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Articles

The FCC and the computer industry have learned much in the thirty-five years since the agency first began to regulate computer networks. Safeguards were imposed on common carriers for the benefit of the networks. This Article examines the so-called Computer Inquiries and how they have repeatedly re-examined and redefined the nature of the regulatory treatment of computer networks over communications networks. The Author reviews Computer I, in which the FCC first attempted to divide the world technologically between computers that ran communications networks ("pure communications") and computers at the end of telephone lines with which people interacted ("pure data processing"). In Computer II, the FCC reclassified the computer world on the basis of the services provided—basic or enhanced. The FCC's third and final attack on the issue, Computer III, retained the conceptual framework, but redetermined how the policy objectives would be implemented. The Author concludes that the actions taken by the FCC may not have "invented the Internet," but they certainly contributed to its success.

This Article assesses the viability of different vertical regulatory regimes in an increasingly convergent environment. It reviews several FCC proceedings that have generated opportunities for stakeholders to avoid regulatory parity by qualifying for reduced regulation based on service definitions. It also considers whether a horizontal regulatory approach can reduce the number of regulatory asymmetries and inconsistencies. The Author concludes that although a horizontal regulatory structure may not secure sufficient political support because of the risk of extending new burdens on previously unregulated activities, that type of structure makes better sense in a convergent, increasingly Internet-dominated marketplace and provides a more intelligent model than the existing vertical orientation that creates unsustainable service and regulatory distinctions.

Notes

This Note argues that although privacy and economic concerns have ruled the encryption debate during the past decade, the move toward increased privacy on the Internet and relaxed encryption regulation, designed to promote electronic commerce, comes at the expense of national security and the protection of Americans' safety. The Article begins with historical information about encryption and an examination of how businesses use encryption to secure their communications and financial transactions on the Internet. This Section also observes that this technology is employed by terrorist organizations to accomplish the same goal: to send private communications. The Author next details the history of encryption regulation during the last decade and addresses why the government has relaxed its stance even though encryption ultimately poses such a threat. The Note then analyzes whether encryption regulation will provide the intelligence community the tools to deal with terrorists who are now technologically savvy, or whether regulation will hurt the nation's already wounded economy. The Author then examines Magic Lantern, cutting-edge technology developed by the FBI that effectively incorporates the privacy benefits of encryption while still providing Americans protection in this new era of terrorism. The Author concludes by proposing the adoption of Magic Lantern as a way to protect privacy and economic concerns while ensuring national security.

Book Review

A review of Alexander Tsesis's *Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements*, New York University Press, 2002. At one level, Alexander Tsesis's thesis is simply one in a long line of arguments about the need to regulate racist speech. Yet on another level, it is fundamentally different from much American literature on "hate speech" because Tsesis draws on a broad historical swath, and because he contends that the United States should regulate "hate speech" due to a causal link between that speech and oppression of such magnitude as the Holocaust and slavery. Moreover, it is fundamentally different because Tsesis focuses on the ideology of racial inferiority and not where most proponents of regulating "hate speech" in the past have set their sights—epithets, or what one could term "verbal assaults." At the end of his book, Tsesis proposes a model statute for criminalizing hate speech.