Imagining the Internet and Making it Governable: Canadian Law and Regulation

by

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Abstract

This dissertation builds upon the existing body of criminological and socio-legal literature on Internet governance by looking at how this technology and its use are regulated in Canada. Rather than focusing on the regulation of specific web-based activities (e.g., illegal downloading, child luring, etc.) or the control of certain types of online content (e.g., hate speech, pornography, etc.), the dissertation considers the ways that regulatory bodies have responded to the emergence of this new medium.

Three specific agencies involved in the governing of the Internet are studied in detail: The Canadian Radio-television and Telecommunications Commission (CRTC), the Media Awareness Network (MNet) and the courts. Using a variety of theoretical and conceptual tools taken from both governmentality studies and Actor-Network Theory (ANT), the dissertation empirically documents how these agencies imagine the Internet and make it governable. Instead of searching for global accounts that look to either Society or Technology as a source of explanation for why the technology is governed in a particular fashion, this project examines how certain knowledges about the Internet and its regulation get produced in the first place. Attention
is paid here to how these agencies initially problematize the Internet, the kinds of regulatory strategies and practices that have emerged and the general impact this has had for our understanding of the Internet and the way in which it should be governed.

In keeping with the constructivist tradition in the field of Science and Technology Studies (S&TS), the dissertation approaches the regulation of the Internet as a site where the very nature of this technology – in terms of what it does, how it can be used and whether or not it can or should be regulated – gets invented and reinvented. However, rather than bracketing the building of the Internet from its governance, these processes are seen as mutually constitutive whereby the technology must be made governable in order to be governed. Consequently, given the many different and often competing visions about the Internet, the version that gets accepted (at least, momentarily) is shown to be crucial for how the technology is eventually received.
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Chapter 1
Making the Internet Governable

Introduction

Since the advent of the telegraph in the late 1800s, new technologies have emerged that dramatically alter the ways in which we communicate and broadcast information. These inventions are typically viewed as matters of progress with newer forms of media greatly improving upon those that preceded it. Whether this is in terms of format, speed, accessibility or customizability, much of our interest in these devices lies in what makes them “new” and better than the ones before. On a grander scale, new systems of communication and broadcasting are inextricably tethered to epochal visions about what they might mean for the future and how they may forever change the world in which we live.

To many enthusiasts, these technological advancements denote new beginnings and, conversely, mean the end of history, geography and politics, as we presently know them (see Mosco 2004). Terms like the “information age” not only highlight the centrality of prevailing communication and broadcasting technologies within a given society, but are often used to signal a discrete break from the past. This shift from one time period to another is typically characterized by the ability of a new technology to bring people closer than ever before and to produce an entirely new space for social interaction. In addition to reducing both physical and social distances, these new technologies are also praised for their democratizing potential and how they can be used to provide citizens the opportunity to speak their minds and to have their voices heard by a much wider and more diverse audience.
Although initially designed by the United States (US) military to allow for continued communications in the event of a nuclear attack (Castells 1996: 351; Kay 1995: 360), the Internet has gone on to become the newest terrain for social activity.¹ The spatial metaphor of “cyberspace” – a term taken from William Gibson’s 1984 science-fiction novel *Neuromancer* – is now commonly used to describe this virtual domain of human interaction made possible through the advancements in computer-mediated communications and the network connections of the Internet. Individuals who venture into this “electronic frontier” can come into contact with other online users and participate in the open exchange of ideas and information by visiting web pages, sending e-mail, sharing files or entering chat rooms.

As a means of conducting business or for purely recreational purposes, the use of this medium has become a part of everyday life for many people. Though the Internet is still largely the domain of “an educated segment of the population of the most advanced countries” (Castells 1996: 359), access is far less limited than in recent past. Whereas it was once restricted to researchers in the military, certain sectors of government and academia, cyberspace is now open to anyone willing to pay for services offered by a commercial Internet provider. Even those who do not own their own computer can get on the Internet at a local web café or public library. However, the increase in the number of users who are venturing “online” has brought with it growing concerns over what takes place in this digital environment. The distribution of child

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¹ For the purposes of this dissertation, the term “Internet” is used interchangeably with the World Wide Web (WWW). Although the two have become synonymous with one another, it is important to acknowledge that the Internet is different from the WWW. The WWW is the product of advancements in TCP/IP protocols and emerged in the early 1990s, while the Internet facilitates the WWW. Arguably, it was the development of graphic user interfaces facilitated by the WWW that ensured the popularity of communication and social interaction via the Internet.
pornography, cyber-stalking, information and identity theft and the luring of children and teens are but a few issues, which have generated calls for government regulation and censorship.

A Criminology of Cyberspace

For a growing number of criminologists and socio-legal scholars, the issue of how to regulate and govern Internet technology has become a major topic of interest. The study of “cyber-crime” is now burgeoning into its own field of inquiry within these broader disciplines, spawning a plethora of conferences, academic journals and books (see, for example, Cavazos & Morin 1996; Jewkes 2007; Loader 1997; Wall 2001a). A significant portion of this research has been undertaken by those working in the areas of criminal justice and public policy, who have devoted much of their attention to identifying the various challenges that the Internet presents to government and law enforcement agencies, and to proscribing possible solutions to these problems.

Peter Grabosky and Russell Smith (1998), for instance, warn of the tremendous potential for the criminal abuse of telecommunications technology and argue in favour of greater governmental control. They note that, in some cases, the developments in computing and communications technology have enabled new forms of criminal conduct to emerge (ibid.: 210). In other instances, these technological advancements have simply allowed already existing forms of crime and deviance to “be carried out more extensively, more efficiently, more quickly, with greater ease of concealment, and thus with greater difficulty of detection. Not to mention with more profound impact in terms of the harm caused” (ibid.). Some of the “digital age crimes” or “cyberspace illegalities” they highlight as issues of concern include: Illegal interception of
telecommunications, electronic vandalism and terrorism, stealing telecommunications services, telecommunications piracy, pornography and other offensive content, telemarketing fraud, electronic funds transfer crime, electronic money laundering, and telecommunications in furtherance of criminal conspiracies (ibid.: 14-17).

In order to ensure greater security and prosperity in cyberspace, Grabosky and Smith (1998: Chapter 11) prescribe a number of strategies and practices that need to be adopted. With respect to law enforcement, the authors suggest expanding data collection and analysis procedures, generating inter-jurisdictional cooperation between agencies, creating specialist units and improving training, using technological consultancies, and increasing staff and funding. They also propose a list of changes to the legal system ranging from the harmonization of laws and the expansion of extradition capabilities to the reliance on international treaties and evidentiary reforms (ibid.).

In addition to this more policy-driven and prescriptive research regarding the governance of the Internet, other scholars in the field (see, for example, Akdeniz 1999; Loader 1997; Wall 1998, 2000, 2001a, 2001b) have attempted to illustrate the various forms of regulation that are already taking shape online. David Wall (2001b: 167) claims that, contrary to the anarchy predicted by those who favoured early government regulation of Internet technology (see Duff & Gardiner 1996), the virtual world of cyberspace is “remarkably ordered.” More specifically, he argues that the Internet is presently governed by a multi-tiered structure of policing and lists five main levels at which this activity is taking place: Internet users and user groups; Internet Service Providers (ISPs); corporate security organizations; state-funded, non-public police organizations; and state-funded public police organizations (Wall 2001b).
In stark contrast to the growing body of literature that documents how cyberspace already is or can be regulated, numerous socio-legal scholars have pointed out the various reasons why the Internet cannot be governed by top-down, state-based forms of regulation. Several of these scholars (see, for example, McChesney 1999; Rheingold 1993) draw attention to the fact that the Internet was originally founded upon a communal, utopian and libertarian vision closely resembling the counter-culture of the US during the 1960s, and purposely designed in such a way that it could not be controlled by any central source. As Robert McChesney (1999) suggests, most of the university and college scientists who initially developed the architecture of the Internet did so with the explicit intent of creating an open and egalitarian communication environment. For these individuals, the Internet was to serve as a public utility founded upon a “vision of a non-commercial sharing community of scholars and, eventually, all citizens of the world” (ibid.: 129).

Many of the early developers also held an incredibly American-centric view of the Internet and thought that it would create a “space” that was far different from the “real” world. To those who shared this communal, utopian, and libertarian vision of the Internet, this new “cyber” space was the electronic equivalent of the Western Frontier; it was “open, free, and replete with possibility” (Hunter 2003: 443). For early “pioneers” like Howard Rheingold (1993), Internet users were not just forming virtual communities, but were “homesteading on the electronic frontier.” Seeing “cyberspace” as this separate and distinct place, Internet users held strongly to the belief that it must be vigilantly protected from government regulation.

John Perry Barlow, former lyricist for the Grateful Dead and co-founder of a cyber-libertarian organization called the Electronic Frontier Foundation makes this sentiment quite clear in his now famous “Declaration for the Independence of Cyberspace”: 
Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather... We have no elected government, nor are we likely to have one, so I address you with no greater authority than that with which liberty itself always speaks. I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear (Barlow 1996: 270).

However, beyond this anti-establishment bravado, cyber-enthusiasts claimed that the ungovernability of the Internet vis-à-vis state-based regulation was inherent in the very design of this technology.

In other words, the Internet was built to be “ungovernable.” On this issue, Mehta (1998: 172) writes:

The Internet, by definition, is the opposite of centralization and, as a result, a conflict between this technology and the state is inevitable. The shift from a highly centralized information and communications infrastructure to a decentralized set of interconnected networks crossing the globe has generated considerable concern about issues of jurisdiction, privacy and censorship.

As a consequence, laws determined by a certain geographic jurisdiction become almost impossible to apply on a network “designed precisely to make geography irrelevant and indeterminate” (Post 1997). And, with no existing nation-state currently possessing the legitimate authority to enforce its laws on citizens of other countries, any attempt to do so represents an “extra-territorial power grab” and a “form of colonialism” that is likely to be met with strong opposition (ibid.).

Given the tremendous difficulties with state-based forms of control, a number of scholars (see Dyson 1998; Johnson 1996; Johnson & Post 1996a, 1996b) assert that only users, themselves, can effectively govern the Internet and that the technology will “naturally” produce
this system of self-regulation. As further evidence to this claim, researchers in the fields of communications and cultural studies have demonstrated how virtual communities establish and enforce their own distinct set of norms and values.

Nessim Watson, for example, has studied an online fan forum dedicated to the rock group “Phish” called “Phish.Net” in which users – who call themselves “Phish.Netters” – rely upon the communal nature of the Internet to create and maintain certain behavioural standards. According to Watson (1997), one specific feature of these online communities is that no member is anonymous. Individuals who choose to post a message on this site via Usenet or e-mail are required to attach their real user ID and can therefore be held directly accountable for anything they do. Those who violate the collective norms and values are made fully aware of their mistake through a practice known as “flaming” in which the violator is bombarded by an onslaught of e-mails sent from offended members condemning the individuals’ actions (ibid.: 111).

On a more individual level, David Johnson (1996) suggests that the practice of self-governing is inherent in the user’s ability to “decide where to go, what to read and with whom to interact.” He argues that what truly sets the Internet apart from other forms of broadcasting technology is the amount of control that it places in the hands of the consumer. So, while the Internet may very well produce certain conditions that some might wish to avoid (e.g., exposure to certain types of content, contact with unsavoury characters, getting junk e-mail or spam, etc.), the technology also gives users the power and freedom to control what it is they receive.
From Cyber-Governance to the Construction of Cyberspace

Although the current body of criminological and socio-legal research may help us to identify the various issues surrounding the governance of cyberspace, much of this work tends to subscribe to a rather determinist view of the Internet and its regulation. There are those who argue (see, for example, Grabosky & Smith 1998; Wall 2001b) that the rise of computer-mediated communications has generated particular concerns, which, in turn, have led to a variety of initiatives that aim to control its use. From the introduction of new legislation to the promotion of safety awareness campaigns, these efforts come about as a result of or in response to the emerging technology. Even those adamantly opposed to state intervention are, in some ways, guilty of endorsing a similar kind of technological determinism. For these cyber-libertarians, the technology of the Internet either makes it ungovernable or, alternatively, “naturally” produces its own system of self-governance that takes away any need for government involvement.

However, what remains largely absent from this ever-expanding field of research is any meaningful discussion of how Internet technology is initially problematized. While a significant amount of attention has focused on why the technology cannot be regulated or the various ways in which users effectively govern themselves, very little has been paid to how the Internet is thought about and understood in the first place. Instead, these examinations of cyber-governance take the Internet as given and conceptualize it as the product of its own internal logic. To use a term from the field of Science & Technology Studies (S&TS), much of this research has treated the Internet as a “black-box”; a device for which the input and output are specified but the internal mechanisms are not (Hess 1997: 81).
As a consequence, the issue of regulation is studied at a time when the technology has achieved momentary “closure” whereby its status and meaning are no longer open to “interpretative flexibility” (MacKenzie & Wacjman 1999: 21; but see also Kline & Pinch 1999: 113; Pinch & Bijker 1984). The various regulatory solutions proposed by academics and policymakers to address the problems associated with the Internet are thus generated in response to a set of commonly held ideas regarding the nature of this technology. What is more, by looking only at the Internet in its “taken-for-granted” form, we fail to recognize the ways in which regulation influences technology and, instead, assume technological change to be an independent factor that impacts on society “from outside of society” (MacKenzie & Wacjman 2002: 5).

In so doing, we devote much of our time examining how we adapt or respond to new technologies like the Internet, but rarely ever consider how we – through these very adaptations and responses – shape these technologies (ibid.: 5). Lawrence Lessig is one of the few legal scholars who call attention to the effects of legislation on the very design and architecture of the Internet. In Code and Other Laws of Cyberspace, Lessig (1999) challenges the belief held by most cyber-libertarians that the “nature” of cyberspace makes it immune from any form of control. Rather, he argues that cyberspace does not naturally evolve, but is largely determined and shaped by its “code”: The arrangement of data or set of instructions found within a computer program.

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2 The term refers to the way in which different groups of people involved with a technology (different “relevant social groups,” in Bijker and Pinch’s terminology) can have very different understandings of that technology, including different understandings of its technical characteristics (MacKenzie & Wacjman 1999: 21; but see also Kline & Pinch 1999: 113; Pinch & Bijker 1984).
For Lessig (1999: 6, emphasis in original), it is essential that we make these connections between the technical and social aspects of the Internet and understand “how code regulates – how the software and hardware that make cyberspace what it is regulate cyberspace as it is.” He writes:

This code presents the greatest threat to liberal or libertarian ideals, as well as their greatest promise. We can build, or architect, or code cyberspace to protect values that we believe are fundamental, or we can build, or architect, or code cyberspace to allow those values to disappear. There is no middle ground. There is no choice that does not include some kind of building. Code is never found; it is only ever made, and only ever made by us (ibid.).

The way in which code is controlled, who the code writers are, and how code writers are regulated have direct implications for the Internet. As Lessig (1999: 60) points out, code writers are now the lawmakers of cyberspace who can set out its nature and “determine what the defaults of the Internet will be; whether privacy will be protected; the degree to which anonymity will be allowed; [and] the extent to which access will be guaranteed.” A strong proponent of the open source movement, Lessig (1999: 141) argues against the restriction and ownership of code, noting that the absence of property and the inability to direct how ideas will be used – what he describes as the presence of a commons – is key to limiting certain forms of governmental control and keeping alive the utopian vision of a communal cyberspace.

By highlighting the importance of code, Lessig’s primary aim is to bring awareness to what its control and ownership may mean not only in terms of tighter regulations in cyberspace, but for the very nature of this technology, more generally. Unlike many scholars working in this area who simply accept the Internet as a black-box that can be disassociated from the larger social, political, economic, cultural and legal contexts in which it is produced, Lessig adopts a decidedly constructivist point of view by taking into consideration how human interests – in this
particular instance, the regulation and treatment of computer code as private property –
invariably shape Internet technology.

This idea that technologies are socially produced has long been a topic of study for those
in the field of S&TS. Much of this research has emerged to directly challenge and question the
belief in a naïve technological determinism by taking into account the various ways in which
social considerations influence technology (see, for example, Bijker & Law 1992; Feenberg
constructivist position, Bijker and Law (2000: 3) explain, “Technologies do not evolve under the
impetus of some necessary inner technological or scientific logic. They are not possessed of an
inherent momentum. If they evolve or change, it is because they have been pressed into that
shape.”

Using this framework as a way of understanding new communications technology, Janet
Abbate provides a constructivist account of the “invention” of the Internet through an
examination of the various social and cultural factors that have influenced its design and use. In
her book, aptly entitled Inventing the Internet, Abbate (1999) details the ways in which certain
collaborations and conflicts between government and military agencies, computer scientists in
academia and industry, graduate students, telecommunications companies, standards
organizations, and network users, have helped to shape this technology. She argues:

The Internet’s identity as a communication medium was not inherent in the
technology; it was constructed through a series of social choices. The ingenuity of
the system’s builders and practices of its users have proved just as crucial as
computers and telephone circuits in defining the structure and purpose of the
Internet (ibid.: 6).
Rather than viewing the development of the Internet as an isolated act of invention, Abbate (1999: 6) suggests that the “meaning of the Internet had to be invented – and constantly reinvented – at the same time as the technology itself.”

Inventing and Reinventing the Internet

Abbate’s analysis of the Internet offers a number of important insights that may be useful to criminologists and socio-legal scholars interested in exploring the regulation of this technology. Her claim that the meaning of the Internet was not inherent, but had to be invented and reinvented through various social processes provides those of us in these fields with a different lens through which we can study the governing of new technologies. Instead of seeing various regulatory practices as responses to technological change, we can start to think about regulation as another location where the very nature of a technology – in terms of what it does, how it can be used and whether or not it can or should be regulated, etc. – gets produced.

More specifically, we can look at the ways in which regulatory institutions respond to the emergence of new devices like the Internet to examine how these technologies are imagined and “made” governable. Thus, rather than approaching the Internet as a stabilized artefact and focusing exclusively on the responses that emerge, we can treat these regulatory sites as places where the controversial status of the technology achieves closure and a particular conception of this technology is formed. By doing so, we can move away from bracketing the building of technology from its regulation and consider these processes as being mutually constitutive.

This type of investigation is premised upon the idea that, in order to govern the Internet, the technology must be constructed in a way that allows it to be regulated or controlled. Given
the many different and often competing visions regarding the nature of the Internet, the version that finally gets accepted (at least, momentarily) is therefore crucial to how it is eventually taken up and received. Whether this knowledge is produced through a public inquiry or a legal trial, the manner by which a technology is governed depends heavily on how it is understood and conceptualized and vice versa.

How Do We Deal with New Technology?

This dissertation attempts to build upon the existing body of criminological and socio-legal literature on Internet governance. Instead of trying to answer very normative questions that centre on how the Internet can or should be regulated, I look at the ways in which different regulatory institutions in Canada have attempted to deal with this new technology. Three specific agencies involved in the governing of the Internet are examined: The Canadian Radio-television and Telecommunications Commission (CRTC), the Media Awareness Network (MNet) and the courts. While each operates on varying levels and under different auspices, all three have been forced to respond to the emergence of the Internet in some way. Using these three case studies, I empirically document how the introduction of the Internet as a new technology gets made into a problem that requires a particular type of response. In other words, how do these regulatory institutions “problematize” the Internet? And how do certain governing strategies get created as a result?

