EU Internet Regulation Policy: The Rise of Self-Regulation

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INTRODUCTION

The world is quickly entering an exciting economic arena with vast opportunity for commercial gain and equal opportunity for criminality and abuse. This arena is called the Internet. Because of its unique technology, the Internet will be a major source of global information and a marketplace for commercial transactions by the year 2000. This uniqueness stems from the Internet’s combination of television media capabilities with the ability to instantaneously exchange information necessary to effectuate a commercial transaction.

As a commercial medium, the Internet is particularly economically attractive because it allows small scale manufacturers and service providers to reach customers around the globe at minimal cost. However, the Internet also provides users with anonymity, making it a fertile environment for economic and social crime.

As the planet rapidly plunges into “cyberspace,” governments and international organizations are faced with the challenge of designing a regulatory framework for the Internet that will allow nation-states to

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1 See EC Documents Address Need for Internet Regulation, TELECOMMUNICATIONS REPORTS, Oct. 21, 1996, at 42, 62 [hereinafter EC Documents].
2 See Llewellyn Joseph Gibbons, No Regulation, Government Regulation, or Self-Regulation: Social Enforcement or Social Contracting For Governance in Cyberspace, 6 CORNELL J.L. & PUB. POL’Y 475, 487–89 (1997). The “Internet” has been defined by one commentator as a network of interlocking computer networks with no owner, central authority, or geographical boundaries. See id.
4 See Neil Winton, EU Commissioners Urge Internet Business Caution, REUTER EUR. COMMUNITY REP., June 3, 1997. Industries that are likely to benefit most from Internet commerce include the travel, computer, and clothing industries. See id.
5 See id.
6 See Todd H. Flaming, The Rules of Cyberspace: Informal Law in a New Jurisdiction, 851 ILL. BJ. 174, 174 (1997). William Gibson, a science fiction writer, is credited with being the first to use the term “Cyberspace” in one of his books to describe the state of “consensual hallucination” which people experienced by connecting their nervous systems through the use of a computer
realize the economic potential of commerce facilitated by the Internet while limiting the opportunity for abuse and criminality. This task becomes increasingly difficult because the Internet is so unlike any economic or media vehicle of the past. Because of its uniqueness and novelty there is very little precedent and guidance available to policy and law makers as they attempt to address the legal issues incident to commercial usage of the Internet.

The European Union (EU), as the collective economic regime for its Member States, has recognized the need to address the Internet question and to develop and implement sound solutions. The EU is especially concerned that failure to coordinate Internet regulation at the EU level will cause a "refragmentation" of the "common market".

device. Id. In the context of the modern computer environment "cyberspace" means the "sense of place created by interaction and communication over online computer environments such as the Internet." See id.
7 See Elizabeth de Bony, European Union Sees Need to Regulate 'Net, COMPUTERWORLD, Oct. 21, 1996.
8 See Gibbons, supra note 2, at 475–76 (characterizing the Internet as a modern "frontier").
9 See Murray & Hudson, supra note 3.
10 See GEORGE A. BERMAN ET AL., CASES AND MATERIALS ON EUROPEAN COMMUNITY LAW 3–19 (1993 & Supp. 1996). The EU as we presently know it is a culmination of successive European efforts subsequent to World War II to increase cooperation between Member States in order to increase economic and social utility. See id. Precursors to the modern EU include the Council of Europe, the Organization for European Economic Cooperation (OEEC), the Organization for Economic Cooperation and Development (OECD), the European Coal and Steel Community (ECSC), the European Economic Community (EEC), and the European Atomic Energy Community (EURATOM). See id. The EEC, ECSC, and EURATOM were established in 1958 under the Treaty of Rome. See id. These institutions were collectively known as the European Community, which functioned until 1992. See id. In 1992, through the Maastricht Treaty, the continued evolution of the Community led to the formation of the EU. See id. The EU is the collective name of the institutions that are addressed by the Maastricht Treaty. See id. These include the European Parliament, the Commission, the Council, the Court of Justice, the Court of First Instance, the Court of Auditors, the Economic and Social Committee, and the Committee of the Regions. See id.
11 See id. Current Member States are: France, Germany, Italy, Belgium, the Netherlands, Luxembourg, Denmark, Ireland, the United Kingdom, Greece, Spain, Portugal, Austria, Finland, and Sweden. See id.
12 See Murray & Hudson, supra note 3.
13 See BERMAN ET AL., supra note 10, at 16–17. Creating a common market has been a goal of the EU and the EU's institutional predecessors since the 1960s. See id. Although achieving a common market has been a consistent policy goal of the EU, little was achieved until 1978 when the European Council created the European Monetary System (EMS). See id. During the late 1980s the EU considered legislation aimed at establishing a full common market. See id. This legislation was passed in the form of the Economic and Monetary Union (EMU) in 1991. See id.
effort. As this note will explore, the EU's Internet regulation policy has undergone a major shift from advocating governmental regulation to advocating industry self-regulation since the EU first began to address Internet issues in 1991.15

