

Social Control in Online Communities

Advantages of Self-regulation on the Internet

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***Abstract-** Online communities are just like real worlds: control is necessary to make for a pleasant society. This does not automatically imply government or company control. In many virtual communities there has been a kind of social control for many years now that adequately maintains order in their public virtual space. Does this mean that laws are unnecessary? Some people cry out for an Internet police that must maintain public order in the cyber-Gomorra. According to Robert Ellickson, Professor of Law at Yale University, there can be order without law. Not only is legislation unnecessary for law, but law is unnecessary for order. After studying dispute resolution among farmers and ranchers in Shasta County, California, Ellickson came to realize that as most people find the maxim 'everyone is deemed to know the law' too hard, and as the costs of procedures are so high, it is easier to fall back on common-sense norms. He found that all three functions of law - rule formation, enforcement, and dispute resolution- are asserted by means of these informal norms. And if the costs of learning and using the law are so high, then there is little use for the government to adjust the law, since citizens will ignore it anyway. Hence, these high costs become an argument for negotiating rather than the complex governmental solutions to property rights conflicts. Why then should we make (new) rules, if there are (too many?)¹ rules already? Do social conventions, control and arbitration not suffice? These and similar questions arise when we look at 'life' in the online communities. Self-regulation of online communities alone is sometimes insufficient. The government will intervene in cases of serious abuse or criminal cases. A good balance between external and internal regulation can be found by having all parties involved in the chain jointly formulate regulations, in which supervision, maintaining order, dispute resolution, and misconduct are openly organized. Draconian measures, often supported by politicians out of ignorance, will however have little effect, as common sense looks for solutions in the future and legislation is based on the past. This article describes the advantages of self-regulation on the Internet and the (im)possibilities social control offers.*

I. INTRODUCTION

Online communities are as old as the telegraph. About 150 years ago telegraph operators created virtual worlds with the world-spanning telegraph by exchanging their experiences from a distance. And little by little regulations were applied to steer all this in the right direction. (Standage, 1999) Communication from a distance between communities was enabled by telephony (after all, the first pay phones were on the street) and with the advent of the television 'the whole world' could be seen, which subsequently led to state regulation and self-regulation at the national level. (Otten, 2005) Each new media technology will become more and more rule-based. (Van Kokswijk, 2007) The media industry itself is of the opinion (as many other professional groups) that self-regulation is by far to be preferred above government interference (Van Es, 2004), an example of which is the application of a kind of self-regulation 'in the shadow of the law' (Mentink, 2006: 191) in Belgium and the United Kingdom. (VanderWilk, 2009)²

Digitization of telephony, the Internet and television, and the installation of fiber-optic networks will cancel out the existing differences between cable and telephone networks and the related content, after which the current dissimilar regulation of cable and telephony networks will be aligned in order to encourage competition. The Internet is the ultimate amalgamation of communication and entertainment from a distance. These two properties of the Internet prominently emerge in online communities and virtual worlds.

The distinction between traditional and virtual or online communities is artificial. It is about belonging or wanting to belong to a community of people centered around a common theme, interest, objective, feeling, hobby or conviction. Electronic communication makes it possible to form communities outside the old structures such as family, church and village.

As the world population urbanizes more and more, these new communities also meet the need to fill up the impersonal, anonymous living environment with connections with other people. Rheingold (1993), the pioneer of the virtual community, sees huge similarities between (the rise of) national states and (online) communities.³ A binding factor and a common enemy help to establish a connection. Central government, as the UN is considering,⁴ can limit a democracy (and therefore self-regulation) by means of control measures. For that matter, these considerations also play a part in the implementation of online communities in de community facilities of companies or organizations. For most people playing and relaxing on the Internet is enough, so why would you need more than just a few rules of play? Practice shows that rare excesses are covered extensively in the media, after which 'people' cry out for measures and therefore regulation. After Price & Verhulst (2000) had mapped out the progress of self-regulation on the Internet in a global environment, Murray (2007) argued that control of the online environment must take place through all kinds of means. Murray (2008) calls it the 'Symbiotic Regulation' and offers a model of Cyber-regulations which acknowledges its true complexity.

The model can be used by both regulators and regulatory theorists in their attempts to design a more comprehensive regulatory strategy for Cyberspace. After her research, Bonnici (2008) also describes the 'formal' regulations of self-regulation. However, neither of them focuses on the 'informal' behavioral norms used between the members of online communities (p:5). Yet, because of the rapid rise of social networking websites, self-regulation of behavior within online communities is a current hot topic. After all, the question of today is whether government regulations in these communities are necessary as well, or whether self-regulation can solve this by itself.

II. SELF-REGULATION TO BE AHEAD OF THE GOVERNMENT

Self-regulation is an institutional arrangement whereby an organization regulates the behavioral norms of its members. (Baggott, 1989) However, in literature it is emphasized that self-regulation is not a well-defined concept. (Alvisi, 1999; Giesen,

2007) The essence of self-regulation would be a process of ruling collectively. In 1996 Julia Black argued that the term 'self-regulation' is used to describe the discipline of the own behavior: '*self-regulation describes the situation of a group of persons or bodies, acting together, performing a regulatory function in respect of themselves and others who accept their authority*'. However, this does not mean that the state cannot play an actual role. Self-regulation does not develop by itself, but under the influence of political or social developments: they try to be ahead of the government. (Giesen, 2007) In many types of self-regulation the state is the initiator of self-regulating actions, or participates in its enforcement, or is the ultimate protector of civil rights. (Maxwell et al, 2000; Cannataci & Bonnici, 2002) In other words, instead of taking over all components of the regulations, the 'self-regulator' can be involved in legislation by developing a code of conduct, while enforcement remains a public task or is officially delegated to the private sector. Sometimes the government can take over a regulator's mandate and enforce this self-regulation code. More often a self-regulating organization will pursue self-regulation in an attempt to keep government regulations at bay. Alternatively self-regulation may come into being to complement legislation. With regard to this point Shackleton (1985) feels that self-regulation is an important characteristic of regulations in the United Kingdom. A number of reports and studies have confirmed that British policy makers in various areas -such as the regulation of professions, advertising, and the press- have opted for a higher degree of self-regulation than their counterparts in other countries (although the recently adopted British Digital Economy Bill will reverse much of this ⁵).