By adopting a “genealogical” approach (Foucault 2001) to the study of cyber-governance, I attempt to move away from much of the existing research that tends to depoliticize our understanding of the Internet and its regulation as natural by-products of the
technology. Instead, Internet technology and the way it is governed are viewed as outcomes of various social and political processes. Thus, in much the same way S&TS scholars have rejected reductionist accounts of technological change, Internet regulation is not seen here as inevitable or predetermined by the technology, but recognized as highly contingent upon how this technology is socially received, understood and conceptualized. As such, the different institutions studied are not only taken as sites of governing but also treated as places where knowledges about this technology get produced.

The various forms of knowledge that serve to inform, shape and legitimize the ways in which the Internet is governed – the different myths, metaphors, analogies and visions about what the technology does, how it operates, the kinds of impact it may have on society and what it means for the future – are therefore central to this study. However, as I will demonstrate, our ideas about the technology and how it should be regulated are inextricably linked and mutually constitutive and, consequently, cannot be easily disentangled from the other.

Seeing Governance through the Lens of Governmentality

The approach to empirical inquiry used in this dissertation draws heavily from the work of Michel Foucault (1979, 1991; see also Dean 1999) and his concept of “governmentality.” Rose, O’Malley and Valverde (2006: 84) define governmentality as a perspective that sees [political power] not as universal, but as always operating in terms of specific rationalizations, directed towards certain ends, with certain styles of reflection on its bases and its limits. An analysis of “governmentalities” then, seeks to identify these different styles of thought, their conditions of formation, the principles of knowledges that they borrow from and generate, the practices that they consist in, the ways in which they are carried out, their contestations and alliances with other arts of governing.
As a way of understanding the “art of government,” the governmentality framework does not view any one single body as being solely responsible for the governing of individuals, but instead, recognizes that a wide array of actors and practices are involved in shaping the conduct of selves and the conduct of others.

The governmentality framework also guides researchers to consider the relationship between knowledge and governance. For Foucault (1979, 1991), a certain mentality – what he called “governmentality” – has become the basis of all modern forms of political thought and action (Rose et al. 2006: 86). In stark contrast to the power of the sovereign to rule over a particular territory or the head of a household to enrich this small unit, the art of government – emerging in Europe in the 18th century – was concerned with the management of populations (ibid.). Central to this project of “bio-political” control is the need for authorities to come to know the existence of a population that is independent of government yet still requires its intervention:

Authorities now addressed themselves to knowing and regulating the processes proper to the population, the laws that modulate its wealth, health, longevity, its capacity to wage war and to engage in labour and so forth. To govern, therefore, whether to govern a household, a ship or a population, it was necessary to know that which was to be governed, and to govern in the light of that knowledge (ibid.: 87).

Viewed in this light, power and knowledge are seen as inextricably connected within the broader project of governing. If a particular population (e.g., criminals, the mentally ill, drug addicts, etc.) can be “known” through certain forms of knowledge, they can then be acted upon and changed.

Given this power/knowledge nexus, experts and the knowledges they produce play a central role in how populations are regulated. According to Foucault (1977), the exercise of
power is made possible through expertise, which, in turn, allows certain practices and power relations to take shape. Building on this work, Pasquino (1991) demonstrates how the rise of criminological knowledge helped to produce “criminals” as a distinct population. More importantly, by producing this category of people and understanding them as sick and in need of some form of treatment, a whole range of programs and interventions were created “in which some people (experts, practitioners) work on other people (offenders) in order to make them different people” (Moore 2007: 9). The main point here is that it is through the production of knowledge that these relations of power are made possible.

Conversely, by looking at the formation of certain knowledges or “mentalities,” we can examine how and why particular governing strategies emerge the way they do. Hannah-Moffat (2001), for example, has considered how the rise of risk and actuarialism has changed the underlying logic concerning the governing of women prisoners from a regime of punishment to one of risk management. Likewise, in her study of criminal justice addiction treatment in Canada from the 1950s to the present, Moore (2007: 3) views the “criminal addict” as a “social artefact” whose existence depends upon, among other things, clinical knowledges and cultural understandings which, in turn, work to “make her up in particular ways and then try to remake her into a new, healthy, non-criminal, normalized person.”

However, as Moore (2007) points out, the “criminal addict” has undertaken a number of different iterations. The criminal addict who first appears in the post-Second World War era is strikingly different from the one we see today. Specifically, while the project of curing the criminal addict still remains a feature of Canadian punishment, Moore (2007: 8) contends that the technologies by which this is to be achieved has changed to match shifting mentalities. Whereas the mentality of the 1970s saw institutions offering holistic treatment for addictions and
the consideration of social factors in understanding the addict’s predicament, the 1980s brought with it a neo-liberal ideology that emphasized individual pathology as the sole cause of crime and affirmed a “mantra of efficiency and effectiveness” (ibid.).

According to Moore (2007), the continuing need to cure the addict can be directly attributed to the ability of psy- epistemologies to adapt with the changing political landscape. She writes:

The criminal addict of the 1970s is a very different, much more social creature than is the criminal addict of the 1980s. Both characters are in need of clinical treatment as a means of alleviating their criminal tendencies, but, in the 1970s, reflecting broader welfarist sensibilities, this treatment is far more socially oriented than are the responses that emerge in the 1990s, when the advent of cognitive behavioural therapy allows all troubling human behaviour to be whittled down to a handful of problems solved through quick and standardized interventions (ibid.: 9).

Thus, while the broader political shift from social welfare to neo-liberalism may help us to account for why we govern the criminal addict in the manner we do, the role of experts – in this case, those from the fields of psychology and psychiatry – and the knowledge they have produced about this particular population, are essential to our understanding of how they are regulated.

Within the governmentality framework, however, power is not something that is simply exerted by experts upon individuals to repress or deny particular forms of conduct. Instead, for Foucault (1977), power is both repressive and productive in nature. Through what Foucault (1978) describes as “technologies of the self,” human beings are encouraged to understand themselves within certain regimes of authority and knowledge, and to act accordingly. In essence, citizens are made to govern themselves. Whether it is achieved through proper diet, regular exercise or preventative therapy, individuals are to become “entrepreneurs” who can
conduct their lives as an enterprise in which the primary goal is self-improvement (Rose et al. 2006: 90; but see also Rose 1989, 1999).

The enterprising self is thus active and calculating, seeking to maximize its own human capital in order to better itself (Rose 1996a, 1996b, 1999). While numerous mechanisms of coercion remain in place for those who fail to take up these practices, individuals are largely “governed through freedom” (Rose 1996a, 1999) as the broader project of self-actualization – in which a wide array of experts offer direction and guidance to reach this goal – is configured as matters of choice, autonomy and personal responsibility (Rose et al. 2006: 90; but see also Cruickshank 1996). Under this system of “advanced liberal government” (Rose 1996a, 1999), modern subjects are transformed into individuals with rights and freedoms who are not merely “free to choose,” but “obliged to be free” in order to “understand and enact their lives in terms of choice” (Rose 1999: 87) and to conduct themselves responsibly.

As an analytical framework, governmentality has been applied as a way of understanding the emergence of neo-liberalism in Western democracies. More specifically, it has been used to make sense of the shift in ideology from social welfare to advanced liberal (or neo-liberal) rule and how this has drastically transformed the role of the state. Whereas social welfarism saw government as providers and guarantors of various social services (e.g., health care, unemployment insurance, security, etc.), neo-liberal governmentalities criticized this approach as “generating government overload, fiscal crisis, dependency and rigidity” (Rose et al. 2006: 91). Moreover, neo-liberal critics argued that the adoption of a new rationality of government was needed in which the state removes itself from these obligations by playing a steering rather than rowing function. Here, rather than taking care of the well-being of its citizens through social welfare and insurance programs, the state is to act “at a distance” by promoting a mentality of
responsibility and personal autonomy that would encourage non-state actors to take on these duties for themselves.

However, while the lens of governmentality has allowed scholars to document and make visible the ways in which power is exercised within systems of advanced liberal rule, critics (Rose et al. 2006) warn of the dangers in transforming this analytical framework into a formalized theory of governance that can be applied as a “one-size-fits-all” explanation for why things are governed in the way they are. As an alternative, it is far more useful to draw upon governmentality’s spirit of inquiry that encourages researchers to focus not on explanations for why certain phenomena have taken place, but to consider how these have come to be. It is this “ethos of investigation” that Rose and colleagues (2006: 100-101) see as the legacy of governmentality:

What remains salient and challenging about this approach is its insistence that to understand how we are governed in the present, individually or collectively, in our homes, workplaces, school and hospitals, in our towns, regions, nations, and by our national and transnational governing bodies, requires us to turn away from “grand theory,” the state, globalization, reflexive individualization and the like… What is worth retaining above all from this approach is its creativity. We should not seek to extract a method from the multiple studies of governing, but rather to identify a certain ethos of investigation, a way of asking questions, a focus not upon why certain things happened, but how they happened and the difference that that made in relation to what had gone before.

As a way of examining regulation and governance, then, governmentality leads us to ask, among other things, who or what is to be governed, how are they to be governed, by whom, according to what logics and with what techniques, and to try and answer these questions through empirical investigation (ibid.).
Bridging Governmentality with Actor-Network Theory (ANT)

While governmentality provides us with a set of questions that may serve as an important starting point for empirically examining how certain things are governed or made governable, it can be argued that it fails to offer any real methodological tools that can be used to study governance. However, this should be seen not as a shortcoming, but celebrated as a major strength of this framework. Indeed, one of the greatest features of this approach is its flexibility and potential for creative use. Although governmentality encourages a particular line of inquiry that openly rejects attempts at grand theorizing in favour of looking at the different ways in which people and objects are governed through more mundane and micro-level practices, it does not set limits as to what the researcher can study or how she should go about doing this kind of empirical work. On the contrary, governmentality can be thought of as one analytical tool that can be used in conjunction with a whole host of other methods to better understand and make sense of a particular phenomenon.

In this project, I borrow a number of key concepts from S&TS and the specific field of research known as Actor-Network Theory (ANT) to help address many of the empirical questions inspired by the governmentality framework. Commonly associated with the work of Bruno Latour, Michel Callon and John Law, ANT focuses on science and technology in the making (Latour 1987: Introduction). Rather than analyze the final products of a computer, the shape of a double helix or a cosmological theory, ANT theorists follow scientists and engineers in the production of these scientific and technical objects. They start out by rejecting any preconceptions as to what constitutes knowledge or technology and look closely at the ways in
which scientific facts and technological artefacts get “black boxed” to become stable entities, processes or laws, dissociated from the circumstances of their production (Lynch 1998: 829).

Unlike other branches of S&TS, ANT does not look for intrinsic qualities that determine the objectivity or subjectivity of a claim, or the efficiency or perfection of a mechanism. Instead, this type of analysis considers the later transformations that these objects undergo in the hands of others (Latour 1987: 258, see also Chapter 1). ANT thus concentrates on movement by following the relevant actors as they build facts and artefacts, and the successive transformations that take place as a result of translation. The primary concern here is on how ideas and things are produced through a network of heterogeneous elements. From this perspective, scientific knowledge is the end of result of “heterogeneous engineering” in which

bits and pieces – test tubes, reagents, organisms, skilled hands, scanning electron microscopes, radiation monitors, other scientists, articles, computer terminals, and the rest – that would like to make off on their own are juxtaposed into a patterned network which overcomes their resistance. In short, it is a material matter but also a matter of organizing and ordering those materials (Law 1992: 2).

So, in contrast to other “network” approaches within the field of S&TS that recognize the importance of social linkages in the production of science and technology, ANT looks beyond the connections that exist among human agents. For ANT theorists, networks are composed not only of people, but can include machines, texts and a whole host of other objects. More importantly, all of these objects – both human and non-human – are viewed as “actors” that are capable of action and must be treated on the same analytical level.  

\[3\] ANT does not celebrate the idea that there is a difference between people, on the one hand, and objects, on the other. Although ANT does not deny that human beings usually have to do with bodies or that they have an inner life, it does reject the notion that people are necessarily “special” (Law 1992). ANT insists that people are who they are because they are patterned networks of heterogeneous materials (ibid.). As Law (1992: 3) explains, “If you took away my computer, my colleagues, my office, my books, my desk, my telephone I wouldn't be a sociologist writing
A Sociology of Translation

The aim for those applying an ANT approach is to follow these networks and the attribution of agency. Particular attention is paid to examining the organizing and ordering processes whereby “social action and material and technical elements are brought together – or translated – into a coherent network out of which certain achievements are attained” (Manning 2002: 651; for a detailed discussion of translation see Callon 1986; Latour 1987). However, it is necessary to be clear as to how the idea of “network” is being used in this context. As Latour (1999) explains, the network concept tends to get associated with the notion of computer-mediated communications and global information systems. Yet, contrary to its more contemporary meaning as a method of transport without deformation, the term “network” within ANT relates to the exact opposite process. More specifically, it refers to a chain of translations that involves a series of transformations.

This notion of translation is central to ANT theorists who use this concept to describe how one entity gives a role to others. As John Law (1992: 5) suggests, translation is about social ordering; it describes the processes by which various “bits and pieces” that are constantly liable to break down or make off on their own are assembled into an order. If the translation is successful and the heterogeneous materials are stabilized, the network disappears and is replaced by the action itself and the seemingly simple author of that action (ibid.). Once stabilized, the network can produce ordering effects such as devices, agents, institutions or organizations that papers, delivering lectures and producing knowledge.” All of the things that one might normally ascribe to human beings – thinking, acting, writing, loving and earning – are generated in networks that pass through and ramify both within and beyond the body (ibid.). For this reason, an actor is also always a network (ibid.: 4).
represent and stand for something else. To use a term from ANT, the network can now pass as a “punctualized actor” (ibid.).

Within this framework, the concept of power is also reconfigured and understood as a consequence rather than the cause of collective action (Latour 1986: 269, emphasis added; see also Law 1992). For ANT theorists, the focus is no longer on how power is possessed and exercised, but the ways in which power relations are constructed and maintained through the stabilization of networks (Carrabine 2000: 312). To be sure, those within the field of ANT claim that it is through the stabilization of networks and the punctualization of actors that create the “effects” of what we often explain away as the result of macro-causal factors such as power, agency, nature or structure. ANT theorists examine this ordering of things and the various effects that are generated by adopting a framework commonly referred to as a “sociology of translation.”

One of the interesting features about the sociology of translation is that it can be used in the very same way to analyze how both scientific facts and technical artefacts come to be produced. The problems of the “fact-building” scientist are exactly the same as those confronted by the “technology-building” engineer (Latour 1987: 131). Both the scientist and engineer must seek out ways to convince others to take on their respective projects and, most importantly, have their claims or objects spread out over time and place. Each time a fact or artefact gets taken up by other actors, it becomes less disputed and slowly achieves the status of a black box, which, in turn, can be fed back and mobilized into other networks.

Michel Callon (1986: 68-79) identifies four (4) “moments” of translation: 1) Problematization; 2) Interessement; 3) Enrolment, and 4) Mobilization. Problematization is the
first moment of translation and the initial stage of network building. It refers to the process whereby an actor attempts to define a problem in such a way that other actors must accept her particular definitions. If she is successful in enlisting the help of others, the “fact-building” scientist (or “technology-building” engineer) becomes an “obligatory passage point” into the network and is now indispensable as those enlisted are forced to accept her knowledge claims or technology (ibid.: 70).

This enlisting of actors can be achieved in a number of ways. One method is to appeal to the other actors’ explicit interests (Latour 1987: 108). As Latour (1987: 108-109) points out, “interests are what lie in between actors and their goals” creating a “tension that will make actors select only what, in their own eyes, helps them reach these goals amongst many possibilities.” The primary aim is to convince the other actors that, by joining them in their project, they will have a much greater chance of obtaining whatever it is they want. Another method of enlisting actors is to define new groups that could then be endowed with new goals that can only be obtained by helping the scientist or engineer build their network (ibid.: 113). This process of imposing and stabilizing the roles of other actors to fit one’s own problematization is the second moment of translation called “interessement” (Callon 1986: 71-74).

But enlisting and interesting other actors is only part of the task. Even if the creation of a new group and its goals are achieved, it is necessary to ensure that the enlisted actors never detect a widening gap between its goals and those of the fact-building scientist or technology-building engineer. If not, the “assembly of people necessary to turn a claim into a black box will behave unpredictably; they will dissent, they will open it, tinker with it; worse, they will lose interest and drop it altogether” (Latour 1987: 122). In order to keep each actor in line, other allies
have to be fetched, assembled and made to be relevant; stronger alliances have to be formed so that nothing can break up the network (ibid.: 128).

To help prevent the actors from “making off,” one can use a set of intermediaries such as texts, technologies, disciplined human beings or money to ensure that the different actors perform their roles (see Callon 1992). As Murdoch (1995: 747 cited in Haggerty 2001: 61) writes:

It is the intermediaries… which act to bind actors together, ‘cementing’ the links. When there is a perfect translation, or redefinition, of actors’ identities and behaviours then these are stabilized with the network. The stronger the network, the more tightly the various entities (human and nonhuman) are tied in.

By using these intermediaries, the scientist or engineer can make each element – human or nonhuman – interested in the work of others. When the actors or entities are finally anchored to the network in their inter-related roles, the third moment of translation called enrolment is reached (Callon 1986: 74-76).

With the assembly of allies, the network slowly turns into an organized whole. But it is not simply a matter of the number of elements that are employed. Instead, it is about how these various elements can act as a unified entity. Through this machination or automatism, all elements are made to behave as one and become a black box (Latour 1986: 131). Once this occurs, the last moment of translation is finally achieved: Mobilization takes place as a desired representative can now act as the spokesperson for other entities (Callon 1986: 76-79). The translation is successful and the heterogeneous materials are stabilized. The network disappears and is replaced by the action itself and the seemingly simple author of that action (Law 1992: 5).

What should be evident from the discussion presented above is that ANT concentrates on movement. In its most basic form, ANT is not so much a social theory as it is a methodology for
documenting how relevant actors build facts and artefacts, and the successive transformations that take place as a result of translation. On this topic, Latour (1999: 19-20) writes:

Far from being a theory of the social or even worse an explanation of what makes society exert pressure on actors, it always was, and this from its very inception, a very crude method to learn from the actors without imposing on them an *a priori* definition of their world-building capacities.

ANT is simply another way of being faithful to the insights of ethnomethodology by providing a vocabulary for empirically studying what actors do, and how and why they do it (ibid.).

And it is through this description of how certain networks emerge that offers ANT theorists an explanation for why things appear the way they do. On this point, Latour (1991: 129) is very much opposed to the claims made by critics of the sociology of science and technology who suggest that even the most meticulous description of a case study is insufficient in providing an explanation of its development. Arguing against the epistemological division between the empirical “how” and the theoretical “why,” Latour (1991: 129) claims that those who adopt an ANT approach never need to abandon the task of description in order to take up the task of explanation. This is because any offer at an explanation is due precisely to the stabilization of networks – a “stabilization that the notion of explanation simply does not explain” (ibid.: 130). Consequently, there is no need to search for mysterious or global causes outside networks. On the contrary, one is entirely capable of explaining cause by looking at how a network is stabilized. If something is missing from this investigation, it is because the description of the network is incomplete (ibid.).
Using ANT and Governmentality to Study the Governance of Cyberspace

As numerous scholars have pointed out (see Rose et al. 2006; but see also Haggerty 2001; Moore 2007; Rose 1999; Rose & Miller 1992), ANT and governmentality studies share many commonalities and thus are highly complementary methods of analysis. For one, both theoretical approaches refrain from offering structural accounts as to why certain phenomena are the way they are or in whose interests in favour of exploring how things get done (Rose et al. 2006: 93, emphasis added). Most notably, both frameworks look at the ways in which various types of knowledge and resources are brought into alignment to achieve particular ends.