Part I of this Note will describe the historical and legal development of the Internet in Europe, including the EU's recent policy shift. Part II will analyze these developments and the policy shift, giving reasons behind the EU's decision to break from its traditional technique of heavy regulatory intervention. Part II will also evaluate the possibilities for success of the EU's Internet regulation policy shift, as well as the shift's implications for EU governmental efficiency. This note concludes that the EU has shifted its Internet regulation policy both in response to President Clinton's call for Internet industry self-regulation and, in part, to effectuate the EU's entry into a rapidly developing market; that Internet self-regulation is a viable regulatory option; that such self-regulation will prove successful in effectuating market entry; and that the EU's policy adjustment demonstrates that the EU has a pragmatic and flexible legislative apparatus.

I. HISTORICAL AND LEGAL DEVELOPMENT OF THE INTERNET IN EUROPE

A. General Development of the Internet

The Internet was developed in the early 1960s by a think-tank commissioned by the United States (U.S.) military to conceive of a means of communication subsequent to a nuclear holocaust.16 The U.S. military eventually abandoned the project, but it was picked up by a group of four U.S. universities in the late 1960s as a method of sharing information.17 Europe had an early hand in Internet technology advancement through the development by a British researcher of the

The EMU commits "the Member States over the course of the 1990s to bring about a convergence of their economic and monetary policies and to eliminate deficit spending while reducing inflation." Id. This goal was to be brought about by breaking down internal trade barriers and creating a common European currency. See id.

14 See EC Documents, supra note 1, at 42, 62.
15 See infra notes 37-85 and accompanying text.
17 See id.
Hypertext Markup Language, which is the basis for the World Wide Web.\footnote{See id. The World Wide Web: refers to those servers connected to the Internet that offer graphical pages of information. When you connect to one of those servers, a screen of information with a number of hyperlinks appears. When you activate a hyperlink by clicking on it with your mouse, you are taken to another page containing additional information and other hyperlinks. Bill Gates, The Road Ahead 94–95 (1995). Collectively, this system of interconnected server screens is known as the World Wide Web. See id.} Internet usage grew in the U.S. during the 1970s and 1980s and has continued to grow rapidly during the 1990s.\footnote{See Barron, supra note 16. By 1987 there were 10,000 host computers in the U.S. Today there are approximately 29.4 million Net users in the U.S. See id.}

The Internet is dominated by the English language because Internet technology developed and spread most rapidly in the U.S.\footnote{See id.} This English language dominance, coupled with higher telecommunications costs collateral to Internet usage across Europe, has led to comparatively lower European usage.\footnote{See id.} Nonetheless, the European growth rate has been strong and consistent.\footnote{See id.} In 1996 there were 8.9 million Europeans connected to the Internet.\footnote{See id.} By the year 2000, industry sources predict that 35 million Europeans will be “wired.”\footnote{See id.} The Internet has experienced such rapid growth because its potential for information exchange and economic gain is unparalleled.\footnote{See id.} In illustration, the Internet is expected to produce nearly 80 billion dollars in yearly revenue by the year 2000.\footnote{See id.}