An important distinguishing factor with regard to virtual worlds (and an extra argument in favor of self-regulation) is that they are all created and exploited by private parties (companies, non-commercial organizations, and private persons).

An online community is created by a provider or developer. This developer marks off the boundaries within which participants of this virtual world can operate. So initially the regulation of the online environment consists of frameworks offered by the provider or developer of the world, which links itself to (inter)national social conventions by means of self-regulation.⁶ In a 'terms of use' contract with participants of the virtual world the developer lays down the mutual rights and obligations. The players participating in this world will not only observe these conditions, but also - if they want to - the rules of conduct and social conventions. This is a second type of internal regulation, between the players themselves. The kinds of online communities that offer people the opportunity to interact with one another have been discussed before, but in a legal sense there is no agreement what the term 'online community' or 'virtual world' is understood to mean exactly. ⁷ In principle, two types of virtual or online worlds can be distinguished,⁸ which distinction is also relevant from the social and legal perspectives: ⁹

- Massive Multi-player Online Role Playing Game – MMORPG
- Multi User Virtual Environments – MUVE

MMORPG

First of all there are 'games' in which often large groups of players are simultaneously engaged in carrying out assignments and/or fighting one another on the Internet in fantasy environments. Usually the term MMORPG (Massive Multi-player Online Role Playing Game) is used for these games or, in short, MMOG (Massive Multi-player Online Game). Typical of a MMORPG is that:

- a) A player is represented in the game by one, or sometimes several, virtual identities or characters, so-called avatars;

- b) The game can be played 24/7 and continues even if the player

himself is not logged in (persistence);

- c) The player transfers part of his social life to the virtual environment;

- d) The player tries to carry out assignments alone or in groups (also called 'guilds') and to acquire extra skills, status, capital, and so on ¹⁰ by playing. A character can become more powerful and advance from a beginner to an expert, usually indicated by levels (0-10, 10-20, etc.).

The best-known and most popular example in the world is World of Warcraft with over ten million paying participants world-wide.

In Asian countries online games are extremely popular. Millions of players participate in Lineage I and II games, aimed particularly at the Asian market. At some point even more than two million people were present in this virtual world at the same time (so-called concurrent users). In 2008 51 million Chinese Internet users played online games in one form or another. Young people spend more time playing online games than watching TV. ¹¹

MUVE

The Multi User Virtual Environment (MUVE) lacks the quality mentioned above under *d*, but the transfer of one's social life to the online virtual environment (under *c*) is more prominent; this is the reason why MUVE is also characterized as a social virtual environment. A well-known example is Second Life, where individuals and businesses not only chat, but also and above all create. An important difference between MUVEs like Second Life, Entropia Universe, and There, and MMORPGs is that players have more freedom to create game elements. For example, in Second Life everything in the game is made by the players. The developer only supplies the 'barren virtual ground' and the means to cultivate it. Other social online communities, such as Hyves, Facebook, My Space (with countless versions in all kinds of languages and forms all over the world) also offer unrestricted possibilities to create game elements, and the online participants add rules of play themselves. As long as the administrator of the online environment (and the software) enables it, the virtual 'citizens' create a community according to their own views, in which self-regulation is indeed exerted.

Habbo Hotel is an application that more fits in with MMORPGs with respect to the possibilities to create objects oneself, but still has to be classified under MUVE on account of its social aspects and the lack of game elements. In this simply designed virtual hotel the young hang out and chat in a three-dimensional environment.

Social Networks ¹² and other online communities fall under the MUVEs and are gradually becoming the majority ¹³. The Far East is leading in this respect. With 220 million active Internet users China now has the largest online user group in the world, with 1 in 3 Chinese maintaining social contacts in an online world. ¹⁴ Over half is younger than 30, stay on the Internet a large part of the day in front of 'window to the outside world' and say they cannot live without online contacts. ¹⁵ Worldwide the number of visitors of online communities is estimated at almost 500 million. And each visitor turns out to have several identities...

III. MORE PERSONALITIES, MORE PARTICIPANTS, MORE RULES

In an online community your body is not present but represented by a digital representative, e.g. a number of letters ('alias' or 'nickname') and/or a graphic image ('avatar'). This second 'I' (and many people have several online aliases) is an image used as a visual representation of the user when visiting Internet forums or participating in chat programs like MSN. In online environments the avatar is a three-dimensional 'person' who can more or less be dressed and styled to suit the user's taste, depending on the specific

virtual world. Via this avatar the player is able to do all kinds of things. An avatar is generally used as the personification of the person behind the computer. It is the digital representation of a player in the virtual world, a 'digital ego', who just like the 'virtual agent' (an artificial intermediary) can acquire an own personality with legal status (Van Kokswijk, 2007/2008). Together, the online personalities used in a virtual world and the three-dimensional virtual objects form this virtual world.

Regulation always relates to these virtual objects or to behaviors of online personalities. Relevant actors for regulation are the following parties:

- the persons who use online personalities and the right they have to virtual objects;
- the provider of the virtual environment/online community;
- third parties (e.g. interest groups such as the World of Warcraft Players Union and the Dutch forum for Secondlife Users);
- the government.

Apart from this classification into actors it is clear that regulation takes place on at least three different levels: contracts, social conventions and legal rules.

- Firstly, the contract participants of an online community conclude with the provider of the virtual world forms the basis of the relation to virtual objects and the relationships between online personalities (avatars and the like).