What is more, both bodies of literature adopt an “anti-humanist” stance by refusing to privilege the role played by human actors (ibid.: 93-94). Although governmentality studies do not fully adopt Callon’s (1986) and Latour’s (1987, 1993) claims that objects and things – from scallops to doorstops – can have agency and provide for action, Rose and colleagues (2006: 94) suggest that this is still very much in keeping with Foucault’s interest in “examining how material structures (for example, prison cells constructed to a certain design) have specific political effects, quite apart from class or other interests of the people controlling them.”

In recent years, ANT has garnered considerable attention from those in criminological and socio-legal circles who draw upon the work of Foucault to analyze knowledge practices and their relation to governance. For example, in what has now become a classic text within the field of governmentality studies, Rose and Miller (1992) take up Latour’s (1987, 1991) concept of translation to consider the way that language and rhetoric are used by actors to enrol and enlist other groups, individuals and institutions, as allies in governing. Through the forging of networks, these actors are able to act as “centres of calculation” and govern “at a distance” by
aligning the desires and aspirations of others with their own, and getting these spatially and organizationally distinct groups to behave accordingly (Rose et al. 2006: 89).

Other scholars (see, for example, Levi 2003; Moore 2007; Valverde 2003; Valverde et al. 2003) have turned to ANT as a way of laying the groundwork for socio-legal scholarship which goes beyond the dichotomy of studying “law in the books” (as a static and disembodied entity) or “law in action” (emphasizing struggles and tactics, but usually leaving out law itself) (Valverde et al. 2003: 16). As Valverde and colleagues (2003: 16, emphasis added) suggest, ANT is particularly useful in this regard as it provides an approach that simultaneously focuses on both law in the books and in action. From an ANT perspective, the law “in the books” can be seen as a network and as an actor: On one hand, it functions as a spokesperson for other objects and texts, taken from other sources that have been ordered and stabilized to allow for their representation as “law.” At the same time, however, the law – as a non-human entity – also provides for action as it is constantly taken up and translated into other networks.

Another important piece of work that has tried to connect ANT with the governmentality literature is Kevin Haggerty’s (2001) study of the Canadian Centre for Justice Statistics (CCJS) – the sub-component of Statistics Canada responsible for producing Canada’s national numbers on crime and criminal justice. Rather than focus on the importance of statistics on the practices of governance, however, Haggerty examines the institutional production of “statistical truths.” Acknowledging a “family resemblance” with a scientific laboratory, Haggerty draws from ANT to document how the Centre’s production of statistics is related to its ability to create a complex network of heterogeneous elements. He notes that the CCJS is able to collect and disseminate numbers on crime and criminal justice by establishing alliances with various individuals, technologies and institutions. And, much like a laboratory, the Centre requires this network of
actors in order to produce statistical “facts.” According to Haggerty (2001: Chapter 5), it is through a network analysis that certain political considerations, which are beyond the purview of recognized statistical methods but remain equally fundamental in the production of official crime statistics, come to the fore.

**Getting Away from the Social vs. Technological Determinism Debate**

As the work cited above clearly demonstrates (see, for example, Haggerty 2001; Levi 2003; Moore 2007; Rose & Miller 1992; Valverde 2003; Valverde et al. 2003), bridging ANT with governmentality studies opens up many possibilities for how we can examine the subject of governance. In particular, by insisting that explanation can be derived through careful description of how a network is stabilized, ANT allows us to avoid the dilemma of seeing new approaches to governing – particularly those that highlight market mechanisms and the devolution of regulatory responsibility from the state onto non-state actors – as simply functions of neo-liberalism. As Rose and colleagues (2006: 97) point out, there exists a “marked tendency” among governmentality scholars to view neo-liberalism as a “more or less constant master category that can be used both to understand and to explain all manner of political programs across a wide variety of settings.” On this issue, Rose and colleagues (2006: 97-98) argue:

To describe certain techniques or even programs as “neo-liberal” indicates their lineage, and provides a point of family resemblance with other “post social” governance. This may be useful at a certain level of generality, but it is not the same as describing diverse contemporary regimes or rationalities as neo-liberal. On the one side, this latter move tends to blunt one of the cutting edges of governmentality – its specificity in identifying how government is formulated, how it problematizes, what techniques it uses and so on. On the other side, it readily lends itself to a kind of cookie-cutter typification or explanation; a tendency to identify any program with neo-liberal elements as essentially neo-
liberal, and to proceed as if this subsumption of the particular under a more general category provides a sufficient account of its nature or explanation of its existence.

The potential danger here is that, by identifying and labelling certain techniques as “neo-liberal,” we wind up confusing description with explanation.

Looking at the current strategies aimed at regulating Internet use in Canada, one can easily fall into this trap and describe many of these practices as being neo-liberal in character. Indeed, the move towards industry self-regulation and the “responsibilizing” (Garland 1996, 2001; see also O’Malley 1996) of users to protect themselves and their children from the various risks associated with “going online” appears consistent with the advanced liberal regimes and rationalities commonly connected with neo-liberalism. In this particular study, however, I want to avoid conceptualizing neo-liberalism as a social force that determines and explains the shape of governance. Rather than try to provide a global account for why the Internet is regulated in these ways, the primary aim of this project is to empirically document how certain knowledges about the Internet and its regulation get produced in the first place.

Still, while empirically investigating how Internet use is problematized and governed allows us to get away from a socially-determined view of regulation, it is equally important that we refrain from seeing the various strategies now being adopted as direct functions of the technology and avoid buying into a kind of technological determinism whereby the Internet – operating under its own internal dynamic and unmediated by any other influence – is believed to mould society to fit its patterns (Winner 1986: 21). Thus, in much the same way we should stay away from using neo-liberalism as a grand theory to explain the off-loading of regulatory responsibility by the state and the concomitant responsibilization of non-state actors to
effectively govern themselves, we must also be weary of accepting, at face value, the argument raised by many cyber-enthusiasts (see, for example, Barlow 1996; Dyson 1998; Johnson 1996; Johnson & Post 1996a, 1996b; Rheingold 1996) that this technology effectively produces its own system of self-governance online.

But how are we to make sense of the current approach to Internet regulation? Furthermore, how do we get away from explaining these emerging “neo-liberal” strategies as either a result of the technology or simply a matter of politics? This dilemma in which we now find ourselves is very much in keeping with what Bruno Latour (1987, 1993) describes as the modern Constitution and the binary distinctions that are created between Nature and Society. For Latour (1993: 10), the word “modern” designates two sets of opposite practices – translation and purification – that must remain distinct in order to be meaningful. Translation corresponds with networks and the creation of entirely new types of beings that are hybrids of Nature and Society, while purification relates to a “modern critical stance” that establishes two discrete ontological zones of humans and non-humans (ibid.: 10, 12).

Latour (1993: 12) claims that, for us to truly “be modern,” we must be faithful to the modern Constitution by keeping separate these two practices. According to Latour (1993), however, this modern Constitution never adequately explains the existence of hybrids (or quasi-objects or quasi-subjects) that lie somewhere in between the two poles of Nature and Society.

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4 According to Latour (1993: 12), this practice of purification sets out a clear division between a “natural world that has always been there, a society with predictable and stable interests and stakes, and discourse that is independent of both reference and society.”

5 The notion of hybrids is consistent with what Donna Haraway (1991) calls “cyborgs.”
Consequently, the practice of purification – central to the modern project – can never be fully accomplished. He illustrates the problem as follows:

But where are we to classify the ozone hole story, or global warming or deforestation? Where are we to put these hybrids? Are they human? Human because they are our work. Are they natural? Natural because they are not our doing. Are they local or global? Both. As for the human masses that have been made to multiply as a result of the virtues and vices of medicine and economics, they are no easier to situate. In what world are these multitudes to be housed? Are we in the realm of biology, sociology, natural history, ethics, socio-biology? This is our own doing, yet the laws of demography and economics are infinitely beyond us. Is the demographic time bomb local or global? Both. Thus, the two constitutional guarantees of the moderns – the universal law of things, and the inalienable rights of subjects – can longer be recognized either on the side of Nature or on the side of the Social (Latour 1993: 12).

As the above excerpt suggests, the difficulty for social scientists trying to reach agreement about the character of objects lies in the contradictions that are created when relying on either Nature (or Technology) or Society as a source of explanation.

In one instance, all objects are simply the products of society. At other times, these objects shape human society as their social construction seemingly disappears into the background. The same problem facing objects exists for society. On one hand, society is so powerful that it can create what is “nothing more than arbitrary and shapeless matter” (Latour 1993: 5). On the other, it is powerless, shaped by objective forces that completely determine its action. As Latour (1993: 53) explains, “Society is either too powerful or too weak vis-à-vis objects which are alternatively too powerful or too arbitrary.” Hence, science and technology cannot determine the shape of society while, at the same time, be determined by society; social determinism cannot be used as an explanation in conjunction with one of technical determinism.

Latour’s (1993: 78) solution lies in a Copernican counter-revolution in which every hybrid is perceived as a mixture of two pure forms. Rather than starting at the poles of either
Nature (or Technology) or Society and moving towards the middle, objects are to be viewed and explained from an inverted position. Explanations no longer start from the ends of pure forms toward the phenomena, but from the centre out to the extremes (ibid.: 78).

This “symmetrical”\textsuperscript{6} approach to studying objects positions the researcher at the median point where she can “follow the attribution of both non-human and human properties” (Latour 1993: 96). By starting at the quasi-object, Society and Nature are explained simultaneously and in the same way as both are seen as the result of a single stabilization process. As Latour (1993: 95) argues:

The appearance of explanation that Nature and Society provide comes only in a late phase, when stabilized quasi-objects have become, after cleavage, objects of external reality on the one hand, subjects of Society on the other. Nature and Society are part of the problem, not part of the solution.

The task for social scientists, then, is to follow the networks and trace the processes of mediation and translation that lead to the production of objects as either natural (or technical) or social.

From this perspective, we can begin to conceptualize the strategies used to govern the Internet as stabilized networks made up of laws, court and tribunal hearings, rhetorical devices, myths and metaphors, various forms of knowledge, numbers and statistic, research, experts and other heterogeneous elements, that have all been enrolled, enlisted and brought into alignment. Viewed in this light, the Internet can also be seen as both a network and as an actor: On one hand, it acts as a spokesperson for a host other actors that have been mobilized and ordered to allow for their representation as “the Internet.” At the same time, the Internet provides for action

\textsuperscript{6} Extending David Bloor’s (1976) notion of symmetry, ANT theorists propose that exactly the same arguments made about Nature have to be made symmetrically about Society (Latour 1987: 143). Social scientists must be able to rely upon the same methodological approach to determining the ontological status of an object.
and is taken up by other actors into their networks to generate certain effects. Thus, the regulatory institutions studied in this project can be thought of as sites of production where both the networks of the Internet and its regulation are produced.

Chapter Summaries

Drawing upon many of the key insights from both governmentality and ANT scholarship, this dissertation looks at the various ways in which the Internet and its use are regulated in Canada. Rather than focusing on the regulation of specific web-based activities or forms of online content, I consider the practices of a number of different institutions that, in some way, play a role in the governing of this technology. As noted earlier, three specific institutions are examined: The Canadian Radio-television and Telecommunications Commission (CRTC), the Media Awareness Network (MNet) and the courts.

Although a whole host of agencies could have been studied (e.g., public law enforcement officials, ISPs, Internet user groups, etc.), the three institutions considered here have all played a major role in regulating the Internet in Canada. These institutions also reflect the diverse cross-section of actors that make up the Canadian regulatory landscape that presently governs this technology and how it is used. Indeed, whereas the CRTC is vested with the authority to directly regulate and supervise all aspects of Canada’s broadcasting and telecommunication systems that include most types of new media found on the Internet,\(^7\) the courts perform a more indirect

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\(^7\) The CRTC is an independent public authority constituted under the *Canadian Radio-television and Telecommunications Act* (1985, c. C-22) and reports to Parliament through the Minister of Canadian Heritage. The
function by adjudicating criminal, civil and other legal matters that happen to occur online. In stark contrast, MNet is a Canadian non-profit, non-government agency that promotes media literacy and critical thinking as a way to keep children and young people safe on the Internet. By placing the focus on three specific institutions that have largely been ignored by other criminology and socio-legal scholars working in this field, this study aims to fill some of the void in the existing body of research and shed further light on the topic of Internet regulation in Canada.

The primary goal of this project is to empirically document how the Internet is imagined and “made governable” within each of these sites. In all three case studies, the aim is to address the following set of questions: First, how do these institutions problematize the Internet? Second, how do certain governing strategies emerge as viable solutions? Finally, what impact have these institutions had in terms of shaping our understanding of the Internet and how it should be governed? Thus, instead of seeing regulation as simply a “knee-jerk” response to an already given technology, the two are taken to be mutually constitutive. That is, in developing regulatory strategies to deal with a newly emerging technology, the technology – and our knowledge of it – must also be constructed. Consequently, the institutions considered here are not only locations of governance, but sites where a variety of heterogeneous elements are mobilized, aligned and stabilized to produce a specific conception of the Internet.

Keeping its Hands Off? The CRTC and New Media

In the chapter that follows, I present the first of my three case studies by looking at the work of the CRTC and the New Media hearings it held almost a decade ago. These hearings hold an important place in the nascent history of the Internet in Canada as they represent the very first attempt by this country’s national broadcast regulators to examine the so-called “new media” industry. After receiving over a thousand submissions and hearing presentations from roughly eighty parties, the CRTC published its final report in 1999. Upon its release, CRTC chairperson Françoise Bertrand (1999) delivered a long-awaited speech declaring that the Commission would not regulate any portion of the Internet.

While those who were certain that regulation was on the horizon shared a collective sigh of relief, others saw the decision to remain “hands-off” as not only expected, but inevitable. One of the most frequent explanations given was that the Commissioners had finally come to their senses and realized that applying federal regulations and policies on a global medium was virtually impossible. An alternative, more political account held that the CRTC had simply lost its relevance in an increasingly neo-liberal landscape. No longer acting as defenders of Canadian culture, the Commission was now focused on maintaining a system of free-market enterprise within the broadcasting and telecommunications fields. If the CRTC had any role to play, cynics maintained, it was to protect the interests of big business through the increasing deregulation of this industry.

Using an ANT framework, this case study considers the New Media hearings as a site of contestation where various parties attempt to mobilize and align a constellation of actors to help construct their own conception of the Internet and how it should be governed. For these groups, the primary aim is to enrol and enlist the CRTC into their respective network, in the hopes of
convincing the Commission to take a particular direction regarding the regulation of this technology. Viewed through this lens, a more detailed and complex picture of the hearings is presented that does not explain away the CRTC’s final decision as either socially or technologically predetermined, but sees it as the end result of the successful (and unsuccessful) building of networks by the various parties involved.

The findings of this case study force us to question some of the common assumptions regarding the impact of neo-liberalism and what the supposed shift from direct state involvement towards an increasing reliance on market forces might mean for Canadian broadcasting and communications. Contrary to what many critics have argued, there has not been a total withdrawal by the state or a complete deregulation of this industry. And, while it seems to have formally abandoned its role in shielding Canadian culture from American influence, the CRTC appears almost destined to continue protecting private broadcasters from having to compete with their counterparts south of the border, albeit under a new guise of promoting Canada’s cultural industries.

Making Internet Users “Safe, Wise and Responsible”

In Chapter 3, I turn the attention away from government to look at the role that those in the voluntary sector have played in shaping Internet technology and the way in which it is governed. Here, I specifically examine the work of the Media Awareness Network (MNet), a non-government, not-for-profit organization that “promotes and supports media education in Canadian homes, schools, and communities” (Government of Canada 2001: 7). As self-described pioneers in media education and Internet literacy, MNet has produced a model for online safety
and “web awareness” that is not only being adopted in Canada, but in countries like Australia and Malaysia. Many of the programs developed by MNet are designed for parents, teachers, librarians, and community leaders to help children and youth “develop the life-long critical thinking skills they require to become safe, wise, and responsible users of the Internet” (ibid.).

As a particularly vital source of information about online safety, MNet has played a tremendous role in how Internet use is governed in this country. In 2001, the Canadian government released a report outlining its strategy for dealing with illegal and offensive content on the Internet. In this document, MNet is specifically cited as a key organization that could make parents and children more aware of the “potential pitfalls of the Internet” and provide them with the “tools to help control what Internet content they will and will not receive” (ibid.: 6-7).

Using data collected through semi-structured interviews with current and former members of MNet conducted in May 2005, this case study explores how the organization has been able to translate its message of “safe, wise and responsible” Internet use into what is arguably the dominant discourse in Canadian public policy pertaining to the regulation of this technology. However, rather than try to explain away the prominence of MNet and its strategy of Internet self-governance as merely a function of new communication technology or as the end result of a rising ethos of neo-liberalism, this analysis relies upon an ANT framework that draws attention to the negotiation and network-building performed by this organization in order to make itself, and the work it does, relevant. A number of factors that I have been identified as being essential in the construction of MNet’s network are outlined and discussed in further detail.
Putting Cyberspace in its Place

In recent years, a handful of legal scholars (see, for example, Geist 2001) have looked at cases in which governments have attempted to extra-territorially impose their laws on individuals, organizations, and companies that physically reside or operate outside of their own geographic borders. Arguably, much of what has been written in this area has focused on the doctrinal principles that have been used in different countries to determine legal forum. The result has been a plethora of case commentaries of relevant judicial decisions and normative prescriptions about what “ought” to be the appropriate tests for determining jurisdiction.

While this type of legal inquiry is important, the proliferation of court cases in the United States, Canada, and other parts of the globe that deal with this question of jurisdiction on the Internet offers an interesting site for other forms of socio-legal analysis. Indeed, what is strikingly absent from the existing body of research in this area is an examination of how the law sees, understands, imagines and comes to know the Internet and computer-mediated communication technology, more generally. Posed differently, what types of images and representations of Internet technology are taken up in law? Secondly, how do these images and representations of the Internet affect the way law is used to govern this technology and as a forum for resolving online disputes?

In Chapter 4, I address these questions by examining the ways in which legal knowledges of the Internet come to be produced. I specifically look at court cases involving the issue of legal jurisdiction on the Internet and consider how various legal actors understand, describe and conceptualize this technology, and the effects that are generated from the formation of these knowledges. Rather than focusing on the doctrinal elements of these cases, I use the courtroom
as a site for empirically investigating how certain understandings of Internet technology are translated into legal settings.

A major focus here is on how legal actors make use of geographic metaphors to describe the Internet. Borrowing key analytical tools from the general field of S&TS and ANT, in particular, this chapter considers how this spatial metaphor is taken up and translated into law by examining the various Canadian court judgements where the term “cyberspace” appears. The chapter looks specifically at the ways in which the courts conceptualize and articulate this technology in spatial terms, and the effects that are generated from the formation of these knowledges. Particular attention is paid to how the adoption of the cyberspace as place metaphor has influenced the courts’ approach to the question of legal jurisdiction on the Internet, and the ways in which the courts have turned cyberspace from a literary device to a legal “reality.”