While some commentators downplay the extent to which the Internet creates criminal opportunities,\footnote{See John T. Delacourt, The International Impact of Internet Regulation, 38 Harv. Int'l L.J. 207, 222 (1997).} early Internet usage has led to the identification of specific areas of Internet commerce that are of legal concern:

Financial service systems—Because much of the commerce of the Internet will be conducted across geographic distances and national
borders, a secure and private framework for electronic payment must be developed to safeguard against fraud.\footnote{28}{See Suzanne Perry, EU to Propose Electronic Commerce Regulation, THE REUTER EUR. COMMUNITY REP., Apr. 16, 1997.}

Unlicensed physicians and lawyers—Concern has been mounting over the use of the Internet by unlicensed physicians and lawyers who use the medium as a method to advertise and sell both services and products.\footnote{29}{See Shailagh Murray & Richard L. Hudson, Europe Seeks to Regulate Global Internet; As EU Joins Fray, Industry Fears Support for Controls, WALL ST. J., Mar. 18, 1996.}

Securities Fraud—As unsophisticated consumers invest across international borders, with brokers that cannot be easily tracked and regulated, securities fraud is a potential problem.\footnote{30}{See id.}


Dissemination of illegal information—The posting of instructions for the manufacture of weapons, including bombs and nerve gas, has been a cause of concern.\footnote{32}{See Delacourt, supra note 27, at 221.}

Contracts—An enforcement mechanism is needed for legal promises made over the Internet.\footnote{33}{See Gibbons, supra note 2, at 483.}

Taxation—Questions of how to tax and how much to tax Internet usage and commerce, as evidenced by the Europeans’ acceptance and investigation of proposals concerning a taxation system, is an area of concern.\footnote{34}{See Resolution, supra note 31, at ¶ 66.}

Defamation—Another ancillary result of the inherent anonymity of the Internet may be the use of the medium for the promulgation of defamatory material.\footnote{35}{See Gibbons, supra note 2, at 483.}
Illegal pornography—Early use of the Internet has spawned concerns over the use of the Internet for the dissemination of pornography, particularly child pornography.36

B. History of European Union Internet Regulation

The first efforts at significant EU computer regulation occurred in 1991.37 In the “Privacy Directive,” which was later formally adopted by the European Council of Ministers in 1995 as the Directive on the Protection of Personal Data, the EU sought to protect personal information stored in computer data banks.38 The directive restricted data collection to specific explicit and legitimate purposes, and gave individuals rights to access their personal records.39 Additionally, in an implicit recognition of the potential abuse of information transfer across national borders—both over the Internet and through alternative transference techniques—the directive attempted to prevent the circumvention of EU rules by non-EU countries.40

Since 1991 the EU has made little substantive legislative progress toward its goal of Internet regulation. No specific Internet laws have been passed. Much of what has transpired has been an exchange of dialogue between administrative and legislative bodies in the typically EU pre-legislative bureaucracy.41

On July 19, 1994, the European Commission (the Commission)42 issued a document entitled, “Europe’s Way to the Information Society: An Action Plan.”43 This document advocated a regulatory role for the EU while explicitly calling upon the private sector to fuel technology

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38 See id. at 321–22.
39 See id.
40 See id.
42 See DAVID M. WOOD & EROL A. YESILADA, THE EMERGING EUROPEAN UNION 4–5 (1996). The European Commission is the executive branch of the European Union government framework. See id. It is comprised of 20 commissioners appointed by the governments of the Member States. See id. Countries with larger populations appoint two commissioners. See id. The 20 commissioners then elect a president. See id.
43 See Action Plan, supra note 41.
development and enterpreneurialism. The document did not call upon the private sector for industry self-regulation. The Commission proposed a "broad regulatory framework package" that would cover market access, compatibility between networks, intellectual property rights and data protection. Through this document, the Commission stated that the underlying motivation of any EU Internet regulation was going to be the production of a "level playing field."

The Economic and Social Committee issued an Opinion in response to "Europe's Way to the Information Society: An Action Plan" on February 23, 1995. This Opinion continued to advocate a high level of regulation.