- Secondly, the relations in the virtual world between avatars and their virtual objects are regulated by social conventions.

- Finally, legal rules may be applied to the relation between online personalities and their objects (contract law, copyright, defamation, etc.). Third parties, the government or the developer can also apply legal rules to undesired behavior (discrimination, libel, etc.) or to objects that break the law in any way, shape or form (copyright, child pornography, etc.).

To be able to explain how self-regulation plays -and can play- a large role in this respect, it is necessary to divide the legal involvement in online environments into various perspectives in order to map out the types of regulation and their interrelationships. The issues are discussed from the side of the actors who (can) appeal to regulation. This leads to the following, related questions:

- Which regulation applies to behaviors between online personalities?
- Which regulation provides for the relation with virtual objects?
- Which actors can intervene in the virtual world and in which circumstances?
- Which actor is best suited to intervene in which cases and with which type of regulation?

The first three questions are mainly empirical, the last one is normative. A study commissioned by the Dutch Rathenau Institute has yielded answers to these questions on the basis of various cases in which regulation of virtual worlds played a role. The study also made use of international sources (literature, the Internet), and interviews were held with relevant experts (university graduates, police, public prosecutors) (Van Kokswijk & Lodder, 2008).

The first finding is that self-regulation in this context can relate to:

- ownership and intellectual property rights, e.g. the legal status of virtual objects;
- the terms and conditions of the game, e.g. acting in breach of rules of conduct and exclusion as punishment;
- political and social behaviors, such as undesired behavior.

When talking about online worlds and regulation, the discussion often focuses on criminal law and the punishment of contrary behavior in virtual worlds. In itself this is not surprising as criminal law appeals to the imagination. Literature however considers these issues in most cases from the perspective of private law: copyright, contracts, general terms and conditions, etc.

IV. THE MAGIC DEVISION IN REGULATION

The basic principle of virtual worlds is to solve problems as much as possible within the online community itself. It is referred to by the term 'Magic Circle',¹⁶ which stands for the division between the fantasy of virtual worlds and the real world. The idea is that the circle protects online environments against external influences such as money, law, and real world economy. Many problems can also be solved internally. As the developer creates, manages and usually also exploits the virtual world, he nearly always has the possibility to intervene effectively. The developer draws up the rules of play (the so-called terms of use), and can take technical measures to prevent behavior that he finds unacceptable. Furthermore, if the developer has reason to do so, players can be kicked or banned from the virtual world.

So in general the providers of virtual worlds feel no need to call in external help in the event of internal problems. In only isolated cases -embezzlement or criminal acts- the police is contacted. In April 2007 Linden Labs handed over to the FBI the names of the persons who time and again deliberately crashed the servers of Linden Labs. This kicked up quite a fuss worldwide, but even so the tenor was that this call for external interference was justified:

'Some people shut down the MMO Second Life by creating self-replicating objects with the in-game scripting system that replicated so much that they crashed the server. (...) In almost all of these cases, good answers are 'have the developer fix the problem in the code' or possibly 'allow players a way of policing or otherwise sort out the problem themselves'. (...) Perhaps in this extreme case, it *IS* correct for the developer to step in and ban, and call the authorities. Almost anything less than this probably does not warrant a ban or any penalty to the player from the developer'.¹⁷

The reticence to apply external regulation to virtual worlds is motivated by similar considerations in the matter of the 'Magic Circle' (Lastowka & Hunter 2004). Most legal experts acknowledge the untenability of the Magic Circle (Balkin 2005). What's more, the 'outside world' is inextricably bound up with the virtual world, as virtual objects are traded for regular money on sites like eBay. The virtual and physical worlds seem to blend more and more. (Van Kokswijk, 2003) This is one of the reasons why the legal and social analyses of what happens within these worlds is becoming increasingly complex. Casuistry and case law show that in spite of the Magic Circle situations have developed where only external regulation is applied. Examples are virtual child pornography, taxation of virtual properties, and combating terrorist activities. Globally there are also recurring discussions about the (im)possibility to legally enter into, or dissolve a marriage. When behaviors or objects have legal relevance outside the online world, this influence can extend over several jurisdictions.

So internal regulation alone does not suffice. However, how a good balance can be found between external and internal regulation is not yet clear. Developers usually operate as if they are all-powerful and combine the traditional roles of legislator (the terms and conditions), police (enforcing compliance) and judge (settling conflicts). For some time now there has been discussion

(including in court) how far developers may extend their power. The power of developers is under discussion, in particular as in addition to emotional interests, financial interests are increasingly important to participants of these worlds.

In a way, participants are restricted in their actions because of the developer's terms and conditions, but depending on the virtual world they have varying possibilities to arrange themselves, their environment and interactions with others at their own discretion. In the past there have been cases where participants were banned from a world after collective actions of other participants; a right that in principle only falls to the developer. Not only players can make inroads on the frameworks imposed by the developer by means of collective actions or otherwise; the law can restrict them as well.

For example, consumer protection can lead to the adjustment of the existing terms and conditions of a game because they conflict with the reasonableness of general terms and conditions as set out in the law. Specific rights that MMORPG providers feel they can appeal to are difficult to maintain, e.g. that they have the copyright to nearly everything within their virtual worlds, including the communication between players of the game. The copyright brings other parties in the picture that are not directly involved in the game. After all, third parties may feel that virtual objects -in particular in MUVES- are in conflict with their intellectual property rights (trade mark rights, copyright).

Another relevant party to regulation is the government itself, i.e. a government that formulates rules which specifically apply to online worlds and that enforces regulation.