Making Network Connections

In the fifth and final chapter, I draw theoretical and substantive connections among the three case studies presented in this dissertation. The broader themes that emerge from this examination concerning the interplay between the construction of the Internet, the production and practices of knowledge about this technology, and the ways in which it is governed are discussed in greater detail. I highlight the possible implications that this project has for future research on Internet regulation and conclude by considering how certain conceptual and analytical tools borrowed from ANT and the field of S&TS, more generally, may further contribute to criminological and socio-legal scholarship.
Chapter 2
Keeping its Hands Off the Internet? The CRTC and New Media

Introduction

On May 17, 1999, Françoise Bertrand, then Chairperson of the Canadian Radio-television and Telecommunications Commission (CRTC), held a press conference to announce the release of its *Report on New Media*. The end result of several months of public consultations, this eagerly awaited document outlined the CRTC’s official position regarding the Internet and, according to many observers, would forever set the course for the future of this technology in Canada. Aware of the mounting anticipation, Bertrand (1999) was straight to the point in revealing their major finding: “Now, to the essence of our conclusion: The CRTC will not regulate new media services of the Internet. Our message is clear. Let me repeat that for those of you who were worried – the CRTC will not regulate any portion of the Internet.”

The CRTC’s announcement was met with tremendous fanfare. The decision was a clear victory for many cyber-enthusiasts and civil libertarians who perceived the Internet to be the last remaining bastion for free speech, public expression and civic engagement. Likewise, the conclusion came as a welcome surprise to a majority of those in the new media sector who felt that any form of government regulation would only hamper the economic and financial growth of this industry. Of course, not everyone was pleased with this outcome. Amongst the chorus of cheers, a less vocal minority lamented that this verdict would have a detrimental impact on the availability of Canadian material on the Internet. Echoing the same concerns that were raised in response to the introduction of radio and television, these critics warned that, without government assistance, online broadcasters would simply choose to upload and distribute more popular and cheaper American content.
Regardless of whether it was viewed as a positive or negative development, a more common reaction to the report was one of shock and disbelief. That the CRTC could come to a conclusion that would ultimately mean less involvement and regulatory oversight on its part was highly unexpected. For many observers, the decision to remain hands-off the Internet was not only a radical departure from the approach it had taken with other technologies, but clearly broke from the Commission’s long-standing tradition of maintaining direct control over the type of content that gets broadcasted in this country. Indeed, many just assumed that the different rules and restrictions that currently govern other forms of broadcasting – particularly those pertaining to Canadian content – would simply be applied to this new medium.

A Question of Politics?

Not surprisingly, it was the staunchest critics of the CRTC who appeared the most stunned by this verdict. To some, the decision was sarcastically read as a momentary lapse of good judgement on the part of the Commission. An editorial printed in the *Calgary Herald* remarked:

The CRTC, after a year of study (no need to hurry when the Feds are supplying the Air Canada passes and the rooms at the Chateau Laurier) has come to the astonishingly correct decision that the Internet should NOT be regulated by Ottawa. Even by federal standards, this is a rare outbreak of common sense. After all, let us take a deep breath and remind ourselves who we are dealing with here (Love 1999: A15, emphasis in original).

What the editorialist is asking the reader to remember is that the CRTC was established by previous governments to protect our cultural sovereignty from the onslaught of American programming entering the country from south of the 49th parallel. According to this critic and
others like him, however, the Commission is no longer (or perhaps never was) needed to serve this function.

In the several weeks after the release of the report, similar news stories and op-end pieces reiterated this claim that the CRTC had simply outlived its political utility. For diehard cynics of the agency, the Commission does nothing more than subsidize unpopular and unprofitable Canadian artists and programs. On this point, the editorial in the *Calgary Herald* continues:

> Because Canadians are not to be trusted with their own cultural taste, we have been given the CRTC; complete with a mandate to make sure that Canadian “content” is in their arts. Thus, while we listen to the Boston Pops or Aerosmith, we also get 20 year-old Gino Vanelli ballads on the radio until we can no longer stomach them. Likewise, there won’t be any Jay Leno on television around here unless we also get the CBC’s pathetic Ralph Benmergui show five times a week… Created in Canada’s centennial year (no kidding) the CRTC’s main job has been to force-feed our “culture” to ourselves, a national policy of insecurity if there ever was one (Love 1999: A15).

Much of this contempt for the CRTC seems to emerge out of a broader disdain for state involvement in the field of broadcasting and in public life, more generally. Even in supposedly left of centre media outlets, a strong neo-liberal argument was presented that admonished any form of government intervention that would somehow limit the power of the free market. As one commentator described it, the CRTC is in the “cultural subsidy business and subsidies, whether they are financial or cultural, create false markets…” (ibid.).

Although detractors of the Commission were somewhat shocked by its decision to allow the “entrepreneurial spirit” of the new media industry in Canada to continue to blossom in an environment unfettered by state interference, others saw this as inevitable and consistent with a wider shift in the agency’s orientation and its deliberate move away from protecting Canadian culture to promoting the economic and industrial growth of the broadcasting and communication
sectors. According to a number of scholars (see, for example, Chodos et al. 1997; Raboy 1990; Vipond 2000), this change in mandate from protection to promotion is part of the rising tide of neo-liberalism, capped by the federal election of a Conservative government that spoke the language of budgetary cutbacks, deregulation and privatization. By the mid-1980s, public broadcasting as a means of preserving Canadian identity had been replaced with an ethos of building a strong Canadian cultural industry (Raboy 1990: 270). Rather than having to defend it against the invasion of US programming on local airwaves, Canadian culture was now viewed like any other commercial commodity that could be bought and sold. The decades of anxiety that free-market enterprise would spell the end for truly “Canadian” broadcasting was virtually forgotten. No longer viewed as tools for nation-building, the federal government had its sights set on realizing the economic potential of the broadcasting and communication sectors (ibid.).

In keeping with these larger social and political trends, the CRTC had also taken on a brand new role. Instead of directly overseeing and regulating what those in this field were doing, the Commission would now be in charge of “supervising” private broadcasters by making sure that they were effectively maintaining a system of self-regulation. The Commission was quite clear about its change in direction, stating in a 1987 report on television broadcasting that, “The CRTC has made a conscious effort to reduce its involvement in detailed regulation particularly in areas that readily lend themselves to self-regulation by the industry concerned” (cited in Raboy 1990: 312). More than a decade later, this hands-off approach has been applied to new media and rationalized under the same logic of free-market enterprise and the “responsibilization” (Garland 1996; O’Malley 1996) of private industry.
A Question of Technology?

The rise of neo-liberalism and the subsequent effect that this has had for how the broadcasting and communication sectors have been governed provides us with a general framework for understanding why the CRTC – a state agency known for its heavy-handed approach to regulation – has opted to remain hands-off this technology. Viewed from this perspective, the decision to refrain from regulating the new media industry is simply a matter of politics where the belief in the free-market to create jobs and generate economic wealth has deterred the CRTC from applying existing legislation to any portions of the Internet.

As many scholars (see, for example, Babe 1990; Chodos et al. 1997; Menzies 1996; Raboy 1990) see it, the current social, economic and political landscape has dramatically altered the way in which this technology has been received. Whether this is articulated in terms of a widening digital divide or the increasing commercialization and homogenization of media, the key point is that the future of the Internet could be radically different, but for the prevailing neo-liberal paradigm that encourages government deregulation and the protection of private enterprise in the name of global trade, job creation and economic prosperity (see especially Chodos et al. 1997; Menzies 1996).

Yet, far from feeling completely powerless, these critics remain highly optimistic, believing that positive change is possible through greater public participation, democratic action and state intervention. As Chodos and colleagues (1997: 133) claim:

Globalization of the economy and globalization of information are occurring simultaneously and sometimes, though not always, along parallel tracks. Neither should be viewed as an inescapable threat. Instead, they should be welcomed, as long as certain minimal conditions apply. On the information side, these conditions include an open door for those with material to share or to receive, a separation of content providers and channel providers to maintain diversity and
independence and, however, unfashionable this may sound in neoliberal circles, oversight by governments and government-controlled international bodies to ensure the broadest possible access to the information highway on both the production and the consumption side. There is a big world out there, and it is ours to share and discover, not to hide from.

Along similar lines, Heather Menzies (1996: 162) argues that what is required is a “social charter” for the “Information Highway,” established by a consensus conference or constituent assembly with representation from different social and cultural groups that would articulate a communitarian model of communications and adequately address the “twin goal of full employment and full participation in the new economy.” Thus, for reform to take place, the march of neo-liberalism must be halted to allow the interests of the public good to hold equal weight to the concerns of big business.

To others, however, the question of regulating the Internet is not a political, but a practical one. The main argument here is that the decision by the CRTC to remain hands-off was inevitable given the ungovernable and global nature of this technology. This belief that the Internet cannot be controlled by a state agency — Canadian or otherwise — is apparent in the different news headlines that surfaced shortly after the release of the CRTC’s report. Banners proclaiming that the “CRTC admits the obvious” (Friedman 1999: B3, emphasis added), that the “CRTC ruling on Internet is wise” (“Net gains for the CRTC” 1999: A4, emphasis added) or the “CRTC wisely eschews Web” (Gibb et al. 1999: A14, emphasis added) not only imply that the Commission made a smart decision in opting not to regulate the Internet, but that this was really the only choice that could have been made given the “ungovernability” of this medium.

Claiming that the Internet was obviously beyond the bounds of state regulation, one critic argued that the New Media hearings were a pointless exercise:
A cynic might suggest that the CRTC decided not to regulate the Internet because, [as] much as it wanted to, it realized it could no more regulate the global exchange of information than it could regulate air. If the planet wants to have a conversation with itself, not even the federal Liberals can get in the way. God love’em though, they thought about it. And as they pondered deeply, another 30,000 home pages came, online, as did another quadzillion [sic.] bytes of non-Ottawa approved information (Love 1999: A15).

Similar reports described the technology as a “giant regulatory headache” that makes “geography irrelevant and policy jurisdictions porous” and renders the CRTC – a governmental body “renowned for its tight-fisted control of Canadian broadcasting policy” – virtually powerless, forcing it to declare the Internet a “regulatory-free zone” (Cribb 1999).

Beyond the practical issues of jurisdiction and enforcement, others point to the ambiguous nature of the Internet as legitimate grounds for choosing to remain hands-off. An op-ed piece published in the Globe and Mail reads:

After 10 months of hearings and more than 1,000 submissions, the Canadian Radio-television and Telecommunications Commission was wise enough to resist arguments to regulate an entity that is not only unruly and chaotic, but that defies definition. The Internet is a global exchange for products, services, information, broadcasting and communications – so far. It is a shopping mall, a library, a post office, a video arcade and a printing press rolled into one infinitely expanding technology. Who knows how it will be used in the future? That being so, the CRTC was smart to back away from a role it was never intended to perform (“Net Gains for the CRTC” 1999: A14).

Whether it is the ungovernability of the technology or the uncertainty as to what it may become in the future, many of these stories draw attention to some inherent quality of the Internet that either makes it impossible to regulate or, at the very least, forces would-be regulators to think twice about trying to restrict how it is used.

On a much deeper level, the decision not to impose its regulatory will on the Internet has left many wondering whether or not this signals the end of the Commission as protectors of
Canadian cultural sovereignty. While scores of industry types have hailed this move as a “practical and realistic approach to a new-age medium that crosses national boundaries with the benign intransigence of a moose,” others like Jordan Worth, a telecommunications analyst in Toronto, see this as the “first nail in the coffin of Canadian content”:

It [the CRTC’s decision] is huge. There’s never been any regulatory body with implication for culture in Canada that says: “We can’t do anything about it. It’s bigger than us. We don’t have a plan to maintain Canada’s presence in this new medium.” Once you create that hole, Canadian broadcasters will all try to squeeze through it (cited in Cribb 1999: 1).

Critics such as Worth are particularly concerned that, by washing its hands of the Internet, the CRTC has allowed for the development of two parallel forms of broadcasting to emerge in Canada: One that takes place across the traditionally regulated airwaves of TV and radio and the other that happens over unregulated computer lines (ibid.).

Roads to Nowhere

Looking closely at the news coverage surrounding the release of the Report of New Media (1999), an interesting dichotomy appears to emerge. Whereas the CRTC and its role in protecting Canadian culture are firmly entrenched within the realm of politics, broadcasting and communication technology falls outside of this domain. So, while the efficacy of applying content restrictions to the Internet are all issues that are up for public discussion, the very nature of this technology – what it does, how it operates and what it will mean for the future – are taken as given and not open for political debate. In effect, the technology of the Internet has become “black-boxed” and is no longer subject to “interpretive flexibility” (see Pinch & Bijker 1987).
We are therefore left with two different yet equally plausible narratives that may help us to understand why the CRTC chose not to regulate any portions of the Internet. One points to the ungovernability of the technology, while the other suggests that the conclusions reached are to be expected in an era of increasing neo-liberalism. The former is a reflection of a naïve technological determinism in which technology develops “as the sole result of an internal dynamic and then, unmediated by any other influence, moulds society to fit its patterns” (Winner 1986: 21). The latter, in sharp contrast, is loosely premised on a theory of social determination in which technology matters far less than the social, political and economic systems in which it is embedded (ibid.: 20).

These two accounts – technological and social determinism – approach the general topic of technology and society from opposite directions. For the technological determinist, technologies emerge independently and alter the shape of society in a variety of different ways. One of the dangers in approaching technologies in this uncritical manner, however, is that we end up reifying what Robert Babe (1990: 9) calls the “myth of technological dependence.”

According to Babe (1990: 9), this myth of technological dependence encompasses the dual doctrines of technological imperative and technological determinism. The technological imperative holds that the “march of engineered artefacts is necessary, in the order of things, subject to little human direction or control” (ibid.). Technological determinism, on the other hand, posits that “all important human phenomena – cultures, distribution of power, belief systems, industrial structures and so forth – are explainable by the evolution of these same industrial devices” (ibid.). Taken together, devices such as the Internet are thought to be inevitable in their “evolution” which is not only beyond our control, but directly influence the contours of the society in which we live. Consequently, societies and governments, in particular,
have very few options but to adopt, develop or further advance these new technologies. As Menzies (1996: 27) suggests, technology is often seen as “a force like nature (“creative gales of destruction” being a popular phrase here) and so big and powerful that only huge institutions like government can grapple with it, and even they can do little more than mitigate its effects.”

The major dilemma in adopting this overly deterministic view of technology and accepting, at face value, the myth of technological dependence is that it does not allow us to fully appreciate how people are intimately involved in the production of new technologies. On the contrary, we are left with an “industrial history” (Babe 1990: 4) of technology that has been deeply de-historicized and removed from the social, political, cultural and economic contexts in which it was produced. It is as if the technology appears out of thin air, on its own accord and without the aid of human involvement (Babe 1990; Menzies 1996).

The findings presented in this chapter are based on an analysis of the written transcripts of the 13 days of oral hearings held by the CRTC. Nowhere has the meaning of Internet technology been more heavily scrutinized and disputed in Canada than at these hearings. I demonstrate that, despite the various news reports that suggest otherwise, the final decision rendered by the CRTC was, by no means, predetermined or automatic. Nor was it based on a unanimous consensus about the state of the Internet in Canada and the kind of approach that the CRTC should adopt. On the contrary, the public hearings reveal very differing opinions as to the direction the Commission should take that are premised upon competing visions of the Internet.

This case study therefore engages not in the “concrete manifestations” of Internet technology per se, but the rhetorical and discursive practices that surround it (Mussio 2001: 90). The issue of Internet regulation and the public discussions generated by the CRTC are used as a
window for exploring ideas about Internet technology and technological change, more generally. However, while this study is based on an analysis of knowledge and discourse – specifically, how the Internet is conceptualized about and what this means for regulation – my intention is not to “purify” or create artificial distinctions between the abstract or conceptual and the concrete or material. Instead, by adopting an ANT framework I look at Internet technology as a hybrid object that is made up of a network of heterogeneous elements that includes both physical and non-physical, and human and non-human actors (or “actants”\(^8\)). The myths, metaphors and factual claims made about technology are thus regarded as equally relevant, at least analytically, in the building and construction of the Internet as web designers, software engineers, fibre optic cables and computer servers.

In the spirit of ANT inquiry, the knowledges about Internet technology produced at the CRTC hearings are treated as both actors and networks. On one hand, the visions of the Internet presented by the different parties are, themselves, the product of various actors – expert testimony, rhetoric, charts and graphs, myths and metaphors, existing broadcasting laws, etc. – which have all been mobilized and aligned into a stable network. Conversely, these understandings and definitions of the Internet are also viewed as actors, which get taken up to generate certain effects in the network-building of public policy.

By adopting this approach, the CRTC’s decision to keep its hands off the Internet is no longer read as simply a story of a government body that has been rendered impotent by an

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\(^{8}\) Latour (1984: 84) and others (see Callon 1994; 53) have often complained about their displeasure with the use of the word “actor” and its immediate connotations with humans and agency. In particular, proponents of ANT are commonly asked how it is possible for non-human entities to be actors without intentions and goals. In order to avoid this confusion, ANT theorists have often preferred to replace the term actor with “actant.” An actant is any entity endowed with an ability to act or “whoever or whatever is represented” (Callon 1994; Latour 1987).
ungovernable technology. Nor can it be understood as a neo-Marxist tale where the interests of private capital have driven the Commission to relinquish its regulatory authority over this new medium. Rather than looking towards the power of technology or the forces of neo-liberalism as a source of explanation, I consider how it is that certain groups have been more successful than others at enlisting the CRTC into their networks and convincing the Commission to accept their conception of the Internet and the way in which it should be governed.

I begin this discussion with a brief overview of broadcasting regulation in Canada as a way of contextualizing the role currently played by the CRTC and the challenges it is now facing with the emergence of the Internet. Particular attention is paid to how certain understandings of broadcasting and telecommunications technologies – specifically, the manners in which they are problematized and the distinctions made between “the medium” and “the message” – are inextricably connected to the ways in which they have been regulated. I demonstrate that, while public policies pertaining to what gets broadcasted over the airwaves or across cable wires has been the topic of great debate, the need to develop new infrastructure has fallen outside the realm of politics.

Protecting Spectrum Scarcity

Since the invention of the telegraph in the late 1800s, the Canadian government has been heavily involved in the governing of broadcasting and communication technologies. From the issuing of broadcast licenses to quotas on Canadian content, a variety of rules and restrictions have been established that control the ways in which these devices are used and by whom. Invariably, however, the ways in which these technologies are managed are very much
connected to the kinds of features and characteristics that get attributed to them upon their introduction. Whether we choose to define them as public utilities or as tools for nation-building, the decisions made about these technologies help to shape and further legitimize the direction that is eventually taken with regards to public policy.

Until the emergence of the Internet, the idea that broadcasting devices were subject to “spectrum scarcity” was used to justify the Canadian government’s limiting of who could own and operate these technologies through the practice of licensing. This system of regulation dates back to 1905 where, under the *Wireless Telegraphy Act*, anyone wanting to own a telegraphic transmitter or receiver had to first obtain a license from the Department of Marine and Fisheries (Bird 1988: 18; Raboy 1990: 21). According to Bird (1988: 18; but see also Vipond 2000: 38-39), the licensing of wireless telegraphy reflected the state’s recognition that the airwaves were vulnerable to crowding and interference, and that steps needed to be taken to enforce the allocation of wavelengths and frequencies to specific parties.

In addition to being the solution to the problem of spectrum scarcity, state intervention has also been rationalized as a means of ensuring that Canada’s broadcasting system remains “Canadian.” Beginning with the radio in the early 1900s, government officials have been heavily concerned about the amount of American programming flowing into this country from south of

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9 An interesting fact about Canadian broadcasting and telecommunications that most people may not know is that the field was initially governed by the Department of Marine and Fisheries – a peculiarity that can be traced back to the Canadian government’s attempt at controlling the use of wireless telegraphy by those at sea. Wireless telegraphy (or the “Marconi” system) was used by naval officers and fishers as a safety device that could signal distress of a ship’s location, day or night and in fog or bad weather (Bird 1988: 7). The ability to send and receive telegraphic dispatches also allowed those on board commercial vessels to stay in contact with the mainland for longer periods of time.