In September, 1996, the European Parliament issued a Resolution indicating that the European Parliament was interested in effectuating broad legislation in order to produce a structured and equitable environment. The Parliament was concerned that without such regulation the Internet would develop into an environment where the disadvantaged could easily be marginalized. The Resolution stated that, whereas without appropriate Community and national social and regional policies, the positive aspects of the information society may be lost, entailing the risk that the unskilled, the poorly qualified, migrants, older people, the disabled and peripheral and ultra-peripheral regions, will be further marginalized and that the equal opportunities for women and girls will once again be eroded.

The Resolution explicitly called for "a strong regulatory framework" in order to achieve "maximum public protection." The docu-
ment, while never mentioning industry self-regulation, stressed the need for an international regulatory regime. 56 The Resolution also called for investigation into the feasibility of assessing an EU tax on Internet traffic, the proceeds of which would be used to fund Internet education. 57 Further evidencing the EU’s position on heavy regulation, the Resolution sought to extend, through regulation, the EU’s efforts to create a multilingual Internet environment. 58

The EU established its commitment to international coordination of governmental Internet regulation in the September, 1996, Parliamentary Resolution. 59 In October, 1996, the EU industry ministers continued this commitment by supporting a German proposal to identify common Internet conditions in an effort to coordinate intra-national legislative regulations in order to avoid fragmentation. 60

In November, 1996, the Economic and Social Committee issued an opinion in response to a Commission Green Paper. 61 The Economic and Social Committee’s reply acknowledged that the development of the Internet would require the Member States to coordinate their regulatory frameworks. 62 The Opinion did not advocate industry self-regulation. 63

As late as April, 1997, the EU appeared to be calling for a high level of intra-state regulation of the Internet. 64 In the paper entitled “A European Initiative In Electronic Commerce,” the Commission detailed plans for regulation of all aspects of electronic commerce. 65 In the paper the Commission stated that the “common market” 66 regulatory framework had worked for other forms of business, so that “[i]nterstate regulation of the Internet is at a high level.”

56 See id. ¶ 32. Paragraph 32 states that the Resolution “emphasizes the need for an appropriate and well-timed regulatory and legal framework to provide a simultaneous accompaniment to the prospect of an information society, which if it is to have a positive impact also needs to be guided and governed at supranational level.” Id.
57 See id. ¶ 66.
58 See id. ¶ Y.
59 See supra notes 50–58 and accompanying text.
60 See de Bony, supra note 7.
61 See Opinion of the Economic and Social Committee on the “Green Paper from the Commission on Commercial Communications in the Internal Market,” 1997 O.J. (C066) 1.
62 See id. at 5.8.2.
63 See id.
65 See id.
must now be made to work for electronic commerce . . . ." The Commission explained that without having "up-to-date" regulation, the Internet will not work as a business forum because it will not instill trust and confidence in either the consumer or the business person. The Commission stated that EU regulation of the Internet was needed in order to prevent the fragmentation of the European market which will only inhibit the commercial potential of the European Internet market. The paper concluded that the Common Market must be constructed on the framework of Internet legislation and policy papers that have already been promulgated by the community.

C. Recent EU Internet Regulation Strategy

EU Internet Regulation Policy prior to September, 1997, focused on a high level of broad governmental regulation in order to protect society and create an equitable Internet environment. Coupled with this strategy, the EU advocated some form of international cooperation and harmonization of Internet regulations. The EU did not advocate industry self-regulation outside of the sphere of the distribution of illegal pornography. In stark contrast, subsequent to September, 1997,

67 Electronic Commerce, supra note 64, at 10.
68 See id.
69 See id. at 11.
71 See supra notes 37–70 and accompanying text.
72 See id.
75 See id.
the EU has advocated and funded efforts to develop industry self-regulation.\textsuperscript{74} In September, 1997, the EU quietly made a significant position change in its strategy for regulating the Internet market.\textsuperscript{75} In September, 1997, the European Internet Services Providers Association (EuroISPA) was established.\textsuperscript{76} This industry group represents over four hundred Internet service providers across the EU.\textsuperscript{77} What is so significant about the formation of this industry group is that the EU agreed to contribute funding to the group and encouraged the group’s efforts at industry self-regulation.\textsuperscript{78} Most significantly, the EU made up to seven million ECU\textsuperscript{79} available to EuroISPA as part of a European Action Plan for Information Society initiatives.\textsuperscript{80} This funding is the first instance of the EU publicly encouraging and funding industry self-regulation of the Internet.\textsuperscript{81}