V. SELF-STEERING OR ROBOT-CORRECTION

For mainly technological, economic and political reasons self-regulation has been suggested as a fitting regulatory system for 'online' realities. Because of the transnational character of, and the cyberspace activities on the Internet regulations pay particular attention to self-regulation. The code of conduct of Internet Service Providers shows there are several limitations to effective self-regulation, such as being tied to national boundaries (the code regulates the behavior of participants from a specific region), the absence of effective sanctions, the public accountability and supervision, and the real reform of systems. Cannataci & Bonnici (2003) argue that self-regulating systems have the ability to go beyond these limitations. New initiatives must prove that self-regulation can indeed solve the transnational limitation of regulations for the digital world. This can be achieved by regulating specific activity areas, particularly when the market requires regulation but the participating states do not have an incentive to intervene.

The concept of 'self-steering' is a much-used term for the process of self-organizing systems that are capable of steering themselves. It often refers to the self-steering capacity of (a part of) society. Self-steering is based on voluntariness, but it is also a process of collective, mutual influence: the organization binds its members and itself. The concept is often put on a par with self-organization. In view of the development of self-steering in social online communities self-regulation -as deregulation of government policies- is an interesting alternative to the virtual environment. A comparison can be made with the day-to-day government environment.

As a means to decrease or simplify government regulations Geelhoed (1993) distinguishes four types of self-regulation:

1) free (or pure) self-regulation; the government leaves the initiative entirely to the other parties;

2) substitute self-regulation: the government intervenes if the interests that deserve protection are not or not sufficiently protected. For example, the government can introduce legislation itself;

3) conditioned self-regulation: two parties conclude performance agreements (sometimes laid down in statutory regulations). For example, the government leaves the initiative and realization to the market, provided it meets the preconditions;

4) a covenant that is binding on all parties as well, comparable to network steering.

Self-regulating rules of conduct are contracts that fall under private law. Dresden (2004) comments on the prevailing view that 'self-regulation' is simpler:

- *Self-regulation is not the same as no regulation or deregulation.* It goes hand in hand with (sometimes even more) rules. It is just that these rules are formulated by the parties involved and are therefore better geared to their living environment, which can have a positive effect on enforcement and compliance.
- *Self-regulation does not end with making specific agreements.* Guarantees will have to be built in that implementation, enforcement, and financing are properly organized by the parties involved. Implementation and enforcement will have to be carried out by an independent, professional organization. Then the only role the government has is meta-supervision.
- *Self-regulation is not unrelated to government policies.*
- *Self-regulation is not unrelated to the availability of effective legal tools.*
- *Self-regulation makes the tasks of the government and administrative courts easier, but intensifies the appeal to the civil courts.* From time to time the private kinds of dispute resolution will end in the civil court.

Still alternative legislation concepts in combination with terms of use (on the basis of an agreement between provider and the person present online: Lex Mercatoria) prove popular on the Internet. In a number of cases (e.g. identification in the US Cyber Security Plan) there is even public-private cooperation.¹⁸

A more frequently seen alternative to government regulation is social control as a regulation mechanism. According to Van Erp and Brandsen (2006) this alternative entails a mechanism that can support self-regulation and the operation of market forces. Social control on online communities will only succeed in the current context if social behavior in online communities is brought up for public discussion, or if customers of the provider switch over to other providers as a result of negative publicity about issues in that particular online community, or if companies take action on account of (alleged) damage to their reputation.

In addition to netiquette, code of conduct, terms of use, and other means of self-steering robot correction -the use of technology as enforcement tool- is quietly coming on. Software as a new, very important regulation instrument offers unprecedented possibilities for automatic *rule formation, enforcement and dispute resolution* (Lessig, 1996/2005). Apparently the advance of this regulation instrument has taken place so quietly that the regular legal order has not noticed it. Leenes & Prins (2006) describe that this technological alternative in its most extreme form enforces human behavior, the result being that difficult discussions about willingness to comply no longer matter. Lessig cynically calls it: 'In the well-implemented system, there is no civil disobedience. Law as a code is a start to the perfect technology of justice.' This type of regulation is remarkable as enforcement takes place by means of technical limitations which are deliberately built in with

an eye to compliance with private norms. Leenes & Prins raise the fundamental question if such private regulation does sufficient justice to the public interests and what the input of the legislator should be.¹⁹

Broadly speaking providers of online communities go very far in setting preconditions within which the game is played (so-called 'Terms of Service') by concluding 'strangulation' contracts with participants of the virtual world and furthermore by implementing electronic facilities to automatically carry out supervision, enforcement and sanctions. Although this internal regulation is covered by the statutory freedom of contract, still there are limits to what can be laid down in such general terms and conditions. Users are not very interested in legal texts (or do they have difficulty in reading and understanding them, just as the Californian farmers?) which enables game providers to include without much resistance stipulations that are, at the very least, dubious. It is understandable that game providers claim as many rights as possible, but this internal regulation has its limits. Unreasonable conditions on the basis of which participants can be denied access to the online environment without giving reasons, or on the basis of which sanctions are imposed that decrease value, are worthy of a test case.²⁰

VI. SOCIAL CONTROL IN VIRTUAL COMMUNITIES

For the greater part the Internet has been formed by the US; after all, it was created there (ARPANET, Hafner&Lyon, 1998). Gradually the Web became global. The US saw this development too, and in the second half of the 1990s the decision was taken to set into motion an evolution towards privatization and self-regulation of the technical management and further technical development of the Internet. By law rules were laid down for behavior on the Internet, e.g. impropriety and obscenity. This led to protests of the users who felt that the Internet as a virtual environment did not fall under the rules of the physical world, and furthermore regulated itself: *You do not know our culture, our ethics, or the unwritten codes that already provide our society more order than could be obtained by any of your impositions. You claim there are problems among us that you need to solve. You use this claim as an excuse to invade our precincts. Many of these problems don't exist. Where there are real conflicts, where there are wrongs, we will identify them and address them by our means. We are forming our own Social Contract. This governance will arise according to the conditions of our world, not yours. Our world is different.*²¹