10 In addition to the scarcity of resources, regulation was also deemed a matter of national security as authorities feared that radio-transmitting equipment could be used for surreptitious purposes (Vipond 2000: 38-39).
the border. Canadians, especially English-speaking ones, were listening in large droves to the more “powerful” American radio stations. 11 For several of the largest urban Canadian stations, the sheer size of the broadcasting industry in the US, coupled with the popularity of American shows and the eagerness of advertisers to sponsor them, made joining American radio networks economically attractive (Vipond 2000). 12 Consequently, as Mary Vipond (2000: 39) describes, it “seemed that yet another Canadian mass medium was about to become dominated by the US.”

Rationalizing a Public System: Natural Resources and an Infant Technology

By the late 1920s, a newly-elected Conservative government would introduce a bill aimed at regulating the broadcasting sector. Although then Prime Minister (PM) Richard Bennett only inherited the broadcasting question from the previous Liberal government, the bill had his own personal endorsement (Bird 1988: 111). PM Bennett saw Canadian broadcasting as a “national concern” and highlighted its importance in building the nation. In his speech in support of Bill 94, respecting radio broadcasting, PM Bennett stated:

First of all, this country must be assured of complete Canadian control of broadcasting from Canadian sources, free from foreign interference or influence. Without such control radio broadcasting can never become a great agency for the communication of matters of national concern and for the diffusion of national thought and ideals, and without such control it can never be the agency by which national consciousness may be fostered and sustained and national unity still further strengthened... In this stage of our national development we have

11 Electrical manufacturing companies in the US were investing heavily into erecting technically-sophisticated, high-powered stations to help stimulate the sale of the radio receivers that they were producing.

12 By 1930, CFRB Toronto and CKAC Montreal had joined the American CBS network, while CKGW and CFCF Montreal joined NBC (Vipond 2000).
problems peculiar to ourselves and we must reach a solution of them through the employment of all available means. The radio has a place in the solution of all those problems… Furthermore, radio broadcasting, controlled and operated in this way, can serve as a dependable link in a chain of empire communication by which we may be more closely united one with the other in that enduring fellowship which is founded on the clear and sympathetic understanding which grows out of closer mutual knowledge (cited in Bird 1988: 112).

PM Bennett was also supportive of a broadcasting system that was publicly-owned and operated. Noting the deficiencies of private ownership, he argued:

[N]o other scheme than that of public ownership can ensure to the people of this country, without regard to class or place, equal enjoyment of the benefits and pleasures of radio broadcasting. Private ownership must necessarily discriminate between densely and sparsely populated areas. This is not a correctable fault in private ownership; it is an inescapable and inherent demerit of that system. It does not seem right that in Canada the towns should be preferred to the countryside or the prosperous communities to those less fortunate. In fact, if no other course were possible, it might be fair to suggest that it should be the other way about. Happily, however, under this system, there is no need for discrimination; all may be served alike (ibid.).

PM Bennett’s very cynical view of private enterprise, coupled with his conception of broadcasting and communication as tools for nation-building, helped solidify his position in favour of a public system.

This endorsement of a public system was also connected to PM Bennett’s own understanding of technology and his belief that radio broadcasting depended upon the use of a “natural resource”: namely, the air (ibid.: 113). For PM Bennett, the fact that signals and radio waves were sent through the air validated the federal government’s claims of jurisdiction over this area: “The use of the air, or the air itself, whatever you may please to call it, that lies over the soil or land of Canada is a natural resource over which we have complete jurisdiction under the recent decision of the privy council. I believe that there is no government in Canada that does not
regret to-day that it has parted with some of these natural resources in trust for all the people” (ibid.).

In addition to its reliance on a natural resource, radio broadcasting was seen by PM Bennett as a nascent technology, making it vulnerable to exploitation by private interests and, as a result, should be protected through federal legislation. As PM Bennett argued:

In view of these circumstances and of the further fact that broadcasting is a science that is only yet in its infancy and about which we know little yet, I cannot think that any government would be warranted in leaving the air to private exploitation and not reserving it for development for the use of the people. It well may be that at some future time, when science has made greater achievements than we have yet a record of, it may be desirable to make other or different arrangements in whole or in part, but no one at this moment in the infancy of this great science would, I think, be warranted in suggesting that we should part with the control of this natural resource (ibid.).

PM Bennett’s conception of radio technology as a science still in its infancy justified a paternal role for government and the need for a state-run system of broadcasting.

Shortly after its introduction by the Bennett government, the Canadian Radio Broadcasting Act (herein after referred to as the Broadcasting Act) became law on 26 May 1932. To nationalists and special interest groups, the new act was a clear victory of public service over private profit (Raboy 1990: 46). Yet, despite much of the hype around national unity, Canadian identity and the inherent dangers of private enterprise, the Broadcasting Act (1932) did not truly reflect PM Bennett’s vision of a publicly-owned system of broadcasting. Unlike in Britain where there were no private radio stations, the concept of “public broadcasting” described in this act never translated into complete public ownership or service. Nor was the system to be modelled after the United States where private stations were all that existed. Instead, the “Canadian way”
included both public and private broadcasters in a single system of broadcasting (Bird 1988: 115).

“The Medium, Not the Message”: From Broadcasting to Communication

By the late 1920s, the Canadian government had fully assumed the responsibility of keeping the nation’s broadcasting system “Canadian.” For broadcasting regulators, this meant more Canadian content on the airwaves; a goal that would become an even greater priority with the advent of television. For example, in November 1959, new regulations were introduced that required TV stations to broadcast definitive amounts of Canadian programming. Section 6(1) of the *Radio (TV) Broadcasting Regulations* read: “During any period of four weeks, not less than 55% of the broadcast time of any station or network shall be devoted to programs that are basically Canadian in content and character” (cited in Bird 1988: 288). Among the many types of broadcasting that qualified under this broad category of “basically Canadian in content and character” were news broadcasts, news commentaries, “broadcasts of events occurring outside Canada in which Canadians are participating” and “broadcasts of programs featuring special events outside Canada, and of general interest to Canadians” (ibid.).

Over 40 years later, the Liberal government led by Lester B. Pearson would introduce new legislation that expanded the definition of broadcasting. While broadcasting was previously defined in terms of radio communication and the transmission of messages via Hertzian waves, this new act introduced the term “broadcasting undertaking” as a way of making the legislation technologically neutral. With the creation of this new category, any form of broadcasting
transmission or reception – regardless of the kind of technology employed – would classify as a broadcasting undertaking and fall under the purview of the *Broadcasting Act* (1968).

The *Broadcasting Act* (1968) would also serve to create a new regulatory agency called the Canadian Radio-Television Commission (CRTC). The CRTC, which replaced the Board of Broadcasting Governors (BBG), was given the authority over all public and private broadcasting. The CRTC’s mandate was similar to that of the BBG and included administrative regulation, the promotion of the national interest, and the advancement of social and cultural values (McPhail & McPhail 1990: 157). But, while the *Broadcasting Act* (1968) placed any and all technologies used for the purposes of broadcasting in the general category of “broadcast undertaking,” advancements in satellite communications would lead to a factual separation between what was being broadcasted and the infrastructure used to carry these signals.

Much like radio and television, the development of satellite communications was believed to be of vital importance for the growth, prosperity and unity of Canada (Raboy 1990: 191). For many proponents, the ability of this technology to introduce broadcasting services to virtually any part of the country would allow for the extension of the CBC’s French and English programming and thus “open the Canadian North to cultural integration” (ibid.). The development of satellite technology would prompt the federal government to consider the need

13 At the same time, the term “broadcasting undertaking” allowed the federal government to define broadcasting in terms of its “means” rather than its “ends.” By doing so, the federal government was able to keep its regulatory authority over cable (and other technologies, for that matter) away from the provinces. As Raboy (1990: 147) explains, the original wording of the *Broadcasting Act* (1932) was based on the Privy Council ruling of 1932 which had given jurisdiction over broadcasting to Ottawa on the grounds that wireless transmission crossed provincial boundaries. Thus, if broadcasting was redefined in terms of its end effect, there would be nothing to stop the provinces from making a claim that they should have control over these “instruments of culture and education” (ibid.).
for new comprehensive legislation and a restructuring of administrative responsibilities to deal with the broadening communications spectrum (ibid.: 192).

This, in turn, led to the creation of the Department of Communications (DOC) to “promote the establishment, development and efficiency of communication systems and facilities for Canada” (ibid.: 194). Formed a year after the Broadcasting Act (1968) received royal assent, the DOC was charged with “developing a new technological infrastructure for telecommunication carriage” and, among other things, was given the responsibility for setting up a domestic satellite corporation (ibid.: 183). Drawing on the dictum popularized by Canadian communications scholar Marshall McLuhan, the Minister-designate Eric Kierans told the House of Commons that this new department would be concerned “with the medium, not the message” (ibid.: 193).

Broadcasting would now be separate from communications. The newly created CRTC (which remained under the auspices of the Secretary of State) would retain its authority over the content of the Canadian broadcasting system. More “technical” matters regarding carriage and infrastructure, however, were now the domain of the DOC (ibid.: 183). Whereas broadcasting was connected to content and seen as a tool of national purpose, communications was tethered to infrastructure and had an “essentially economic and industrial vocation” (ibid.: 193). What is more, while the issue of broadcasting and its relation to Canadian culture were matters open to public discussion, any questions pertaining to the technology by which this content was to be delivered were dealt solely by the DOC, often in the name of private sector interests (ibid.: 183).

The government of the day held firmly to the belief in the revolutionary potential of communications technology and its ability to drastically alter the society in which Canadians
live. In keeping with this determinist outlook, government officials saw technology as being beyond the realm of politics. Again making reference to McLuhan, Kierans argued in the House of Commons:

> Without accepting uncritically the dictum that the medium is the message, it is obvious that the former affects the latter and that any message is altered and conditioned by the medium through which it is communicated… Communications constitutes the most important single element in the technological revolution that has overtaken us and which is carrying us along… toward a kind of society which we can as yet only dimly perceive… technology is altering our political system, and specifically… technology is drawing the ideological content, the traditional ideological content, from our political wars. A machine is non-political, neither Liberal nor Conservative nor New Democrat nor Creditiste. Nor for that matter is it a capitalist machine or a communist machine. No matter who designs it or where it is designed, a machine is a machine (HOC, *Debates* [1968-69], 6080-1 cited in Raboy 1990: 389).

The emphasis on the medium over the message clearly altered the way in which communications was thought about and understood. Because of this view that “machines are simply machines,” the development of this technology was no longer subject to political debate. Regardless of political orientation or affiliation, there was no question that communication infrastructure had to be developed as a matter of progress.

“The Medium is the Message?” Communication, Broadcasting and Cable

In spite of the attempts made by government officials to separate the “medium from the message,” this task of purification became increasingly difficult as the two elements of content and carriage started to converge. Media convergence posed particularly troubling questions for regulators: Was cable to be treated as a utility that was used in the delivery of broadcast signals from one place to another? Or, was it be viewed as broadcasting and part of the cultural industry
since what was being carried on these coaxial or fibre optic cables was a typical mix of news, information and entertainment? And what about the small number of cable companies that were now beginning to produce their own original programs to be shown on community channels? How were these companies to be defined?

By the late 1960s, the DOC began its effort to address many of these questions. In September 1969, the Federal Minister of Communications, Eric Kierans, announced that the DOC was undertaking a comprehensive study of telecommunications (to be known as the “Telecommission”) that would provide advice on future policy directions regarding a variety of technical, social and cultural issues (McPhail & McPhail 1990: 266). In total, almost 40 individual studies were undertaken, which were later synthesized and published as a research report entitled *Instant World* (ibid.; but see also Raboy 1990: 216).

One of the many topics examined in *Instant World* was the “technological dimensions of telecommunication and the potential problems confronting regulators as a consequence” (ibid.: 267). A key recommendation put forth in this report was for the Canadian government to consider reconstituting the three existing federal regulatory agencies: The Canadian Transport Commission (CTC), which was responsible for the common carriers; the DOC, which was responsible for the technical aspects of all radio communication, including broadcasting; and the CRTC, which was responsible for all other aspects of broadcasting that were not the under the authority of either the CTC or DOC (Raboy 1990: 216).

Similar recommendations to harmonize the various branches of government involved with telecommunications and to combine existing telecommunications legislation into a single law were reiterated a few years later. In March 1973, Gerard Pelletier, the newly appointed
Federal Minister of Communications, published a green paper entitled *Proposals for a Communications Policy for Canada* that highlighted the need for government to keep pace with technology and proposed to harmonize telecommunications legislation into a single law “related to clearly stated statutory national objectives” (ibid.: 221). The green paper cited the cable system as one specific area in the larger field of telecommunications that required new legislation and a restructuring of the regulatory framework.

The main problem concerning cable was that it could be defined as either a broadcasting service (and therefore subject to the CRTC) or as a telecommunications carrier (and therefore subject to the various regulatory bodies\(^4\) and legislation that governed this industry) (ibid.: 221). According to the report, new legislation was needed that would clear up this ambiguity and finally put to rest the constitutional battle between the federal and provincial governments over jurisdiction of cable broadcasting (ibid.). The report specifically noted that the blurred boundaries between “the medium and the message” required a single, unified agency that had regulatory jurisdiction over both the broadcasting and carriage functions of cable (ibid.).\(^5\)

The green paper also acknowledged a more general separation of communications from culture that had been taking place since the creation of the CRTC. The economic and industrial vocation of the medium had become more important for government than the cultural significance of the message; hardware and carriage was now taking precedence over software

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\(^4\) For example, telephone and telegraph companies were regulated by the telecommunication committee of the Canadian Transport Commission.

\(^5\) Cable, however, was not the only form of broadcasting technology that was of concern. In addition, the green paper also warned that broadcast satellites offering direct-to-home services would also muddy the boundaries between broadcasting and one-to-one or “point-to-point” systems of telecommunications like the telephone (Raboy 1990: 221). The paper also made mention that government needed to recognize the telecommunication capabilities of the computer industry and not allow it to develop uncontrolled as cable had (ibid.: 221).
and content. It was assumed that the new regulatory agency would more effectively deal with this imbalance and give equal weight to the “social, cultural, economic aspects of communications, in accordance with clearly stated national objectives” (ibid.: 221).

In October 1974, legislation was introduced by the federal Liberals that served to unify all things related to telecommunications under the authority of a single agency (Bird 1988: 555; Raboy 1990: 235). The Act to Establish the Canadian Radio-Television and Telecommunications Commission received royal assent on June 19, 1975 and took effect on April 1, 1976. This new piece of legislation proposed to combine the functions of the CRTC with those of the telecommunications committee of the CTC (Raboy 1990: 235). Both aspects of telecommunications, broadcasting and transmission (or “content and carriage”), would now be governed by a reconfigured CRTC. Though the acronym stayed the same, the CRTC would now stand for the “Canadian Radio-television and Telecommunications Commission”.

With the CRTC taking over as the main governing body for broadcasting and communications in Canada, the Secretary of State was removed of its general responsibility for maintaining Canadian culture in broadcasting. This duty, along with a whole host of others, would fall squarely on the shoulders of the Commission. But, while the rationale for creating a single, unified regulatory body was premised on its ability to properly balance the social, cultural, economic and technical aspects of broadcasting and communications, critics warned that this balancing act swayed heavily in favour of private industry. As Raboy (1990: 243) argues, “Despite its own rhetoric, not to mention the strongly articulated views of the various

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16 In addition to this name change and its expanded jurisdiction, the new Act also created a physically larger CRTC, which grew from 5 to 9 full-time members.
publics whose interest it was supposed to represent, the CRTC was becoming increasingly a captive of the industries it regulated.”

Part of the difficulty in trying to consolidate and unify “the medium with the message” under the broad category of telecommunications was that very little guidance was provided in the legislation about how the CRTC should approach “hybrid” technologies that could be treated as either carriage or content. Consequently, as Mary Vipond (2000: 162) argues, instead of requiring the CRTC to take into account the social, cultural, economic and technical dimensions of the cable industry, the CRTC’s cable policy and its assumption that cable is a hybrid – half broadcaster and half utility – was used to liberate “highly-profitable companies from the most stringent regulations normally applied to both broadcasters and utilities.” When an attempt is made to distinguish between these two functions of carriage and content, the record of the CRTC suggests that signal delivery takes precedence over programming (Raboy 1990; Vipond 2000). Allowing market forces to operate without interference almost always trumps the need for cultural protection.

The Information Highway: The Same Issues, a Different Technology

The rise of the Internet and the gradual blending of computer technology with broadcasting and telecommunications capabilities would only add to the confusion. In typical Canadian fashion, a Federal inquiry committee was struck in 1994 to investigate the development of content and competition policies for new communication technologies and services. Adopting the popular catchphrase of the time, the committee was named the “Information Highway Advisory Council” (IHAC) and was comprised of twenty-nine members
representing the broadcasting and telecommunications industries, academia, the cultural sector and labour (Chodos et al. 1997: 11). Certain members were also appointed to the Council as a way to ensure a degree of regional, ethnic and gender balance (ibid.).

According to the Council, the questions raised by the emergence of new communication technology that once confronted Canadians in the past are remarkably similar to the ones that presently exist. Drawing upon its own orthodox reading of Canadian broadcasting history, the IHAC committee argued that the various obstacles brought about by a new era of information technology
do not differ in principle from the challenges posed by radio in the 1920s and 1930s; television in the 1940s and 1950s; cable in the 1960s and 1970s and, communications satellites in the 1970s and 1980s. In each case, attractive new services were first available from US sources. With Canadians rightly demanding access to these services, government policy had to ensure that attractive and viable domestic services were also available within the system (IHAC 1995).

The main challenge for the Canadian broadcasting system – as it has always been – is trying to maintain this delicate balance between social and cultural goals, on the one hand, and the economic interests of private broadcasters, on the other.

Indeed, since the early days of radio, direct state involvement in the form of licensing has been used to maintain this balance and to ensure that an appropriate amount of “Canadian” programs and services were made available to the general public. Through a variety of funding mechanisms, private broadcasters have subsidized numerous policy initiatives ranging from the extension of services to remote areas of the country to the production of frequently unprofitable Canadian programming, using the profits they generate by providing foreign content. In
exchange for meeting these obligations, licensees receive government protection from foreign competitors which has allowed these private companies to remain highly profitable.\textsuperscript{17}

In its report, the Council asserted that the \textit{Broadcasting Act (1991)}\textsuperscript{18} and the section outlining the need to create and maintain a distinctively Canadian system were still very much relevant in spite of the changing nature of technology. As the Council explained, “The Act is not a dusty and dated piece of legislation passed in the days of crystal sets and Victrolas. It is an expression of the will of Parliament studied, debated and passed just over four years ago. This legislation anticipated both the extraordinary pace of technological change and an explosion of broadcasting services in a competitive environment” (ibid.). However, while the principles of “shared national identity and public service” were deemed important, government intervention as the primary means of achieving these ends was seen as highly outdated in light of the existing social, political, economic and, perhaps most importantly, technological climate.