This sponsorship of industry self-regulation coincided with a speech given, on September 8, 1997, by the EU’s telecommunications Commissioner, Martin Bangemann. While speaking about a possible global Internet regime, Bangemann stated that industry self-regulation, along with mutual recognition of inter-state regulation, would be the two primary methods the EU would use to promote a global charter.\textsuperscript{82} Bangemann also stated that any global agreement must be industry-led.\textsuperscript{83} “This places new demands on the multinational industry for self-regulation and standardization in partnership with governments and international organizations to construct an effective legal framework within which such a global order can be conceived, agreed [upon] and implemented.”\textsuperscript{84} Bangemann made reference to the limited role EU governmental regulation would now fill saying, “[The

\textsuperscript{74} See infra notes 75–85 and accompanying text.
\textsuperscript{75} See European Internet Services Providers Association: EuroISPA established in Brussels, M@ PRESSWIRE, Sept. 15, 1997 [hereinafter EuroISPA].
\textsuperscript{76} See id.
\textsuperscript{77} See id.
\textsuperscript{78} See id.
\textsuperscript{79} See Berman et al., supra note 10, at 16. “ECU” is the term used for the European Union’s artificial currency unit which was established collaterally through the creation of the European Monetary System (EMS) in 1978. See id.
\textsuperscript{80} See EuroISPA, supra note 75.
\textsuperscript{81} See id.
\textsuperscript{84} Id.
global charter’s] role would not be to impose detailed rules, except in particular circumstances where it is clearly necessary.  

D. President Clinton’s Report: A Framework For Global Electronic Commerce


In the Report, President Clinton called for a “free trade zone” on the Internet which would be devoid of discriminatory taxes, tariffs, and unnecessary regulations. The Report also explicitly called for industry self-regulation by stating, in part:

Though government played a role in financing the initial development of the Internet, its expansion has been driven primarily by the private sector. For electronic commerce to flourish, the private sector must continue to lead. Innovation, expanded services, broader participation, and lower prices will arise in a market-driven arena, not in an environment that operates as a regulated industry. Accordingly, governments should encourage industry self-regulation wherever appropriate and support the efforts of private sector organizations to develop mechanisms to facilitate the successful operation of the Internet. Even where collective agreements or standards are necessary, private entities should, where possible, take the lead in organizing them. Where government action or intergovernmental agreements are necessary, on taxation for example, private sector participation should be a formal part of the policy making process.

Upon issuing the Report, President Clinton stated, “We want to encourage the private sector to regulate itself as much as possible.”

85 Id.
87 See Clinton & Gore, supra note 86.
88 U.S. Eyes Internet Free-Trade Zone Through WTO, BERNAMA, MALAY. NAT. NEWS AGENCY, July 2, 1997 [hereinafter BERNAMA].
89 Clinton & Gore, supra note 86.
90 BERNAMA, supra note 88.
When he issued the Report, President Clinton sent staffers to Europe and to the World Trade Organization (WTO) to lobby for support.\(^\text{91}\)
This diplomacy anticipated the European rejection of the Report due to animosity over U.S. dominance of the information medium.\(^\text{92}\)

On July 9, 1997, subsequent to the release of the Report, U.S. and EU officials met in Brussels to discuss the Internet.\(^\text{93}\) Notwithstanding the President's concerns about EU cooperation, the Europeans appear to have decided to seek a global partnership with the U.S. aimed at fostering industry self-regulation of the Internet. The European Commission expressed hope that such a meeting could lead to progress in "identifying guiding principles and the areas for future in-depth work at bilateral and international levels."\(^\text{94}\) One of the major issues discussed during this meeting was the relationship between regulation and self-regulation.\(^\text{95}\)