But soon the internet society seems not to be the virtual paradise. Extreme behavior in the online community often provokes outsiders to call for government measures. In more and more countries governments intervened and tried by trial and error to get control of the behavior of people on and via the Internet, consistent with interventions in the physical world. Yet, self-regulation is the first and best choice. Over the years, most misconduct on the Internet has been solved by means of internal correction or regulation, with the exception of spamming, hacking, child pornography, pedophilia, sexism, racism, and fascism. Due to a multitude of interests it is very difficult to put a stop to this. This means that self-regulation of online communities alone is insufficient. The government will intervene in cases of serious abuse or criminal cases. A good balance between external and internal regulation can be found by having all parties involved in the chain jointly formulate regulations, in which supervision, maintaining order, dispute resolution, and misconduct are openly organized. Draconian measures, often supported by politicians out

of ignorance, will however have little effect, as common sense looks for solutions in the future and legislation is based on the past. Fijnaut (2003) states that social control, which fell away in (small) communities, has been appropriated by the governments. In order to keep guard over social trust, governments have built data systems to make available the information that everyone used to have. 'Even when these governments have been democratically chosen and are constitutionally checked, I still have problems with the fact that much privacy legislation shows an institutional distrust of these governments.'²² On the other hand, governments have not been able to keep up - neither politically nor legally - with the fast development of the Internet into a global means of communication and a social platform. The use and management of Internet platforms like online social communities has thus become a matter of the providers/operators.

In some online social networks the providers/operators use volunteers to be actively present in the network concerned on a regular basis, the so-called moderators.²³ In the comparison between the physical and virtual societies, it is clear that the virtual society has adopted most public order enforcement elements of the physical society, but has extended them with the software code control elements, enabling a much more efficient control of forbidden actions. In the digital environment this can be accomplished by changing the software code in such a way that the forbidden behavior cannot occur, or by the monitoring behavior in such a way that it is a trivial matter to find the transgressor. In this manner, the code of law is applied to force the code of software into the service of social control. This kind of software control can be used for the rules and sanctions described by Ellickson (1991) in his 'elements of a comprehensive system of social control'.²⁴ In this context it is important to realize that with the development of information technology the laws of physics (with regard to time and space) seem to have been fallen away in the virtual worlds, so that human behavior is less 'restricted' to a specific place and time, and that that same technology is now used to adjust behavior. In the virtual society, restricting your behavior -self-control- is supported by automatic software ('bots') and external adjustment takes place by limiting communication in various ways, such as limiting the features during use (e.g. the use of time, options, level, volume), starting 'refresher' courses, blocking functions or access, and banning the IP address of a connected computer. The table shows a comparison of the ways in which people are monitored in physical and virtual societies.

The table 1 [supplementary to Ellickson's concept (1993)] shows that 'rules', 'monitoring' and 'sanctions' in the virtual society are supported by the enablers of cyberspace: electronic equipment. Human online behavior is strongly directed by -usually non-transparent- software code, sometimes in an abrupt inhuman way. Significant is the broad social acceptance of software code as a combined system of rules, monitoring and sanctions in the virtual society (e.g. in comparison with the application of software code in the traffic environment). The result is a movement toward increasingly secure private property rights under customary law. As Ellickson (1993) writes: 'There is abundant evidence that a group ... need not make a conscious decision to establish private property rights. ... People who repeatedly interact can generate institutions through communication, monitoring, and sanctions.' Therefore, no central authority with coercive powers is necessary to produce law in such a cooperative social community.' Benson argues that coercion is only required when there are strong incentives to resist, generally because the law grossly discriminates between individuals or groups in the allocation of rights and wealth.²⁵

| Regulation | Physical community | | | Virtual community | | |
|----------------------------|--------------------------|--|--------------------------------------|--|---|---|
| | Rules | Sanctions | Combined system | Rules | Sanctions | Combined system |
| Primary | | | | | | |
| Transgressor | Personal ethics & values | Self-restraint | Self-control | Personal ethics & Netiquette | Self-restraint | Self-control + Software code (= restriction by software robot) |
| Secondary | | | | | | |
| Contract party | Contracts | Personal approach with reference to agreements | Supervisor on the basis of contracts | User agreement; reminder by 'pop ups' in software code | Correction and limitation by administrators/moderators and/or software code | Software code (limitation of possibilities, exclusion, etc. on the basis of IP address) |
| Externally | | | | | | |
| Social environment | Norms | Aid by clergyman, social worker, etc. | Informal control | Situational & peer group norms | Shaming & blaming, exclusion | Ignoring the online personality (with software code); pressure by peer leader |
| Organization | Organizational rules | Organizational enforcement | Organizational control | Organizational rules | Organizational enforcement | Public organizational pressure |
| Government | Law | State enforcement | Legal system | Some law & Case law | State enforcement | Legal system |
| International organization | Treaty | Cooperative enforcement | Legal system | Treaty | State enforcement | Legal system |

Table: 1. Elements of a comprehensive system of social control

VII. FRAMEWORKS FOR AN EFFECTIVE ONLINE SELF-REGULATION

In a disciplining style regulation mainly consists of channeling, in its literal sense of 'regulating': setting boundaries and rules. In the goal-oriented style however, regulation consists of formulating and implementing policy. Policy is made on the basis of objectives. Here regulation does not consist of channeling, but also of moving towards a specific goal. In addition, acceptance requirements are set to self-regulation: rules can only then be used if they:

- (1) 'offer a durability that provides security and something to go on';
- (2) 'enable people to shape their environment in their mutual dealings or dealings with the government'; and
- (3) enable people to 'make their actions productive'.²⁶

Contrary to the usual authors of self-regulating rules (company code, professional code, industry code, code of honor) self-regulation of online communities 'to shape their environment by means of productive actions' is a matter of the three parties involved: the platform provider, the users/participants and the government. To enforce compliance with the online code of conduct it is important that clear, transparent compliance mechanisms are developed and special officials are appointed to monitor compliance. With the help of moderators (from the user group), administrators (from the provider) and 'neighborhood' police officers (from the government) first-line, second-line and third-line control can be organized, with the government only intervening in criminal cases. Social control of compliance with the code of conduct must be relied on to a considerable extent, as it is not possible nor desirable to fully monitor compliance on the basis of formal procedures. Thanks to the Internet the possibilities for social control have increased, both through automation (monitoring) and human intervention. Such an 'own' transparent supervision is seen as more agreeable and more effective than when the government deploys anonymous and elusive Internet monitors.