For the IHAC, one of the key features separating new media from the old was that, unlike radio, television, cable or satellite, computer-mediated communication was not hampered by the

\textsuperscript{17} The CRTC has introduced a variety of rules that serve to protect the economic interests of private broadcasters. In the case of cable broadcasting, the simultaneous substitution or “simulcasting” rule requires cable operators, upon request, to replace a foreign signal with a local one in the event that the same program was being shown at the same time (Vipond 2000: 160-161). The substitution of broadcasting signals was a way to increase the audience size and, more importantly, the advertising revenue for local Canadian broadcasters (ibid.: 160-161). A second protectionist tool adopted by the CRTC is Bill C-58, the 1976 legislation amending Section 19 of the \textit{Income Tax Act}. Under Bill C-58, any Canadian company that chose to place advertisements on American border broadcasting stations would lose their ability to claim these advertising expenses as a tax deduction (ibid.: 160-161). Again, the intent here was to ensure that advertising money would filter into Canadian stations.

\textsuperscript{18} In 1991, the \textit{Broadcasting Act (1991)} was passed in response to the recommendations of the 1986 Caplan-Sauvageau Report and replaced the \textit{Broadcasting Act (1968)}. Among other things, the new act: Emphasized the importance of bilingualism, multiculturalism and the special place of Aboriginal people in Canadian society; promoted employment equity for women, Aboriginal people and visible minorities; emphasized the importance of programming which is Canadian in both content and character; and redefined the Canadian Broadcasting Corporation’s (CBC) role in creating a “Canadian consciousness.”
problem of spectrum scarcity. Quite the opposite, on the “Information Highway,” Canadian users
could become their own broadcasters and access an almost endless supply of content – Canadian
or otherwise – like never before. Echoing the logic of neo-liberalism, citizens were reconfigured
as consumers whose choice was to be celebrated and embraced, not constrained by government
interference. The council explained:

In the opinion of some, the old era was characterized by limited spectrum, over-
regulation, and concepts of public service that may have encouraged attitudes of
paternalism on the part of legislators, regulators or even broadcasters. It is now
clear that any such attitudes cannot survive in an era of virtually unlimited
capacity, where control is increasingly in the hands of the consumer (ibid.).

Thus, while many of the issues surrounding broadcasting and communication have remained the
same, the limitless nature of this new technology no longer necessitates direct state involvement.

Making Sense of New Media

Ever since the publication of the IHAC’s report in 1995, the CRTC has been hugely
concerned about the number of services being delivered via new distribution methods and
technologies such as Internet audio and video – delivered “on-demand” or in “real-time” – that
are readily available as a result of software and hardware developments and greater network
capabilities (CRTC 1998a). Still, in the wake of all of this technological change, the CRTC held
on to the belief that the fundamental objectives of the Broadcasting Act (1991) remain
unchanged:

A fundamental objective of the Broadcasting Act is to ensure the availability of
high quality and diverse Canadian programming that maximizes use of Canadian
creative and other resources in a manner that supports Canadian sovereignty and
Canada’s cultural identity. The substantial growth and development of new media,
and their delivery over both global and domestic networks, have not altered this
fundamental objective, which has challenged and preoccupied Canadians for much of the 20th century (ibid.).

The CRTC was steadfast in its position that it must continue to “enrich and strengthen the economic, social and cultural fabric of Canada by ensuring a prominent Canadian presence in the content and delivery of broadcasting services” (ibid.). However, much like the IHAC Council, the CRTC was highly cautious about simply dealing with new media in the same way it had managed earlier forms of broadcasting technology, and acknowledged the fact that “the approaches that have proven successful in the past with respect to the distribution of the programming services of conventional broadcasting undertakings may be inappropriate for the distribution of new media services to Canadians or inadequate in an age of worldwide networks and the global delivery of services” (ibid.).

On July 31, 1998, the CRTC announced that it was initiating proceedings under the auspices of both the Broadcasting Act (1991) and Telecommunications Act (1993) to study the “rapidly expanding and increasingly available range of communications services collectively referred to as ‘new media’” (CRTC 1998b). In keeping with its own long-standing tradition of holding public consultations to examine the potential impact of emerging technology, the CRTC claimed that the proceedings were a way to gain a “better understanding of the scope and impact of the new media, the evolving industry structure, and the potential competitive access issues that may affect consumers in all regions of Canada” (ibid.).

The Commission made it explicitly clear that they were “not looking to apply old regulatory models to the new media, nor did [they] have in mind any particular regulatory model, and nor did [they] want to regulate” (ibid.). Instead, they maintained that the hearings were simply an opportunity to learn more about the current state of the new media industry and its
domestic and global potential. Noting that they “could and should take advantage of its unique public processes to help create a better understanding of these phenomena,” the CRTC set out to hold a three-phase process of public consultations and encouraged all interested parties to submit their comments (ibid.).

The CRTC saw this as a perfect opportunity to establish a forum in which interested parties could present their views about new media and engage in a constructive discussion about issues of concern. These proceedings were also to give Canadians a clearer picture of the potential benefits that could be reaped from the “evolution of new media services” and the economic and cultural contributions that these services could make to Canadian society (ibid.).

From the very outset, the Commission was acutely aware of the ambiguity of the term “new media” and offered interested parties the following as a working definition:

New media can be described as encompassing, singly or in combination, and whether interactive or not, services and products that make use of video, audio, graphics and alphanumeric text; and involving, along with other, more traditional means of distribution, digital delivery over networks interconnected on a local or global scale (ibid.).

The CRTC further noted that, given this very broad description, “virtually all services found on the Internet could be considered as forms of new media” (ibid.). Under the general mandate of

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19 In the first phase, the CRTC requested all interested parties to submit written comments on the various questions posed by the Commission and other matters relevant to the examination of new media. Interested parties, regardless of whether they have made submissions during the first phase, were then allowed to file comments with respect to matters raised by any of the comments submitted during the first phase. In order to participate in the oral phase of these proceedings, interested parties were advised to state their request on the first page of their written submissions, providing clear reasons as to why their submissions are not sufficient and why their appearance is necessary. The Commission would then determine whether or not these parties would appear at the oral hearing and could, in advance, request that interested parties focus on specific issues in their oral presentations. Following the oral public hearing, interested parties were given the opportunity to file final written arguments with the Commission.
investigating the place of new media in Canada, the CRTC’s public consultations were directly aimed at addressing four (4) main questions:

1) In what ways, and to what extent, do new media affect, or are they likely to affect, the broadcasting and telecommunications undertakings now regulated by the Commission?

2) In what ways, and to what extent, are some or any of the new media either broadcasting or telecommunications services?

3) To the extent that any of the new media are broadcasting or telecommunications, to what extent should the Commission regulate and supervise them pursuant to the Broadcasting Act and the Telecommunications Act?

4) Do the new media raise any other broad policy issues of national interest?

In response to its call for comments, the Commission received over a thousand submissions, which translated to roughly 6,500 pages of documentation. This was in addition to the hundreds of e-mails received at an online forum hosted by the McLuhan E-lab Unit in Toronto. Moreover, almost one hundred parties made presentations at the oral sessions that were held over eleven days in November and December 1998 and two days in February 1999. In their final report, the Commission mentioned that these proceedings were “unprecedented for the breadth of the range of individuals, industries, and interest groups from which [it] received comments” (CRTC 1999).

At the two public hearings, the CRTC heard from various multimedia companies like America Online (AOL) Canada, Rogers Communications and AT&T that were directly involved in both the production and distribution of new media products and services. The traditionally regulated industries and their industry associations already familiar and active in Commission proceedings were also in attendance to offer their opinions. Some of these “usual suspects”
included the Canadian Association of Broadcasters (CAB), the Canadian Business Telecommunications Alliance and the Alliance of Canadian Cinema, Television and Radio Artists.

In addition, the CRTC also heard from a number of individuals, groups and industries that had not previously participated in these types of hearings. Among the many organizations making their first appearance in front of the Commission were the African-Canadian Legal Clinic (ACLC), the Canadian Anti-Racism Education and Research Society and Electronic Frontier Canada. According to the CRTC (1999), the submissions by these parties were “most useful in informing the Commission during its deliberations on the prevailing technical and market realities in which new media players operate.”

Making the Internet a “CRTC-free Zone”

Much of the discussion that took place over the 13 days of public hearings was spent trying to define the term “new media.” Taking the lead from the CRTC in its call for comments, almost all of the participants interpreted new media as a catch-all phrase to describe the various forms of material that could be found online. A representative from the Canadian Advertisers’ Group, for example, defined new media as the “video, audio, graphic and textual content and the interactive services that are carried out on the Internet” (CRTC 1998c). Other presenters, however, opted to take a much broader interpretation by linking new media to computers and digitization, more generally. But, while there was general consensus that new media was in some ways connected to the Internet and/or computing technology, this is where much of the agreement stopped.
Representatives from private industry who were adamantly opposed to state regulation held a very different conception of this technology from those demanding greater involvement by the CRTC and spent much of their time at the hearings trying to convince the Commission that the Internet was doing just fine without government interference. For these individuals, the new media market was vibrant, competitive and growing rapidly in an environment subject to free market forces and non-intervention by government regulators. To demonstrate this point, several parties related personal anecdotes and success stories in their presentations to the Commission. For example, Stephen Bartkiw, then managing director of AOL Canada – one of the largest ISPs at the time of these hearings – recounted:

When I joined AOL over three years ago, we had approximately 3 million members, all in the United States. Now AOL has over 14 million members and offers localized services in nine countries and in four languages. During peak times over 850,000 of our members are online simultaneously. Each day our members send over 34 million e-mails and access over 75 million stock quotes (CRTC 1998d).

In addition to relying on their own insights and experiences, a number of groups drew upon empirical data produced by other organizations to support their claims that government regulation was unnecessary.

Several presenters, for instance, pointed to the 1997 Statistics Canada Household Internet Use (HIUS) Survey and its finding that 24% of Canadian households – which translated to approximately 2.5 million Canadians – have access to the Internet to help illustrate that the use of this technology was already flourishing without the aid of state assistance. Other groups, like the CAB, commissioned their own independent studies on the state of new media in Canada. As part of its submission, the CAB filed four separate research reports, which produced a handful of numbers that were frequently cited at these hearings. Chief among them was the prediction made
by the CMI and Multimediator Strategy Group that nearly 40% of Canadian households would have Internet access in three years.

Over the 13 days of oral hearings, these numbers were largely taken for granted. That 2.5 million Canadians have access to the Internet was not only accepted as fact, but was seen as a sign of tremendous growth and prosperity. Quite clearly, those in private industry were able to mobilize these statistics on Internet use to help further their own interests by demonstrating that an already impressive number of Canadians were using this technology with even more to follow. Thus, while it could have been interpreted in a variety of ways, this number was taken as a symbol of success.

A Space for Canadian Content

Although all sectors of the new media industry were to prosper, producers of Canadian content were believed to be the real winners in the so-called “Information Age.” As Stephen Bartkiw from AOL Canada argued, there exists a growing demand for Canadian content on the Internet:

Content is and has always been the most important ingredient and acts as a catalyst for communications and in building community. We regularly conduct telephone surveys and detailed interviews with our membership in order to find out precisely what sorts of services they want and use. By way of example, we entered the Canadian market in January 1996. Within months we had developed a unique Canadian online service led by a Canadian management team with 13 categories of Canadian content. By September of this year, I am proud to boast more than 60 Canadian content partners and a paid membership in excess of 100,000 Canadian households (ibid.).

Bartkiw further claims that this production of Canadian content is purely consumer driven:

The key point is that no government, regulator, advisory body or license conditions compelled us to make these significant investments. We saw a market
opportunity and by paying close attention to the needs of consumers, we have successfully capitalized on that opportunity by providing our members with the services they want and use (ibid.).

AOL Canada was by no means the only party to highlight the considerable presence of Canadian content on the Internet.

Like Bartkiw, Peter Barnes from AT&T Canada pointed out that the growing demand for this material has emerged without prodding by government, and that Canadians “naturally” seek out Canadian content that is readily available and easily accessible on the Internet:

With regard to cultural content on the Internet, one notes that Canadians have a certain appetite for the cultural exports of foreign countries. However, there should be no doubt that ISPs who wish to successfully address the Canadian market must, over time, offer high quality Canadian content. In other words, Canadian customers will look for Canadian stories and Canadian voices. While that is happening, it stands to reason that our content is widely available to the rest of the world who will be looking and listening to us also. All of this has occurred without the presence of content requirements. At my office, we recently attempted to test the ability of people in far away places to access Canadian cultural content on the Internet. We asked a couple of colleagues in other countries to seek out Canadian content on their web browsers. In addition to viewing the state-of-the-art home page of the CBC, our correspondent in Beijing turned up a home page of a Canadian Internet railroad cartoonist, Erik Swanson (CRTC 1998e).

The ease with which Canadians can access Canadian content on the Internet from both inside and outside the country and the supposedly inherent desire for Canadians to seek out this material – claims supported with personalized “expert” knowledge and anecdotal evidence – were used as evidence of a strong market that naturally entices companies to produce more and more content by and for Canadians.

To be sure, one could sift through the hundred of pages of hearing transcripts and find numerous presenters who argue that the new media industry in Canada is thriving and that Canadian content – believed to be the primary concern for the CRTC – is available to anyone
who wants it. Once again, personal success stories and remarkable numbers were used to legitimize and make real this idea that Canadians “naturally” want Canadian content on the Internet.

Fostering alliances with other parties was another typical strategy employed by various groups to further these claims. For example, it was quite common to see different organizations that shared a similar position come together to deliver joint presentations to the Commission. In some instances, individual presenters who appeared at the hearings were members of multiple organizations and thus represented these differing interests at once. By bringing in multiple voices, these organizations were able to present a “united front” and prove to the CRTC that the arguments they were making were not just their own, but ones that they shared with others.

Joining forces also allowed these groups to draw upon the specific expertise and knowledge of certain individuals. For example, to provide further evidence that Canadian content was rapidly emerging on the Internet without the aid of the CRTC, AOL Canada brought with them, Marc Boucher of Maple Square – a British Columbia-based online content producer that developed the first national directory of Canadian websites which gives priority and prominence to Canadian content on the Internet. Speaking alongside AOL Canada, Boucher made the following statement:

In 1997, Maple Square entered into a partnership with AOL Canada to bring our Canadian content to AOL members and Internet users worldwide. Right from the beginning, AOL Canada understood that to be successful, it was important to provide their members with content that was authentically Canadian. For this reason, they have partnered with 60 companies and individuals to help produce and promote Canadian content. They are clearly leaders in this regard. It is very important to emphasize that there are few barriers for new content producers entering the market and creating content. If an individual has access to a computer that is connected to the Internet, then they can publish content. With high quality content and a commitment to promote it, anyone can have a successful online
business. Do we need incentives or funding from Government agencies to produce Canadian content? The answer is no (CRTC 1998d).

Like many of the other groups who appeared in front of the CRTC, Boucher also presented a number of figures showing a growing Canadian presence on the Internet to support his claims:

We have made great progress without incentives. In the nearly three years that we have been indexing Canadian Web sites, the number of sites has grown from a couple of thousand in 1995 to over 60,000 today with several million individual Web pages (ibid.).

To use a courtroom analogy, AOL Canada called upon Boucher as a witness who could testify as to the presence of Canadian content on the Web. He was mobilized as an actor into this network aimed at convincing the CRTC that the Internet was not only “vibrant, competitive and growing rapidly,” but a space for Canadian content.

**Separating the Old from the New: Spectrum Scarcity on a Global Medium**

For those demanding that the Internet remains unregulated, convincing the CRTC that this new medium was unlike radio and TV was another way of preventing the Commission from imposing its regulatory power over this technology. One of the main features that numerous participants saw as separating new from “traditional” media was the lack of barriers to one’s entry into the field. Speaking on behalf of Electronic Frontier Canada – a non-profit online civil liberties organization founded in 1994 – David Jones remarked:

With traditional media, such as newspaper, radio or television, Canadians must rely largely upon intermediaries to tell their stories, to convey their opinions, to tell them what their fellow Canadians are thinking and doing in distant parts of the country, and we have very little recourse if these intermediaries do a poor job of it. These are media from the few to the many. The economic barriers to entry in traditional media are often enormous. But on the Internet everyone can be a
publisher. And even though the telephone allows direct one-to-one conversation
over great distances, the Internet offers one-to-many and many-to-many
communication to an unprecedented degree (CRTC 1998f).

Other presenters at these hearings made very similar arguments. Noting that the Internet does not
suffer the problem of “spectrum scarcity” facing traditional media, Richard Cantin, speaking on
behalf of the Canadian Association of Internet Providers (CAIP), explained:

The characteristics of new media are unlike those of traditional media and, therefore, the problems resulting from the problems of traditional media and the remedies to solve those problems simply do not apply to new media… [t]here is no scarcity of spectrum in new media… New media production does not share the characteristic of high production costs. Every Canadian can be a creator of high quality content. Canadians, unlike in traditional media, are not disadvantaged by our small size in that we have access to the same global customer base as do those from other countries. Given this stark contrast in characteristics, the conclusion reached by most is that the remedies designed to solve problems brought about by the characteristics of traditional media simply do not apply and should not be applied to new media (CRTC 1998g).

This argument against spectrum scarcity – the idea that the channels available for the purposes of
broadcasting are limited and thus should be allocated and governed by the state – was tied to the
more general claim that the Internet was a “global” medium.

For many parties, the fact that anyone in the world could access Canadian content – helping to produce both supply and demand for this material – was viewed as a distinctive characteristic of this technology that separated it from traditional radio and TV. What is more, like other communication technologies that have come before it, the Internet was believed to have finally done away with the problem of spatial distance. This idea that the Internet would bring the world closer and connect Canadian businesses with a global market was often told through very dramatic stories of individuals and organizations that had somehow overcome the obstacles of time, distance and space with the help of the Internet.
The presentation made by IBM provides a very good illustration of this way of thinking.

In front of the CRTC, Shahla Aly – Vice President of E-Business at IBM (who, at this time, was also the Chair of CAIP) – recounts the following tales:

Librarie Garneau, the largest francophone book chain, is extending its reach beyond Canada's borders, making its more than 250,000 French language books available to the world. One only has to think of the seven million francophones dispersed around the United States to see the immense pool to potential customers in North America alone… The Alberta Women's Enterprise Association is a not for profit organization that uses the intranet to provide better service for its customers and connecting them to other women to share business experiences… For the citizens of remote northern communities like Rankin Inlet in the Northwest Territories, the Internet is providing them with a link to the outside world in a way never before possible. Today some 20 per cent of its local citizens, many who grew up in a settlement with no telephones, have an e-mail address. The John D. Bracco School in Edmonton uses the Internet to ensure that children of families who are working abroad in Holland, Turkey and even in the oil fields of Saudi Arabia continue to receive a Canadian education. What new vistas the Internet can open up and new worlds that can open up to the physically disabled. We in fact have a student working for us at Lakehead University who works for my business, who is a paraplegic and is able to provide value and Web site construction from his wheelchair in Lakehead. He had never come into the offices in Toronto. He works [from a] distance (ibid.).

Perhaps more importantly, the Internet was portrayed as a vehicle for bringing “Canadiana” to the rest of the world. Aly continues:

Let me share with you additional examples of how the Web makes it possible to make Canadiana available to the rest of the world. When Bryson's Furniture, a 50 year old family run business that specializes in the sale of handcrafted Mennonite furniture, decided to open a Web site, it was with the intention of extending its sale reach across Ontario. However, when their first e-mail order arrived, it came not from Ontario but from an enthusiastic customer in California who wanted lots of furniture and he offered to pay all shipping costs (ibid.).