II. Analysis

There are at least two implicit motivations behind the EU's policy shift.\(^\text{96}\) First, the EU policy shift can be explained as a reaction to President Clinton's Report.\(^\text{97}\) Second, the EU policy shift can be explained as a strategic move to facilitate EU entry into the Internet commercial market.\(^\text{98}\)

A. EU Policy Shift as Reaction to President Clinton's Internet Report

The EU had a policy advocating broad governmental regulation of the Internet from 1991 until at least April, 1997.\(^\text{99}\) President Clinton released his Internet Report on July 1, 1997.\(^\text{100}\) The EU publicly began to vigorously advocate industry self-regulation in September, 1997.\(^\text{101}\)


\(^{92}\) See Bernama, *supra* note 88.

\(^{93}\) See *Press Release Re EU-US Meeting to Discuss Internet*, Spicers Centre for Europe, July 8, 1997.

\(^{94}\) *Id.*

\(^{95}\) See *Press Release: European Union and United States Meet to Discuss Internet*, Rapid, July 8, 1997.

\(^{96}\) See *infra* notes 99–111 and accompanying text.

\(^{97}\) See *infra* notes 99–103 and accompanying text.

\(^{98}\) See *infra* notes 104–111 and accompanying text.

\(^{99}\) See *supra* notes 37–70 and accompanying text.

\(^{100}\) See Clinton & Gore, *supra* note 86.

\(^{101}\) See *supra* notes 71–85 and accompanying text.
The fact that EU Internet regulation policy dramatically shifted from a position advocating a high level of governmental regulation to one vigorously advocating industry self-regulation suggests that the EU responded to President Clinton’s Report by conforming EU Internet policy with the Internet regulation policy of the U.S.\textsuperscript{102} This apparent acquiescence may have occurred because of the U.S.’s hegemonic position in either the international order or in the burgeoning Internet industry.\textsuperscript{108}

B. EU Policy Shift as Facilitation of Europe’s Commercial Entry in the Internet

The shift in EU Internet regulation policy can also be explained, in part, as the EU’s recognition of the need to facilitate and expedite European commercial entry and positioning in the Internet market.\textsuperscript{104} The EU legislative process, with its various stages and consultative periods, is traditionally time consuming.\textsuperscript{105} By shifting policy to the promotion of industry self-regulation, the EU may have chosen to forsake its traditional legislative process to allow its Member States’ economic actors to “grab land” on the Internet before others could stake claim to the Internet’s various economic opportunities.\textsuperscript{106}

The EU has undoubtedly recognized that a race is in progress to carve out a competitive economic position on the Internet.\textsuperscript{107} The EU Internal Market Commissioner, Mario Monti, implicitly expressed concerns about regulation-as-restraint hampering European efforts in such a scenario in April, 1997, when he stated, “We definitely want to avoid, like in other sectors, having too much legislation too early.”\textsuperscript{108}

The land-grab explanation is given support by viewing the EU’s Internet policy shift in the context of the former explanation: that of the EU’s reaction to President Clinton’s Report.\textsuperscript{109} The EU may have conformed to U.S. advocated industry self-regulation because if the EU had not, U.S. commercial actors, effectively given a governmental

\textsuperscript{102} See \textit{supra} notes 16–95 and accompanying text.

\textsuperscript{103} See \textit{id.}

\textsuperscript{104} See \textit{id.}

\textsuperscript{105} See \textit{BERMAN ET AL.}, \textit{supra} note 10, at 3–19.

\textsuperscript{106} See \textit{supra} notes 16–95 and accompanying text.

\textsuperscript{107} See \textit{Action Plan}, \textit{supra} note 41, at Intro. The Commission stated, “The race is on at the global level, notably US and Japan. Those countries which will adapt themselves most readily will de facto set technological standards for those who follow.” \textit{Id.}

\textsuperscript{108} Perry, \textit{supra} note 28.