Dispute resolution fits into the self-regulation of online communities as well. However, there must be an adequate arbitration and sanction arrangement in place for dealing with complaints and disputes, which are known to participants of the virtual environment. If recognizable, effective punishments are imposed for violations of the code, it will lead to relative fewer violations of codes.

A possibility to give a sanction regime more 'bite' is setting up an

arbitration committee or a disciplinary tribunal consisting of members from the peer group, which can deal with complaints and if necessary, can impose sanctions. Such sanctions include warning, reprimand, fine, suspension, banning, and cancellation of the contract. This type of social control takes place frequently and can be carried out more simply and more efficiently than external monitoring, where an external expert or the government monitors the entire Internet for compliance with the code of conduct.

Social control can not always preclude discussions about the ownership of virtual goods and other valuable attributes in online communities. With regard to theft of virtual objects both internal and external regulation questions play a role. Establishing the punishment of theft is an example of external regulation,²⁷ but another option is to settle theft within the game itself (e.g. the operator of the online world reverses the action electronically). Following on from the discussion about the question whether internal or external regulation is called for in this situation, the question arises whether such regulation pertains to behavior or property. If the behavior is seen as theft, then there must also be stolen property. When the behavior is resolved within the game, it is not necessary to look upon virtual objects as property.

VIII. CONCLUSION

Self-regulation of online communities alone is insufficient. In the event of serious abuse and criminal cases the government will intervene. Extreme behavior in online communities often provokes outsiders to call for government measures. Yet, self-regulation is the first and best choice.²⁸ In the past 20 years, most misconduct on the Internet has been solved by means of internal correction or regulation, with the exception of spamming, hacking, child pornography, pedophilia, sexism, racism, and fascism. Evidently it is very difficult to put a stop to this. The problem is that many interests are at stake, such as money and connections, and in such cases politicians and entrepreneurs are not willing to take effective measures. However, the most effective way of monitoring is to follow the money and record the identity of parties in transactions via the Internet. A good balance between external and internal regulation can be found by having all parties involved in the chain jointly formulate regulations, in which monitoring, maintaining order, dispute resolution, and misconduct are openly organized. Finally: all those who do not trust the social control on the Internet have but one option: cut the power to your PDA, laptop or computer. Without electricity no online community.

