pdf](http://ec.europa.eu/avpolicy/docs/library/studies/finalised/studpdf/rating_finalrep2.pdf) (accessed 17 August 2010).
- Organization for Co-operation and Development (OECD) (1999) *Guidelines for Consumer Protection in the Context of Electronic Commerce*, Paris: OECD Publishing.
- Ostrom, E. (1990) *Governing the Commons: The Evolution of Institutions for Collective Action*, Cambridge: Cambridge University Press.
- Parker, C. (2002) *The Open Corporation: Effective Self-Regulation and Democracy*, Cambridge: Cambridge University Press.
- Pattberg, P. (2005) 'The institutionalization of private governance: How business and nonprofit organizations agree on transnational rules,' *Governance*, 18(4): 589–610.
- Porter, T. and Ronit, K. (2006) 'Self-regulation as policy process: The multiple and criss-crossing stages of private rule making,' *Policy Science*, 39(1): 41–72.
- Price, M. E. (ed.) (1998) *The V-Chip-Debate: Content Filtering from Television to the Internet*, Mahwah, NJ: Lawrence Erlbaum.
- and Verhulst, S. G. (2000) 'In search of the self: Charting the course of self-regulation on the Internet in a global environment,' in C. T. Marsden (ed.) *Regulating the Global Information Society*, London and New York: Routledge.
- and — (2002) *Parental Control of Television Broadcasting*, Mahwah, NJ: Lawrence Erlbaum.
- Programme in Comparative Media Law and Policy (PCMLP) (2004a) *Self-Regulation of Digital Media Converging on the Internet: Industry Codes of Conduct in Sectoral Analysis*, Research report for the European Commission, Oxford: PCMLP.

- (2004b) *Internet Self-Regulation: An Overview*, Oxford: PCMLP.
- (2004c) *Self-Regulation and the Print Media: Codes and Analysis of Codes in Use by Press Councils in Countries of the EU*, Oxford: PCMLP.
- (2004d) *Self-Regulation and the Broadcast Media*, Oxford: PCMLP.
- Puppis, M. (2009) *Organisationen der Medienselbstregulierung*, Köln: Halem.
- (2010) 'Media governance: A new concept for the analysis of media policy and regulation,' *Communication, Culture and Critique*, 3(2): 134–149.
- , Künzler, M., Schade, E., Donges, P., Dörr, B., Ledergerber, A. and Vogel, M. (2004) *Selbstregulierung und Selbstorganisation*. Unpublished final report for the Federal Office of Communications (Bundesamt für Kommunikation, or BAKOM), Zürich: IPMZ. Online. Available HTTP: [http://www.mediapolicy.unizh.ch/forschung/selbstregulierung\\_report.pdf](http://www.mediapolicy.unizh.ch/forschung/selbstregulierung_report.pdf) (accessed 11 October 2011).
- Raboy, M. and Padovani, C. (2010) 'Mapping global media policy: Concepts, frameworks, methods,' *Communication, Culture and Critique*, 3(2): 150–169.
- Radaelli, C. M. (2004) 'The diffusion of regulatory impact assessment: Best practice or lesson-drawing?' *European Journal of Political Research*, 43(5): 723–747.
- (2005) 'Diffusion without convergence: How political context shapes the adoption of regulatory impact assessment,' *Journal of European Public Policy*, 12(5): 924–943.
- Rhodes, R. A. W. (1996) 'The new governance: Governing without government,' *Political Studies*, 44(4): 652–667.
- Ronit, K. and Schneider, V. (1999) 'Global governance through private organizations,' *Governance*, 12(3): 243–266.
- Rosenau, J. N. and Czempiel, E. O. (eds.) (1992) *Governance without Government: Order and Change in World Politics*, Cambridge: Cambridge University Press.
- Saurwein, F. (2011) 'Regulatory choice for alternative modes of regulation: How context matters,' *Law and Policy*, 33(3): 334–336.
- and Latzer, M. (2010) 'Regulatory choice in communications: The case of content-rating schemes in the audiovisual industry,' *Journal of Broadcasting and Electronic Media*, 54(3): 463–484.
- Schneider, V. (2001) *Die Transformation der Telekommunikation: Vom Staatsmonopol zum globalen Markt (1800–2000)*, Frankfurt and New York: Campus.
- Schulz, W. (2007) 'Neue Ordnung durch neues Medienrecht? Modelle der Co-Regulierung im Medienbereich,' in O. Jarren and P. Donges (eds.) *Ordnung durch Medienpolitik*, Konstanz: UVK.
- and Held T. (2002) 'Regulierte Selbstregulierung als Form modernen Regierens,' Endbericht im Auftrag des Bundesbeauftragten für Angelegenheiten der Kultur und der Medien, Arbeitspapiere des Hans-Bredow-Instituts Nr. 10, Hamburg: Hans-Bredow-Institut.
- Schuppert, G. Fw. (2005) 'Governance im Spiegel der Wissenschaftsdisziplinen,' in G. F. Schuppert (ed.) *Governance-Forschung: Vergewisserung über den Stand und Entwicklungslinien*, Baden-Baden: Nomos.
- Scott, C. (2002) 'Private regulation of the public sector: A neglected facet of contemporary governance,' *Journal of Law and Society*, 29(1): 56–76.
- (2004) 'Regulation in the age of governance: The rise of the post-regulatory state,' in J. Jordana and D. Levi-Faur (eds.) *The Politics of Regulation*, Cheltenham and Northampton, MA: Edward Elgar.
- Sinclair, D. (1997) 'Self-regulation versus command and control? Beyond false dichotomies,' *Law and Policy*, 19(4): 529–559.
- Streeck, W. and Schmitter, C. P. (1985) 'Community, market, state—and associations? The prospective contribution of interest governance to social order,' in W. Streeck and P. C. Schmitter (eds.) *Private Interest Government: Beyond Market and State*, London: Sage.
- Tambini, D., Leonardi, D. and Marsden, C. (2008) *Codifying Cyberspace: Communications Self-Regulation in the Age of Internet Convergence*, London and New York: Routledge.
- Thatcher, M. and Stone Sweet, A. (eds.) (2002) 'Theory and practice of delegation to non-majoritarian institutions,' *West European Politics*, 25(Special Issue): 1–22.
- Treib, O., Bähr, H. and Falkner, G. (2005) 'Modes of governance, old and new: A note towards conceptual clarification,' European Governance Papers No. N-05-02. Online. Available HTTP: <http://www.connex-network.org/eurogov/pdf/egp-newgov-N-05-02.pdf> (accessed 20 November 2010).
- Van Cuilenburg, J. and McQuail, D. (2003) 'Media policy paradigm shifts: Towards a new communications policy paradigm,' *European Journal of Communication*, 18(2): 181–207.
- Weinberg, J. (2000) 'ICANN and the problem of legitimacy,' *Duke Law Journal*, 50: 187–226.
- Werle, R. (2001) 'Standards in the international telecommunications regime,' HWWA-Institut für Wirtschaftsforschung-Hamburg, Discussion Paper 157.
- Zacharia, G., Moukas, A. and Maes, P. (2000) 'Collaborative reputation mechanisms in electronic marketplaces,' *Decision Support Systems*, 29(4): 371–388.