\textsuperscript{109} See \textit{supra} notes 16–95 and accompanying text.
“green light” under President Clinton’s Report, would have had a competitive advantage in the quickly developing Internet. Moreover, the EU may have realized that it cannot handicap the Member States’ commercial actors by requiring them to compete with U.S. commercial actors within the restraints of a heavily regulated system.

C. Outlook

Some form of industry self-regulation appears to be a viable option for regulating the Internet in Europe. Although the European Court of Justice has raised doubts about the ability of industry self-regulation to effectuate an ordered system in a large and rapidly growing industry, legal commentators feel that self-regulation may be the only viable regulatory option because traditional regulatory regimes will not be able to regulate Internet use. Traditional regulation will most likely prove futile because Internet operation respects neither geographical nor governmental boundaries; because complete coordination of intra-governmental regulations will most likely be impossible in a world comprised of governments with competing economic, political, and religious/moral motivations; and because enforcement of violations will be frustrated due to the Internet’s inherent anonymity and opportunity for remote use. Additionally, optimism regarding industry self-regulation of the Internet is justified because industry self-regulation has proven in the past to be an effective regulatory scheme in both the EU and the U.S.

Proposed methods of industry self-regulation of the Internet, some of which have already been substantially developed, include a comprehensive rating system, screening software, and a contractual usage system. The advantages of industry self-regulation include a greater degree of expertise and technical knowledge by the regulators, less bureaucracy resulting in quick adaptation of rules, flexible enforce-

110 See id.

111 See id.

112 See Delacourt, supra note 27, at 235.


114 See Delacourt, supra note 27, at 208.

115 See id.; supra notes 16-95.

116 See GIANDOMENICO MAJONE, REGULATING EUROPE 23–26 (Jeremey Richardson ed. 1996).

117 See Delacourt, supra note 27, at 224–29.

118 See id. at 229–34.

119 See Gibbons, supra note 2, at 483–84.
ment and internalized costs, all of which limit the need for governmental taxes. The disadvantages of self-regulation include the "risk of capture of the regulators by the regulated interest" and the lack of enforcement due to the unwillingness of self-regulators to draw attention to non-compliance by their industry compatriots.

Industry self-regulation will undoubtedly result in rapid commercial development and creative entrepreneurialism. It remains to be seen, however, if the inherently liberal nature of industry self-regulation will allow the negative potential of the Internet, such as electronic theft, copyright and trademark violations, and child pornography, to outweigh the commercial good.

Aside from what the EU's policy shift favoring industry self-regulation means for the future of the Internet as an information and commercial medium, the policy shift has meaning for the legitimacy of the EU as a governmental entity. The EU's Internet regulation policy shift demonstrates the EU's strength as a legislative body through its ability to recognize the need to use creative and flexible regulatory regimes in the face of a novel situation. Because of the extreme bureaucracy of the EU's legislative process, such flexibility has not been anticipated. However, the April, 1997, shift in Internet regulation policy indicates that the EU legislative process is both flexible and effective.

**CONCLUSION**

Europe, like the rest of the developed world, is experiencing rapid development of the Internet. This development has been accompanied by EU efforts to formulate regulatory schemes for the commercial medium. From 1991 until April, 1997, the EU's dialogue concerning Internet regulation focused on a broad governmental regulatory regime. In September, 1997, the EU abandoned this policy position and instead chose to promote industry self-regulation. This policy change was most likely both a response to the issuance of President Clinton's Report on the Internet and a realization that without the advantages

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120 See Majone, supra note 116, at 23–26.
121 Id. at 25. The "risk of capture" occurs when a regulation process is unduly influenced, either directly or indirectly, by the industry to be regulated. Id.
122 See id. at 23–26.
123 See id.
124 See supra notes 16–95 and accompanying text.
125 See id.
of a free market, the EU Member States' economic actors would be at a competitive disadvantage in the burgeoning and borderless Internet industry. Because industry self-regulation has proved successful and advantageous in the past, optimism for the future of the regulatory scheme in the EU is well placed. However, it remains to be seen if industry self-regulation will be adequate to control the unique legal considerations of the Internet. Finally, the EU policy shift supports the notion that the EU is a flexible and effective legislative body which is not fatally hampered by bureaucracy.

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