REFERENCES

- Alvisi, C. 'Pubblico e privato nei sistemi autoregolamentari. Il problema dei controlli sull'autonomia nel settore della pubblicità commerciale', (1999) p463, who describes selfregulation mechanism as complex phenomena of self-regulation of private actors, same as private law regulations can replace or supplement the local acts.
- Baggott, R. 'Regulatory reform in Britain: the changing face of self-regulation', (1989) Public Administration 67, p438.
- Balkin J.M. and B.S. Noveck, 'The State of Play: Law, Games, and Virtual Worlds.' New York University Press.
- Black, J. 'Constitutionalising Self-Regulation', (1996) Modern Law Review 59, p24.
- Bonnici, J.P.M.B. 'Selfregulation in Cyberspace', (2008). TMC Asser Press.
- Boonk, M.L. & A.R. Lodder, 'How to apply e-commerce and intellectual property law in Virtual worlds? On the blurring borders between the real world (IRL) and virtual reality (in game)', Proceedings BILETA 2007.
- Cannataci A. & J. P. Bonnici, 'Can Self-Regulation satisfy the transnational requisite of successful Internet Regulation?', International Review of Law, Computers & Technology, V17, N1, 3/2003, pp51-61(11).
- Dresden, M.J., Dutch PhD thesis 'Algemeenverbindendverklaring van overeenkomsten in het milieubeleid' (2004), p35. WWW <<http://www.narcis.info/publication/RecordID/oai:uva.nl:278787>> (1-5-2010)
- Castronova, E., Synthetic Worlds: The Business and Culture of Online Games, (2005) Chicago University Press.
- Dibbell, J., 'Play Money: Or, How I Quit My Day Job and Made Millions Trading Virtual Loot', (2006) Basic Books.
- Duranske, B.T., Virtual Law: Navigating the Legal Landscape of Virtual Worlds, (2008) American Bar Association.
- Ellickson, R.C., 'Order without Law: How Neighbors Settle Disputes', (1991) Harvard University Press.
- RC Ellickson, 'Property in Land', *Yale Law Journal*, vol. 102 (1993) p1366.
- Erp, J. van & T. Brandsen, 'Maatschappelijke controle als reguleringsmechanisme', in: "Op weg naar bruikbare regulering", in 'Recht der Werkelijkheid, Tijdschrift voor de Sociaal-Wetenschappelijke Bestudering van het Recht'. 3/2006, p97-116.
- Es, R. van (ed), 'Communicatie en ethiek: organisaties en hun publieke verantwoordelijkheid' (2004), p150, 11.9.
- Geelhoed, L.A. 'Deregulating, herreguleren en zelfregulering', (1993) in: Ph. Eijlander, P.C. Gilhuis en J.A.F. Peters (red.), "Overheid en zelfregulering", Giesen, I. 'Alternatieve regelgeving en privaatrecht', (2007) Kluwer Law.
- Hafner, K & M. Lyon 'Where wizards stay up late, the origins of the internet' Hart, H.L.A., The concept of law, (1961) Oxford University Press.
- Johnson, D.R. & D.G. Post, 'Law and borders: The Rise of Law in Cyberspace', *Stanford Law Review* (48) 1996.
- Jong, A. de & M. Schuilenburg, *Mediapolis, Popular culture and the City*, (2006) Rotterdam: 010 Publishers.
- Kokswijk, J. van, 'Architectuur van een Cyber Cultuur'. (2003) Bergboek.
- Kokswijk, J. van, 'Digital Ego', *Social and Legal Aspects of Virtual Identity*, 2007, p13.
- Kokswijk, J. van, 'Granting Personality to Virtual Agents'. *International Journal for Human and Social Science*, 2:4 2008. WWW <<http://www.waset.org/journals/ijhss/v2/v2-3-37.pdf>> (1-5-2010).
- Kokswijk J. van & A.R. Lodder, 'Recht in online reality, De juridische werkelijkheid in fantasiewerelden', Paris, Zutphen NL (2008). (partially based on the study "Virtuele werelden en regulering" for the Dutch Rathenau Institute)
- Lagemaat, A.C., M.L. Boonk & M. Briet, 'Vermogensrechtelijke aspecten', (2006) in: A.R. Lodder (red.), 'Recht in een virtuele wereld: juridische aspecten van massive multiplayer online role playing games' NVvIR, Elsevier, p21-40.
- Lastowka, F.G. & D. Hunter, *The Laws of the Virtual Worlds*. (2004) 92 *California Law Review* 1.
- Leenes, R. & C. Prins: 'Techniek als alternatief reguleringsinstrument; Implicaties voor privaatrechtelijke verhoudingen', in: "Op weg naar bruikbare regulering", in: 'Recht der Werkelijkheid, Tijdschrift voor de Sociaal-Wetenschappelijke Bestudering van het Recht.' 3/2006, p117-134.
- Lessig, L. 'The Zones of Cyberspace', (1996) *Stanford Law Review* 48, p1408
- Lessig, L. "Code and Other Laws of Cyberspace." / "Code v2" (2006) WWW <<http://codev2.cc/>> (1-5-2010)
- Malaby, T., 'Parlaying Value. Capital in and beyond virtual worlds', *Game and Culture*, 2006/1, p141-162.
- Maxwell et al., J.W. 'Self-regulation and social welfare: the political economy of corporate environmentalism', 2000 *Journal of Law and Economics*, no 2, p584.
- Mentink, J. H. 'Veel raad, weinig baat', An investigation into the usefulness and necessity of the "Raad voor de Journalistiek" (the Press Council); Recommendations for codes. (2006) Ad. Donker, Rotterdam.
- Murray, A. 'The Regulation of Cyberspace: Control in the Online Environment' (2007) Abingdon.
- Murray, A. "Symbiotic Regulation" (2008) WWW http://works.bepress.com/andrew_murray/1/ (1-5-2010)
- Otten, R. 'Achter televisie: omroepmarkten en -structuren in West-Europa' (2005), p22 (mengvormen van regulatie).
- Price M.E. & S.G. Verhulst, 'In search of the self: charting the course of self-regulation on the Internet in a global environment', in C.Marsden, *Regulating the global information society*, 2000, p58.
- Rheingold, H., 'The Virtual Community' (1993, 1st. ed.). Addison-Wesley Pub.
- Shackleton, J.R. 'UK privatisering - US deregulering', 1985 *Politiek*, oktober, pp. 8-16. Ref. Italian Selfregulation, see: F. Cafaggi, *Reframing Selfregulation in European Private Law*, 2006.
- Schermer, B.W. et al., 'Meer dan een spelletje.' (2008) Research report into the economic, legal and social aspects of computer games and online worlds in The Netherlands, ECP.NL (by order of the Dutch Ministry of Economic Affairs).
- Schermer, B.W., 'Virtuele werelden, echte belangen: aansprakelijkheid van aanbieders van virtuele werelden', *Tijdschrift voor Internetrecht* 2008/1, p9-14.
- Schermer, B.W., 'Alan Turing and the Matrix: Intelligent System for Law Enforcement in Virtual Worlds', (2007) WWW <http://virtuallyblind.com/files/reading-room/B19_schermer.pdf> (1-5-2010).
- Standage, T., *The Victorian Internet: The Remarkable Story of the Telegraph and the Nineteenth Century's On-line Pioneers*. (1996).
- Viersma, M. & B. Keupink, 'Virtuele criminaliteit: all in the game', in: A.R. Lodder (red.), *Recht in een virtuele wereld: juridische aspecten van massive multiplayer online role playing games*, (2006) NVvIR, Elsevier, p41-59.
- Wilk, E.W. van der, 'Macht, Media & Montesquieu : Over nieuwe vormen van publieke macht en machtsevenwicht', (2009).