In addition to these heart-warming anecdotes and stories of success and triumph, Aly also relied upon an array of figures to further highlight the connections drawn between the Internet and global commerce:
As you can see, the Internet is about more than content. It's about business transformation, growth, wealth creation, competitive advantage and personal effectiveness. Thousands of businesses have already proven that the Internet has helped them grow revenue, reduce costs, improve quality, decrease time to market, manage the supply chain and enter new global markets in ways never before possible. In fact, last year in Canada, e-commerce sales accounted for 5.4 per cent of worldwide Internet commerce revenue in a market that is expected to reach $300 billion by the turn of the century. In many ways Canada's potential is totally unlimited with our world-class telecommunications infrastructure, powerful base of innovative and creative entrepreneurs and the fact that we lead the G7 in penetration of cable, telephones and home computers (ibid.).

For Aly, it is this framework for understanding the Internet that the CRTC and others need to adopt if we are to truly benefit from this technology:

I firmly believe that the great promise and potential that the Internet holds for Canada is not inevitable. The networked world that is taking place around us is a global phenomenon and by its very nature transcends national and international borders. The danger, as I see it, is that each government, each special interest group could view the Internet as a mosaic of local issues and not as the global phenomena that it is (ibid.).

From this perspective, technology is quite separate from politics. While the decision to harness the potential that the Internet holds for Canada is very much a political one, the globalizing effect of this technology is a real inevitability. As I discuss further below, it is this understanding of the Internet as an unstoppable global medium that many feel makes it virtually ungovernable.

Making the Internet Global and “Ungovernable”

For several participants at the New Media hearings, Internet regulation is not just unnecessary and undesirable, but simply impossible given the nature of this technology. Like radio and television before it, the Internet is shrouded in a dual rhetoric of technological determinism and technological dependency: On one hand, the Internet is believed to be operating under its own internal logic, drastically shaping the larger social, political, economic and cultural
landscape. Yet, at the same time, the Internet represents progress and improvement that should not be halted. Various groups including Bell Satellite Services Incorporated remarked that the Internet was “evolving” on its own and, at the risk of disrupting this “natural evolution” and hurting any positive benefits that could be derived from it, the CRTC should simply allow the technology to run its course without any undue interference (CRTC 1998h).

Once again, the supposedly global nature of this technology was cited as the main reason for remaining hands-off the Internet. According to these critics, any form of regulation would only serve to drive business outside of Canada. A representative from the Canadian Advanced Technology Alliance makes this point quite clear:

[Our] key concern is the potential impact of CRTC regulations on electronic commerce… Canada has an export driven economy. Among our members, it is not unusual for more than 90% of revenues to come from foreign markets. Internet taxes and regulations [that] place Canadians at a competitive disadvantage in global e-com and will slow the growth of the entire economy. While the CRTC is examining the situation of new media in Canada, many countries have set out to attract Internet businesses to their shores. Ireland, Bermuda, the Bahamas and Barbados have been cited by previous intervenors during your hearing. The United States, the leader of the Internet, has a natural attraction for Web businesses. Any obstacles placed in the paths of Canadian new media businesses will make these venues more attractive. They will divert creativity, investment and employment away from Canada. A website can be moved with a click of a mouse and the impact is not trivial (CRTC 1998c).

The global reach of the Internet is thus construed here as a double-edged sword: While it allows for the uploading and downloading of Canadian content by individuals from around the globe, the fact that anyone can set-up shop in cyberspace from virtually anywhere in the world means that users can easily take their business elsewhere. Consequently, any rules or restrictions imposed by the CRTC would only serve to make Canada a far less attractive place for new media businesses to invest.
Beyond the potential impact that state intervention may have for business and investment in new media in this country, the global nature of the Internet forced many participants to ask a more obvious question: How and with what authority does the CRTC plan to impose and enforce its rules? More specifically, how is the Commission going to assert legal jurisdiction on a global medium? Groups like the Media Awareness Network (MNet), for instance, claimed that “due to its limitless and borderless nature” the Internet and its regulation cannot be approached in the same way that other forms of broadcasting and telecommunications have been in the past (CRTC 1998f). CAIP goes so far as to suggest that the “global nature of the Internet makes its regulation impractical if not impossible” (CRTC 1998g). Here, both presenters hint at the fact that any attempt at government regulation that is contingent upon the authority of a sovereign state is doomed to fail when enforced on a network that is unbound by geography or territorial boundaries.

Making the Internet Something Other than Broadcasting

Alongside these discussions about the nature of this technology, a large part of these hearings was devoted to the question of whether or not certain activities on the Internet constituted “broadcasting” as defined under the *Broadcasting Act* (1991). The current *Act* (1991) defines broadcasting as:

> Any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication of reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place.
The term “program” means sound or visual images, or a combination of sounds and visual images that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds that consist predominantly of alphanumeric text.

Because the Broadcasting Act (1991) was initially designed to be “technologically neutral,” there was little debating that the Internet qualified as a broadcasting medium. Instead, much of the discussion looked at whether or not the material found on the Internet qualified as a program. Not surprisingly, many of the intervenors opposed to regulation spent their time trying to convince the Commission that what takes place online was not “programming” and therefore could not be defined as broadcasting, for two (2) main reasons: 1) much of the material found online is alphanumeric text; and 2) Internet transmissions are customizable and interactive.

Rob Hall, speaking on behalf of CAIP, summarizes both of these arguments quite nicely.

On the first point about online materials being predominant text-based, he explains:

… I don’t pretend to understand all of the complexities of the Broadcasting Act, but certainly there is this debate of is it graphical and audio or is it text-based? Text-based may be exempt, but Web sites are mostly about graphics now. I will challenge that... Try and go to a web site that is in a different language and see how far you get. It is still a very heavily text-based component and a message that people are reading as opposed to just watching images fly by (ibid.).

With regards to the customizability and interactive nature of Internet content, Hall claims:

Technically, certainly the Internet by definition is not broadcasting. It’s a one to one communication… the fact that it’s interactive. If you and I go to the same site, we will have two different experiences there. It’s not simply sitting in front of a computer and watching something go by… I think if you asked the layman (sic.) today, you know, on the street what is broadcasting and is this broadcasting, his answer would be no. No matter what the legal definition of the Act is, typically this is not what we think of as broadcasting, sitting on my couch and watching TV or listening to a radio and someone else choosing content. The joy of the Internet is I get to choose the content interactively every second I’m there. I never have to put up with something I don’t want to (ibid.).
In both instances, common sense is used to trump legal knowledge. Admitting that he does not understand all of the complexities of the *Broadcasting Act* (1991), Hall reframes the issue from a legal to a practical question. So, while lawyers may hold an opposing view on the matter, it was obvious to any layperson that the Internet was not like “traditional” broadcasting.

Other intervenors made similar appeals to common sense by reiterating this claim that what was transmitted over the Internet was strikingly different from what one sees or hears on television and radio. Terms like “simultaneity” and distinctions between “push” (forms of broadcasting where the user has no influence with regards to the programs that they receive) and “pull” technologies (forms of broadcasting where the user can, in some way, manipulate these programs) were tossed around by various groups to highlight the customizability of Internet content that put it outside the definition of a program.

While the commissioners pressed the intervenors to explain why they believed the Internet not to be a form of broadcasting, the CRTC seemed to be in general agreement with this position. Like many of the presenters, the Commission was of the opinion that content that was predominantly alphanumeric text and/or customizable in some way be excluded from the definition of “program.” Where there was some debate, however, was how to deal with the remaining type of material on the Internet that could fall under the definitions of “broadcasting” and “program,” as found in the current *Broadcasting Act* (1991). In other words, what was exactly to be done to the various online activities that were akin to traditional broadcasting?

Begrudgingly, the majority of participants, when pushed by the CRTC, accepted the idea that certain activities – for example, Internet radio and video streaming – did, in fact, constitute a form of broadcasting. However, many were quick to point out that the technology was still not capable of handling this type of programming with any sort of reasonable quality and, thus,
should be exempted from regulation until such time. The CRTC agreed and referred back to the
genral claims about the current state of Internet technology in Canada – that it was thriving and
had a strong presence of Canadian content – to reason that regulation, at this time, was not
necessary and would not help to achieve the overall objectives of the *Broadcasting Act* (1991).
To most, this option offered by the CRTC seemed like a fair compromise.

**Letting the Net Self-Regulate: Offering an Alternative to State Intervention**

Another way in which interested parties tried to resist the imposition of CRTC regulation
on the Internet was by highlighting the alternative methods that the technology already was or
could be governed. A point raised several times was that, contrary to popular belief, cyberspace
was not a “lawless” place. As a representative from AOL Canada explained, conduct that is
illegal offline is also illegal online and thus existing legal mechanisms such as the criminal law
still apply. Similarly, groups such as B’Nai Brith argued that existing legislation pertaining to
hate speech could easily be tweaked to be more applicable to the digital world. Thus, rather than
having the CRTC impose blanket regulations on the Internet, the organization argued that the
*Canadian Human Rights Act* could be updated to ensure that the Canadian Human Rights
Commission could deal more effectively with complains about hate on the Internet.

Meanwhile, in what might be described as a pre-emptive strike against government
regulation, ISPs put the onus on themselves to actively regulate how their services were being
used. Speaking the language of corporate responsibility and industry self-regulation, companies
such as AOL Canada talked about what they were doing to make the Internet safe for their
customers. As a company representative explained:
We firmly believe… that as responsible corporate citizens there is much that Internet service providers can do and have done to discourage and reduce [inappropriate] behaviour on the Internet. AOL Canada is at the forefront of such measures. Our Terms of Service… apply to all of AOL Canada members and establish minimum requirements for appropriate online content and proper online conduct (CRTC 1998d).

However, for AOL Canada and other ISPs, the responsibility for regulating Internet use is one that must be shared with others.

To this end, several ISPs outlined various partnerships that they had formed with industry associations, law enforcement agencies and community organizations to combat illegal and offensive conduct on the Internet. One representative from CAIP told the Commission how their organization was working to educate law enforcement agencies on ways that the police could better deal with the kinds of problems they were encountering online:

The ISP industry maintains an ongoing dialogue and has conducted seminars with and for law enforcement officials… I meet with the law enforcement of Ottawa-Carleton on a regular basis. I would say every two or three weeks we get together and talk about what’s happening. In fact, they have formed a group called the High Tech Prevention Association, which has a lot of ISPs in it (CRTC 1998g).

For CAIP, the alliances being forged between ISPs and law enforcement were merely secondary to the larger educative function performed by these companies.

As CAIP explain in their presentation, “education is key” to establishing an effective system of self-regulation on the Internet with ISPs playing a lead role in educating all segments of society on how to deal with this technology. Noting that ISPs are highly knowledgeable and best suited to perform this function, one member from the organization argued:

[ISPs] are the first contact for the client that has a question about the Internet. Whether it is [about] content they found… or how to do something more general on [the] computer. We educate our customers. That happens everyday with every tech support phone call. CAIP is a body that is trying to educate other entities…
the intellectual property people that have concerns [and] certainly the police forces… I’m a fan of everybody educating. The Internet provides the best tool to communicate and educate. Certainly other bodies should be involved in education, but CAIP members, as well as a body, are involved everyday (ibid.).

Other organizations would later pick up and expand on this neo-liberal theme of self-regulation through education. In almost all cases, the responsibility for dealing with illegal and offensive content was placed not on the CRTC, but put squarely on the shoulders of users.

Not surprisingly, parents and children were the key targets of this responsibilization campaign. In addition to encouraging customers to install filtering software on their home computers, AOL Canada and other private ISPs urged them to take advantage of the parental control services that allow parents to tailor their children’s access to Internet content. However, a much bigger role that parents could play was to get their children to become media literate.

Highlighting the importance of education and critical thinking, a representative from B’Nai Brith explains:

… We are going to have to teach people – and, frankly, this does not just apply to the Internet, it applies to all media. We must be able to search out and evaluate critically information available through the Internet. They have to be able to know how to be able to assess where it is coming from, who put it out (given the numbers that can easily be put out there), what the basis of it [is] (CRTC 1998e).

To further demonstrate the need for greater Internet literacy among users, the representative shares the following example:

On Yahoo! There used to be something called “Jew Watch” which was under the Jewish section. Now, it sounds like a good research section on Judaism, except it is an example of something that is very anti-Semitic. It tells you want Jews to watch, including in Canada, a list of influential Canadian Jews. We have to increase the awareness of children and others as to how… to promote Internet safety. And there is some exciting work going on in Canada in that respect, curriculum materials development and media awareness networks (ibid.).
Instead of demanding the CRTC to become more active in taking down this material from off the Internet, users were now expected to learn how to filter online materials on their own.

The Media Awareness Network (MNet) (discussed further in Chapter 3) was one of the biggest proponents of this approach to Internet regulation. A non-profit, non-government organization devoted to fostering media literacy among children and youth, MNet vehemently argued that the Internet was different from TV and radio and therefore could not be governed in the same way. In their presentation to the CRTC, one representative explained:

Due to its limitless and borderless nature, we feel that we cannot approach the Internet and its regulation as we have approached broadcasting and telecommunications in the past. We feel that regulation, in this traditional sense, is both impractical and unmanageable... In response to the unregulated, borderless nature of the Internet, there is an urgent need, in our opinion, for education – a new kind of education that we call “Web literacy.” To help Canadians understand and manage this new medium, we are suggesting two main approaches: First, we need to help young Canadians develop the critical thinking skills that they will use for the rest of their lives – for filtering, analyzing, understanding and learning how to authenticate online information. And we need to teach them how to use this powerful tool for a better democracy (CRTC 1998f).

According to MNet, the use of Internet technology could not be managed in any other way but through a strategy of awareness and education that would allow users to effectively govern themselves.

To help bolster these claims, MNet relied upon its identity as a “network” and the general support it received from other parties who appeared in front of the Commission. For MNet, the main goal was to convince the Commission that its position on Internet regulation was held by a very diverse group of actors with whom they have partnered, and that this view reflected the various interests of its members. This idea of different groups coming together for a common purpose was further reflected in the people who were selected to appear in front of the CRTC.
These individuals not only embodied the multiple partnerships that MNet had formed, but were also in positions of authority and, in many cases, had previous dealings with the Commission.

At the very outset of their presentation, the then Chair of MNet, Fil Fraser, highlighted the credentials of the various individuals who were representing the organization, noting that all of the presenters “bring a considerable wealth of experience to the table” (ibid.). The list of participants appearing on behalf of MNet on this day included: the Chair of the Ontario Regional Broadcast Standards Council; the Vice-President, Federal Government Relations at Bell Canada; the Government Film Commissioner and Chairperson of the National Film Board; and the President of the Communications Management Incorporated organization, introduced by Fraser, as “one of Canada’s pre-eminent Internet experts” (ibid.). Fraser also listed a number of board members who could not be in attendance, which included the Vice-President of Shaw Communications, the Chief Executive Officer of MicroIntel – a new media production house based out of Montreal and the Director of Professional Development Services of the Canadian Teachers’ Federation.

Although these individuals came from very different walks of life, all were said to be representing the common interests of MNet. As Fraser remarked, “I want to begin… by saying that we all come here only wearing our Media Awareness Network hats” (ibid.). And, while this distinct collection of people may not always agree on certain issues, they stood (literally) united in their opinion that media education and Internet literacy was the best and most effective approach to dealing with the challenges presented by this new technology.
Dissenting Voices: Presenting an Alternative Vision of the Internet

The discussion presented above has illustrated what was arguably the dominant view regarding the state of new media in Canada. For the majority of participants who appeared in front of the CRTC, the Internet was very different from radio and TV. Unlike other traditional forms of broadcasting, the Internet did not suffer from the problem of spectrum scarcity. On the contrary, this democratizing medium allows almost anyone in Canada to become a publisher or broadcaster with the ability to upload Canadian content onto the web. By virtue of its global reach, Canadian content and all things “Canadiana” are never in short supply on the Internet and are always well within reach of Canadians and non-Canadians alike.

More broadly, the Internet was equated with progress. The new media industry was helping to create jobs and was a key catalyst of economic prosperity for many Canadians. The general belief here was simple: If Canada is to succeed in the so-called “information age,” it would have to do so on the back of this technology. It would also have to allow this industry to operate without the restraints of state intervention. That is, without CRTC regulation. According to proponents of this hands-off approach, the future of the Internet was not open for political debate. There was no doubting that this technology would continue to march forward and drastically alter the shape of our social, political, economic and cultural landscape. The only question that remained was whether or not Canadians would ride the waves of technological progress or completely miss the boat by imposing archaic legislation.

Some, however, felt that the technology simply could not be regulated. That, given the “global” and “borderless” nature of this technology, it was virtually impossible for the CRTC – or any other government agency for that matter – to impose state-based regulations on the
Internet. Still, for others, the possibility of CRTC regulation being enforced in the digital world of cyberspace was dismissed on legal grounds. Because much of what was transmitted online did not constitute a form of broadcasting as defined under the *Broadcasting Act* (1991), the CRTC had no legitimate authority to impose restrictions on this technology.

A final point shared by many parties was that the Internet was already highly regulated. Various presenters pointed to what ISPs and other industry groups were doing to make the Internet safe for their customers. In addition, users were expected to protect themselves against the potential dangers lurking online by becoming web literate and learning how to effectively navigate through the digital world of cyberspace. Thus, what was required was not more government regulation, but greater education and awareness. Instead of trying to control what was being posted online, the CRTC was encouraged to keep its hands-off this technology and allow the Internet to regulate itself.

However, not everyone shared these views about the Internet. A number of parties attempted to construct an alternative vision of this technology. Rather than emphasize the economic and industrial potential of this medium, Andrew Clement, an Associate Professor in the Faculty of Information Studies at the University of Toronto and the Coordinator of its Information Policy Research Program, argued that it was important to think outside this narrow box and consider the Internet as an “electronic commons”:

The notion of a commons is a place for everyone, that's open to all, that people, whatever their backgrounds or resources, are able to come to and get some benefit from. We are using that as a term that gets away somewhat from the one-to-one communication of telephone and the one-to-many of broadcasting, but rather to see it in a more physical and sort of a spatial metaphor -- it is a place where we can all come and meet each other and engage in a wide variety of necessary valuable acts in our lives, that we all have a right to be there and we all have a say in how it is managed. That's part of our notion of the commons (CRTC 1998i).
For Clement, public policies directed at the Internet should be developed with this spatial metaphor in mind:

As a number of presenters have noted, the new media open up new areas that are still relatively unexplored; they are in a formative stage. They are in flux, and the CRTC and its regulatory and policy measures I think have to open up and embrace or at least consider broader notions of what it means for Canadians to communicate with each other. We are trying to offer this as a possible model and a way to think about that, and it is one which we think can include both, as we say in the remarks, a wide range of commercial activities as well as ones that are not for profit and are considered to be more personal and community based. So it is to embrace all of the various ways in which people want to use networks (ibid.).

Here, Clement appears acutely aware that the manner in which this technology is conceptualized will invariably shape how it will be governed and, like many of the other intervenors at these hearings, attempts to influence the direction of public policy by getting the Commission to accept his framework for understanding the Internet.

Clement was not the only individual who tried to offer a different reading of the Internet. Indeed, there were a handful of detractors who did not believe that this technology was a democratizing medium that was available to all Canadians. The African Canadian Legal Clinic (ACLC) – a not-for-profit legal organization established to address anti-Black racism and other forms of systemic and institutional discrimination in employment, housing, health care, education and other spheres of society – was the most vocal group to express this opinion and was the only party at these hearings to suggest that access to the Internet was highly racialized and divided along class lines.

Speaking on behalf of the ACLC, Michelle Williams presented what she believed to be a more “realistic” picture of new media and broadcasting in Canada:

I would like to point out that it is clear that the new media, like other forms of media, should allow for the free flow and exchange of ideas and opinions in a way
that enhances democracy. In reality, however, most types of media remain to some degree inaccessible and non-representative of the multicultural nature of Canadian society (CRTC 1998j).

