



## Book Review

### **Chokepoints: Global Private Regulation on the Internet**

Tusikov, Natasha. (2016). Oakland, CA: University of California Press. ISBN 9780520291218 (cloth) US\$85.00; ISBN 9780520291225 (paper) US\$29.95; ISBN 9780520965034 (ePub) (US\$29.95). 320 pages

SARA BANNERMAN  
McMaster University, Canada

Google, eBay, GoDaddy and PayPal – intermediaries that now control huge swaths of the internet’s search, marketplace, advertising, domain name, and payment activities – have become some of the leading threats to prospects for social justice. There have been significant victories in recent battles over the regulation of the internet, such as the 2012 “internet blackout” that stopped proposed American legislation that would have left web sites carrying intellectual property-infringing content vulnerable to total shutdown. Such victories are pyrrhic, as Natasha Tusikov’s (2016) important book shows; effectively the same measures to shut down web services have been put in place anyway, without legislative oversight, through informal agreements between intellectual property owners, government officials, and internet intermediaries. Tusikov reveals that eight such agreements now regulate the internet, having been established privately through back room deals.

Tusikov (2016) reveals in *Chokepoints: Global Private Regulation on the Internet*, that efforts to shut down Wikileaks by cutting off payment and domain services to the site launched a new phase in internet regulation; legislation would no longer be the primary tool of enforcement. Rather, a new wave of back room deals saw intermediaries agree to act as enforcers for corporate intellectual property owners. Through 90 interviews with government officials, corporate actors, and civil society groups in the US, UK, Australia, and Canada, Tusikov traces the establishment of the secret

*Correspondence Address:* Sara Bannerman, Department of Communication Studies & Multimedia, McMaster University, Hamilton, ON, L8S 4L8; Email: [banners@mcmaster.ca](mailto:banners@mcmaster.ca)

ISSN: 1911-4788



handshake agreements that would turn internet intermediaries into “chokepoints” that control many of the main functions of the internet globally, and that have the power to disable sites and sites’ revenue streams.

Following an introduction that gives an overview of the roles of macrointermediaries in anti-counterfeiting efforts, regime theory and the concept of the regulatory state, Tusikov walks us through the rise of multinational corporations’ influence on American and global intellectual property policy from the late 1970s to 2012, up to the failure of rights holders’ efforts to expand intellectual property rights enforcement measures under the proposed *Stop Online Piracy Act* and the proposed *Protect Intellectual Property Act*. The three chapters that follow trace the establishment of secret handshake agreements that established similar forms of control over payment, internet access, and marketplace “chokepoints.” The final two chapters of Tusikov’s book reveal new trends in relationships established between the state and corporate actors and offer recommendations for ways forward that would strengthen digital rights.

### *Renew Chokepoints*

The UK and US governments, in 1996 and 2006 respectively, formed initiatives with nonprofit partners that would see payment providers like Visa, MasterCard, and PayPal terminate services to websites involved in the distribution of child pornography (pp. 78-79). A similar initiative in 2005 saw payment providers agree to prohibit payment processing for sites violating tobacco sale laws (p. 79). By 2009, as Tusikov recounts, the UK had established a similar anti-counterfeiting agreement with payment providers (p. 81). Under threat of criminal charges for money laundering by the City of London Police (p. 85), payment processors dropped their initial reluctance to police the internet, and began voluntarily to work with police and intellectual property rights holders to choke revenue to sites accused of intellectual property infringement, operating without court oversight or judicial orders (p. 84). Agreements with major internet advertising intermediaries saw industry-compiled blacklists of sites (such as sites alleged to sell counterfeit products). Blacklisted sites became ineligible to be hosts of ads for major ad intermediaries, choking ad revenue stream.

### *Access Chokepoints*

Intellectual property rights holders have also pressured search providers to adopt informal agreements governing internet searches. Such agreements would demote infringing sites in search results, prioritize certified sites, de-index sites based on court orders, “improve” notice-and-takedown requirements, and limit “suggested” and “related” searches (p. 135). While

Google has been resistant to interference with its search results, it has made significant concessions, beginning to demote infringing sites, streamlining notice-and-takedown, and in 2011 and 2012 adjusting its autocomplete feature to prevent terms associated with piracy (pp. 136-137). Such measures, including automated notice-and-takedown measures, result in “wrongful and abusive” enforcement, incorrect takedowns, and the labeling of legitimate site operators as criminals (p. 154), choking access to infringing and legitimate web sites.

### *Marketplace Chokepoints*

Online marketplaces eBay and Taobao also signed enforcement agreements to make enforcement agreements faster, more streamlined, and more proactive (p. 157). The resulting takedowns of sellers and products from their marketplaces are also imperfect, as marketplaces do not have the expertise or knowledge to distinguish with complete accuracy between infringing and legitimate products (p. 186).

### *Trends*

The list of social problems that intermediaries are responsible for regulating is expanding, from child pornography, illegal gambling, and political extremism to intellectual property (p. 189). Private enforcement regimes have been established with the facilitation and backing of the UK and US governments. In fact, intermediaries, many initially reluctant to act as internet regulators, have been coerced by threat of legal action to take up the role of regulator (p. 194).

Rights holders in the North have been able to enroll the UK, US and EU governments to protect intellectual property rights, targeting China in particular, ensuring that the South-to-North flow of royalties and revenues is not disrupted (pp. 190, 199), and shifting the burden of intellectual property enforcement to intermediaries (p. 199). Whereas Edward Snowden’s revelations about American government mass surveillance revealed that governments enroll intermediaries as massive sources of data and information about their customers, Tusikov reveals that intermediaries are also tapped because of their ability to *restrict* the flow of information, to shut down web sites and to remove content (p. 223). By enrolling transnational intermediaries, intellectual property holders have been able to circumvent the limits of national legislation and national borders, establishing an extra-legal transnational enforcement regime (p. 201).

Tusikov asks, “Is this the future we want?” (p. 15). She calls for greater transparency around the establishment, nature, scope, and operation of nonbinding agreements (p. 231). As well, she calls for the establishment of

stronger laws protecting digital rights such as privacy, net neutrality, data protection, and freedom of expression (p. 239).

Tusikov's book is an important contribution to our understanding of how the internet is regulated. It shows an important shift towards private informal regulation that is broader and stronger than the legislative regimes that were the focus of previous enforcement campaigns. Private and automated regulation will likely produce many wrongs for which there is little accountability or recourse. Tusikov's painstakingly-researched work is illuminating. It is an important and fascinating read – one that paints a disturbing picture of the future of internet regulation – a future in which activists' tasks in confronting internet injustices will likely be more difficult.