NOTES

- Over-regulation is being discussed: 'Britain's new Internet law -- as bad as everyone's been saying, and worse. Much, much worse' WWW <<http://www.boingboing.net/2009/11/20/britains-new-internet.html>> (1-5-2010)
- Changes in the supervision of journalistic behavior in the United Kingdom, Germany and Flemish Belgium were only realized after the legislator threatened to intervene: By analogy of the history of the development of the British Press Complaints Commission "in de shadow of the law".
- Interview with Rheingold WWW <<http://www.bbc.co.uk/blogs/digitalrevolution/2009/10/title.shtml>> (1-5-2010)
- The Internet Governance Forum (IGF) is to support the United Nations Secretary-General in carrying out the mandate from the World Summit on the Information Society (WSIS) with regard to convening a new forum for multi-stakeholder policy dialogue by an interactive, collaborative online and offline space where all stakeholders can air their views and exchange ideas. WWW <<http://www.intgovforum.org/cms/>> (1-5-2010)
- Digital Economy Bill. WWW <<http://www.publications.parliament.uk/pa/ld200910/ldbills/001/10001-i-ii.html>> (1-5-2010)
- Safer social networking: the choice of self-regulation; "The Safer Social Networking Principles for EU" were signed February 10, 2009 during Safer Internet Day, in Luxembourg. WWW <http://ec.europa.eu/information_society/activities/social_networking/eu_action/selfreg/index_en.htm> (1-5-2010)
- Duranske (2008) points out in the first sentence that everybody has his own definition: 'If you ask ten people who participate in virtual worlds to tell you what a virtual world is, you will get ten different answers'.
- In this article the term 'online world' is used as coordinating concept for MMORPG en MUVE. Same as Schermer (2008)
- See examples/links at: WWW <<http://terranova.blogs.com>> (1-5-2010) and <<http://www.virtualenvironments.info/>> (1-5-2010). See (Castronova 2005) too.
- Also known as avatar capital, see (Malaby 2006) and (Castronova 2005).
- Social Impact of ICTs - Canada 22-5-07 WWW <<http://www.oecd.org/dataoecd/37/56/38738648.pdf>> (1-5-2010)
- See for survey: WWW <http://en.wikipedia.org/wiki/List_of_social_networking_websites> (1-5-2010)

13 A trend to use the synergy between online games and social platforms will lead to 'social games', same as Huizinga's 'Homo Ludens, Man the Player' has led to 'serious games'. This will blur the MMO distinction.

14 CNNIC report: One-in-three in China socializes in online world - Social network users reach 124 million in China WWW <http://www.china.org.cn/china/2009-11/13/content_18879694.htm> (1-5-2010)

15 Virtual and actual worlds to net-surfing kids – A way of live WWW <http://news.xinhuanet.com/english/2009-11/11/content_12431544.htm> (1-5-2010)

16 See e.g.: Joshua Fairfield, WWW <http://www.law.indiana.edu/webinit/papers/fairfield_the_magic_circle_weiss.pdf> (1-5-2010)

17 'Second Life calls the FBI'; WWW <<http://www.sirlin.net/archive/second-life-calls-the-fbi/>> (1-5-2010)

18 Public/private competition/collaboration WWW <<http://opt-out.cdt.org/egov/handbook/publicprivate.shtml>> (1-5-2010)

19 "If the law does not take into account changes in technology, then technology itself becomes the means of creating or eliminating laws, and the democratic process becomes irrelevant."...and created a situation where individual rights and freedoms have been impaired" in: E. Warncke, 'Techno-Regulatory Arbitrage and the Future of the Internet' Dec-03-2009. WWW <http://salem-news.com/articles/december032009/Internet_ew.php> (1-5-2010)

20 If you use your e-mail address to register specific rights, e.g. Paypal or Ebay, or a licence for Adaware or Total Record, than you'll have a problem when your e-mail address is limited or deleted.

21 Barlow's Manifesto was published at the Internet at 08-02-1996, the day after the US Telecom Reform Act van 1996 was accepted as law. WWW <<http://www.eff.org/~barlow/Declaration-Final.html>> (1-5-2010)

22 'Opsporing: misplaatst vertrouwen in ICT, een te eenzijdige blik naar art. 8 EVRM en de gevolgen van onterecht institutioneel wantrouwen. In gesprek met C.J.C.F. Fijnaut', in: 'Zeven essays over informatietechnologie en recht.' Dutch IteR 63/2003 WWW <http://ejure.nl/mode=display/dossier_id=215/id=97/downloads/ITeR_63_Zeven_essays1.pdf> (1-5-2010)

23 Moderator is a term used on the Internet for a user with certain privileges. Often moderators have the task in a forum, mailing list or website to 'clean' or lead a discussion. On bulletin boards moderators were appointed to quickly remove non-relevant messages. To accomplish this task moderators often have rights to send messages to users to modify or delete text, and to lock accounts. Although moderators have to keep certain rules and must ensure that ordinary users have to comply with these rules, it sometimes happens that a moderator will be overstepped. Many forums or mailing lists have in some cases even a sysop or network manager to which can be complained. In the early days of the Internet, some operators were pure dictators and full-time online, like Badass AA, an IRC operator who enjoyed a lot when she was compared to a dictator after someone had blocked. See e.g.: Dumb People Moderating Internet Forums WWW <<http://thestuffdumbpeoplelike.blogspot.com/2009/06/moderating-Internet-forums.html>> (1-5-2010).

24 David Friedman, 'Less Law Than Meets the Eye' in: *University of Michigan Law Review* vol. 90 no. 6, (May 1992) pp 1444-1452. WWW <http://www.daviddfriedman.com/Academic/Less_Law/Less_Law.html> (1-5-2010)

25 BL Benson, 'Where Does Law Come From?' (1997) WWW <<http://www.independent.org/publications/article.asp?id=202>> (1-5-2010)

26 'Nota Bruikbare Rechtsorde', Kamerstukken II 2003-2004, 29 279, nr. 9, p. 4. Dutch Parlement (2004).

27 Habbo Hotel 'Virtual theft leads to arrest' WWW <<http://news.bbc.co.uk/2/hi/7094764.stm>>, Dutch Court 02-04-2009 <<http://jure.nl/BH9789>>, <<http://jure.nl/BH9791>> and 'Court Ruling in Runescape Case' WWW <http://virtual-economy.org/blog/netherlands_court_finds_crimin> (1-5-2010).

28 This conclusion had opponents and supporters, ref to privacy: WWW <http://www.broadcastingcable.com/article/367678-CDD_Industry_Self_Regulation_Has_Failed_For_Online_Privacy.php> (1-5-2010); WWW <http://ec.europa.eu/information_society/activities/social_networking/eu_action/selfreg/index_en.htm> (1-5-2010) and WWW <<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcomeds/353/35302.htm>> (1-5-2010).