To further substantiate this point that the Internet was not universally accessible, Williams does what many other intervenors at the hearings had done: She points to numbers and figures.

Interestingly, however, the statistics that the ACLC draws upon are the same ones that industry representatives were using to demonstrate that Internet use in Canada was remarkably high and on the rise. In an effort to mobilize the statistics for their own purposes, Williams turns the figures on its head:

We note also that some of the other intervenors have indicated there are probably about 2.5 million Canadian households right now that have access to the Internet. That leaves a lot more households that don't have access to the Internet right now (ibid.).

Instead of claiming that this 2.5 million figure was incorrect or presenting their own set of alternative numbers, Williams argued that it needed to be re-examined using a different lens. That, rather than counting Internet users as “consumers” and seeing them in purely economic terms, more consideration needs to be given to issues of race and inequality:

There have also been numerous studies that have document the under-representation and misrepresentation of racialized groups in traditional media. Often we are not represented at all or if we are, it is negatively. We have also been to some degree shut out from employment in the media. That is within traditional media organizations. There is one author who has written on Canadian broadcasting and multiculturalism entitled "Attempts to accommodate ethnic minorities.” He notes: "-- the economic imperative in broadcasting poses a threat to ethnic and racial minorities, with the goals of the Broadcasting Act being undermined by seeing media consumers in economic terms only.” Again, we are here to highlight other principles that you may not otherwise get to hear sometimes when economic interests may dominate the debates (ibid.).
The ACLC’s goal was to present a picture of the Internet that was different from the ones imagined by those in the new media industry and, more importantly, to construct the technology in such a way that state intervention was necessary.

Carving a Place for the CRTC

Unlike the overwhelming majority of participants who preferred a system of self-regulation where the state would remain hands-off, the ACLC argued that it was essential for the CRTC to be actively involved in the governance of this new technology. More specifically, the ACLC claimed that the Commission must act on behalf of those who have been typically left out of the discussions regarding broadcasting and communications policies by putting into effect the “principles of equity” found within existing legislation.

According to the ACLC, Canada has a fairly comprehensive legal framework that includes the Charter (1982), various Human Rights Codes and the Multiculturalism Act (1985), which, when taken together, form “part of a network of legal rights designed to promote equal participation in Canadian society and protect vulnerable groups from race discrimination and hatred” (ibid.). In addition, the organization made specific reference to a section of the Broadcasting Act (1991), which states that the “Canadian broadcasting system should, through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society.”
For these reasons, the ACLC submitted that: 1) the CRTC has jurisdiction over new media, or in the alternative, should explicitly establish jurisdiction; 2) the regulation of new media and service providers contribute materially to the attainment of the objectives set out in the *Broadcasting Act* (1991) and the *Telecommunications Act* (1993); 3) the CRTC develop a regulatory framework that responds to concerns raised by the new media and specifically address the proliferation of racist hate content in the new media; and 4) the CRTC promote universal access to the new media through regulatory and voluntary mechanisms, and that such promotional initiatives explicitly include measures to promote access to racialized groups who are both underrepresented and misrepresented in the Canadian media (CRTC 1998j).

Contrary to what others at the hearings were claiming, the ACLC argued that the CRTC had the jurisdiction or, at the very least, the mandate to regulate new media. Interestingly, despite being a legal organization, the ACLC saw this not as a question of law, but as a matter of common sense. When asked by a Commissioner to explain how they arrived at this conclusion, Williams responded:

Well, I guess sort of perhaps the same way that other people arrived at the opposite conclusion. That is, that when we first looked at it, it was more of a common sense proposition than anything. If the CRTC does not have the jurisdiction to wade in and, to some degree, govern or take seizure of the convergence of telecommunications and broadcast, we are not quite sure who does. We did not undertake – we could, if you want us to – a legal analysis of the particular legislation to say, “Here are the underlying principles in the *Broadcasting Act* that suggest that you could fit it in here.” Because we think, if you do not think it already exists, then you are certainly in a position to say we are going to make it exist or we are going to recommend that we wade in on this area and ask for the tools that you need to do that. And, so at the end of the day, it is our submission that you should wade in that area and, if you want to, there is a way to do it (ibid.).

The ACLC had taken a decidedly constructivist stance to law. Instead of offering a dogmatic interpretation of the *Broadcasting Act* (1991) and proposing a legal argument for how it applies
to new media, the ACLC took the position that the CRTC could easily make the legislation fit this technology, should they chose to do so. The ACLC took this line of reasoning one step further by applying this constructivist logic to the Internet.

**Questioning our Faith in Technology**

Unlike many of the parties who appeared at the New Media hearings, the ACLC did not subscribe to a technological determinist view of the Internet. The organization did not see the technology as developing under its own internal dynamic, subject to little human influence or control. Nor did they buy into what Babe (1990: 9) describes as the myth of a technological imperative whereby the Internet represents the march of progress that should not be halted by government regulation. Quite the contrary, the ACLC argued that public policy was needed and could alter the shape of the Internet for the better.

In making this claim, the ACLC pointed to the history of Canadian broadcasting where state intervention was deemed necessary in ensuring the availability of quality programming and services on radio, TV and cable. Citing the IHAC’s *Convergence Report* (1995) which makes similar arguments about the importance of government involvement to Canada’s broadcasting system, Williams argues:

Looking historically, it’s our position that the CRTC has in fact enhanced broadcasting in Canada. Indeed, in evaluating traditional broadcasting, the Convergence Report of the CRTC Information Highway proceeding stated that, “... exclusive reliance on market forces in the broadcasting sector would threaten the economic underpinnings of our cultural industries. Regulation and funding for program production have resulted in more real quality and diversity in the services on our television screens than anywhere else in the world” (CRTC 1998j).
Underlying this position is the general belief that broadcasting and communications technologies cannot be separated from the larger social, political, economic and cultural climate in which they emerge, and that these external factors can directly influence how a medium like the Internet is received.

According to the ACLC, the various forms of inequality that exist within Canadian society permeate on the Internet and invariably shape the way in which it is used and by whom. Thus, instead of taking the “wait and see” approach advocated by those in the private sector, the group urged the CRTC to apply policies and regulations that could guarantee equal access and diverse representation with regards to this technology. Noting the fact that new media was really no different from the old, Williams explains:

Waiting for the future to apply meaningful regulation to such a power force as the Internet risks not being able to ensure equal benefits for all Canadians… The same principles underlying current regulations are applicable and should be applied to the new media. Canada’s unique cultural traditions and the need to maintain them as well as our commitment to anti-racism, multiculturalism and the development of an equitable society demand that the CRTC ensures that universal access is provided to new media. In this instance, it’s our submission that it’s not prudent to wait but rather to begin promoting the principles underlying the Broadcasting Act and Telecommunications Act in the context of new media (ibid.).

Yet, despite their impassioned pleas for the CRTC to “act now,” the ACLC was very much alone in its anti-determinist reading of the Internet and, as such, found it quite difficult to find others who could lend support for their cause.

**Being (in) the Minority**

The ACLC seemed acutely aware that they were in the minority who believed that the CRTC should actively regulate the Internet. Knowing that their views were opposite to what
other parties were advocating, the organization began its presentation by attributing this difference of opinion to the systemic barriers that social justice groups, like themselves, face when participating in public debate:

The difficulty in participating in the policy and regulatory process is due to the complexity and cost of lobbying. We feel very privileged to be able to speak with you today. We are a fairly young organization. I can tell you that there are a lot more people who are interested in this issue who just weren't able to sort of put the resources together to come before you. We don't have big lobbying budgets or anything. The issue of access even to participate in policy making is a big one (ibid.).

The ACLC claimed to be speaking on behalf of a much larger segment of the Canadian population. It was not that their views were radical or extreme, but that they were the only organization that could attend these hearings to express this opinion.

Still, the fact that they were unable to mobilize support from parties who were in attendance at these hearings was a major obstacle for the ACLC. Unlike many of the other presenters who drew strength in numbers by building partnerships and alliances, the ACLC could not present the same kind of united front to the CRTC. What is more, even organizations that were believed to share similar concerns over diversity, equality and human rights were not in agreement with the ACLC’s position that more regulation was needed for the Internet. As a result of being in the minority, the ACLC spent much of their time in front of the Commission on the defensive.

Not only did the ACLC have to articulate their position regarding the regulation of new media, but they also had to present this against a common body of opinion that swayed in a direction opposite to their own. At one point in their presentation, the Commissioners asked the representatives from the ACLC to comment on the submission from Palestine Heritage who had earlier offered the view that self-regulation was more than adequate and, citing the “limitless
capacity” of this technology, stated that the best solution to hate speech was more speech (see CRTC 1998f). CRTC Commissioner Wilson presented this countervailing position:

We had a presentation last week by Palestine Heritage who described the Internet as the ultimate democratic instrument. And what they meant by this I think became clear when they compared the notion of balance and freedom of expression between traditional and new media. And with respect to traditional media, you know, they said there are a limited number of stations and the messages received by the audience are very much controlled by the producers or the stations… But they said, you know, while there is an opportunity under law and regulation to respond to abusive comment in traditional broadcasting, there is no real practical opportunity to correct the record. Whereas on the Internet, it is possible. It is so limitless in capacity, it is practical and easy and rapid to respond. Anyone can be a publisher… It has been argued to us that the Internet is the perfect solution for this. Because it is so accessible to virtually anyone who wants to go on it and make their statement (CRTC 1998j).

In response, J.R. Richards from the ACLC posited an alternate reading of the Internet claiming that it was misguided to assume that the technology was equally accessible to everyone:

I think the argument there sort of assumes that we have this universal access which we submit really does not exist. There are communities that are not as wired in as everyone else. I think – I mean, it has been said that the only – how does it go, again, the only thing that combats bad speech or evil speech is more speech… When you look at traditional forms of media that is just not the case… From the outset, we can prohibit certain kinds of speech or take action against certain kinds of speech while we wait for the individual to come along and say: There is a hate site, I am going to respond to that and that should be enough, assuming that there are enough voices that are online that are going to drown out that particular speech. I think that is a pretty big assumption given what we know about access to new media and given what we know about historically disadvantaged groups in Canadian society (ibid.).

Michelle Williams followed up by suggesting that it would be incredibly unfair to expect victims of hate speech to go out and respond to these potentially harmful messages on the Internet.

Later on, the organization was asked to explain why they did not share the opinion that state involvement would hamper the economic growth of this industry and that a self-regulatory approach was a viable alternative:
COMMISSIONER WILSON: I guess I am just curious to understand why you feel that in view of the sort of body of opinion that has been developing over the course of the last five days, why would you feel that [a] self-regulatory model in terms of new media is not an appropriate one? For example, a lot of people have suggested that, you know, this whole industry is really going to be a huge economic driver, not only for Canada, but for the entire world. And that if you start trying to rein it in with regulation, that you will hinder the development of the industry.

MR. RICHARDS: To interject, with the creation of automobile standards in the automobile industry that was another argument that was used. You know, you cannot interfere with automobile manufacturers because [they are] huge employer[s], you are going to limit it, you know, profits are going to go down and people will lose their jobs. It is just not so. Automobiles are still on the road. The automobile industry is still a huge employer with all kinds of government regulation. So I think the argument does not hold water that we cannot wait and that at this point we are going to start hindering, start interfering. Competition, sure, it is valuable. But, you know, in all sorts of instances market forces are tampered and interfered with by government and nobody says anything. Governments bail out banks and huge institutions all the time. That is interfering. That is regulating. So, in this instance, regulating, I do not see how regulating for the public good at this stage, saying it is going to, you know, create all sorts of damage, I just do not see how that argument holds water (ibid.).

Once again, the ACLC tried to paint an entirely different picture of the Internet. By pointing to other industries that have remained successful and prosperous in spite of government intervention, Richards attempts to dispel the myth of the technological imperative surrounding this technology. Yet, despite their best efforts, not one of the ACLC’s recommendations was ever taken by the Commission.

Choosing to Keep its Hands Off

Upon the release of its Report on New Media (1999), Chairperson Bertrand made it explicitly clear that the CRTC would not regulate new media services on the Internet, noting that this industry was “vibrant, highly competitive and successful without regulation.” In rendering this verdict, the CRTC had broken the long-standing Canadian tradition of government
intervention in this sector. So why this sudden about face? Looking at the reasons provided in the final report, the CRTC’s decision to remain hands-off appears to be based on its assessment that there was, indeed, something “new” about new media, which set it apart from other forms of broadcasting.

For one thing, unlike radio or television, there was no real shortage of Canadian content in cyberspace. The CRTC seemed convinced by the arguments made by various parties that a strong Canadian presence already existed on the Internet, as evidenced by: 1) the number of Canadian web sites online; 2) the key partnerships that have developed between some ISPs and Canadian content creators for the specific purpose of generating a supply of Canadian content; 3) the expansion of many traditional media businesses to the Internet; and 4) the search tools available that make it easier to locate Canadian content on the Web.

The Commission sided with the majority of participants who felt that there was already a significant amount of Canadian new media content and services on the Internet and an abundance of business and market incentives for their continued production and distribution (ibid.). The CRTC put its faith in the new media environment to provide Canadians with certain opportunities and advantages that do not exist in conventional broadcasting. Unlike in the past where new broadcasting technologies were imagined as pipelines for American and foreign programming and a threat to our cultural sovereignty, the Commission held out the belief that the Internet would open up a new global market for home-grown content. As the Commission described it, “The advantage of the Internet is that anyone can place their product or program on a server and immediately gain access to a global audience” (ibid.). And, because of our expertise in several of the creative and knowledge-based industries like software development, digital
animation and multicultural/multilingual content creation, Canadians were ideally positioned to succeed in this new media environment.

The new digital landscape would also offer “more outlets for alternative voices and niche services that may be able to develop an audience or market base” (ibid.). Not only could Canadians benefit from participating in the new global marketplace, but they could also gain access to a diversity of content and services that might not be available to them through more conventional means. This was seen as being particularly beneficial to Canadians who belong to communities of interest that have not been well-represented by mainstream media.

On the issue of public access to the Internet, CRTC Chairperson Bertrand (1999) did acknowledge in her speech that “many of the people who came before the Commission were worried that many Canadian citizens, for a number of reasons, might not be able to get online themselves and take part in this important technological revolution.” But, while Bertrand noted that they would examine what could be done to help those in remote areas go online, the Commission was silent on how it would address the barriers preventing a large segment of the Canadian population – particularly, visible minorities and lower-income people – from accessing and making their voices heard on the Internet. Thus, in spite of the ACLC’s attempt to get the CRTC to accept a much a looser interpretation of the *Broadcasting Act* (1991) and to fully recognize the principles of equality that underlines this piece of legislation, the Commission seemed to have decided that these social issues were outside their mandate.

The CRTC therefore concluded that the various regulatory measures once required to get more Canadian content on the airwaves were no longer necessary. On the contrary, the CRTC
agreed that regulation would only serve to hinder, not help, the creation of this material. Buying in to the promises of new media, the Commission (1999) concluded that it does not need to impose any regulatory measures to support the development, production, promotion and distribution of Canadian new media content and services. On balance, while there may be both advantages and disadvantages in the future new media environment, the Commission is confident, based on the record of this proceeding, that the industry is moving in a direction that will result in a strong Canadian new media industry and a strong Canadian presence on the Internet. Most noteworthy was the expression of excitement and energy that was communicated by those who discussed their work in new media. The Commission does not intend to impede this creative energy through unnecessary regulatory measures but rather to encourage the continued leadership and innovation of the Canadian new media sector.

Instead of regulating the use of this technology, the Commission would leave those on the Internet to govern themselves.

The CRTC agreed that a hands-off approach to the Internet was in order and that the problem of illegal and offensive content could be better dealt with through the application of existing Canadian laws and industry self-regulation. In their report, the Commission pointed to the various efforts of ISPs and their industry associations, in conjunction with both government agencies and other organizations, to develop codes of conduct that address the issue of illegal and offensive content on the Internet, as evidence that these self-regulatory initiatives were already beginning to take shape (ibid.). The Commission further encouraged these groups to continue working on developing standards and procedures for dealing with this type of content (ibid.).

Finally, the CRTC noted the role that users can play in helping to control access to website that may be inappropriate for children. The Commission specifically mentioned the existence, and rapid development, of relatively inexpensive (and, in some cases, free) content
filtering software that can be used to effectively block out unsuitable content. The Commission also highlighted the need for greater “awareness” and “knowledge” about the potential benefits of using this technology (ibid.). In order to gain a better understanding of the many advantages and possible pitfalls of the Internet, the CRTC identified the work of groups like MNet that were dedicated to media education and media issues affecting children as sources of valuable information for users of this technology (ibid.).

**Staying Relevant**

Although the CRTC’s pronouncement that it would remain hands-off new media might not have come as a huge surprise to many observers, what is intriguing is that the supposedly ungovernable nature of this technology was never once cited as a reason for this decision. Indeed, despite the number of presenters who vehemently denied that the Internet could be controlled by a state agency (Canadian or otherwise), these parties seemed unable to convince the Commission to accept this point of view. Quite the contrary, the Commission came away from these hearings maintaining regulatory authority over certain aspects of this technology by determining that some forms of new media, including digital audio services and audio/visual signals transmitted over the Internet, did fall under the *Broadcasting Act’s* (1991) definitions of “program” and “broadcasting.”

With regard to “those undertakings that offer new media services that do fall under the definition of broadcasting,” the Commission simply concluded that “regulation is not necessary to achieve the objectives of the *Broadcasting Act*” and, as a consequence, issued an “exemption order without terms or conditions in respect of all undertakings that are providing broadcasting services over the Internet, in whole or in part, in Canada” (CRTC 1999). These conclusions,
however, have been largely ignored by various observers who appear to have misread the findings in the *Report on New Media* (1999) as an unequivocal admission by the CRTC that it could not regulate the Internet.

This was clearly not the case. At the hearings, the CRTC was able to sway even the most ardent opponents of government regulation into accepting the notion that Internet services could eventually look more like traditional broadcasting. In so doing, the CRTC was able to construct a future for the Internet in which it could remain relevant and, if necessary, impose regulation. Indeed, looking at the services now available on the Internet, we see that many clearly resemble and, in some cases, rival the kinds of programming found on radio and television.

For instance, major American networks such as ABC, NBC, CBS and even the CBC in Canada have begun to “video stream” many of their programs on their websites. In addition, Apple’s iTunes Store now sells episodes of various TV shows online that can be downloaded and viewed on a home computer or a personal media device like an iPod. This type of online programming has prompted the CRTC to once again examine its regulatory role with regards to this technology. In June 2006, Canadian Heritage Minister Bev Oda asked the CRTC to conduct a six-month consultation on the effects of changing technology on the radio and television industries. Ironically, many of the key stakeholders who, less than a decade ago, were lobbying for the Commission to keep its hands off the Internet, have reversed their positions.

For broadcasters, copyright collectives and labour unions, unregulated new media now “represents a threat to the current regulated Canadian content model” (Geist 2007). Groups such as the CAB are currently urging the CRTC to take action by stressing the possible implications that Internet video – in particular, streaming video from US broadcasters – might have for the Canadian market. Interestingly, as Michael Geist (2007) points out, this argument for greater
state intervention is based on a recasting of broadcasting history. In its submission to the CRTC, the CAB maintained that, “From its very beginnings, a separate rights market has been a central objective of the Canadian broadcasting system and an underpinning of Canadian broadcasters’ ability to support Canadian content” (cited in Geist 2007).

According to the CAB, one of the main goals of Canadian broadcast policy has been the reliance on cheap and profitable US content in order to subsidize the creation of unprofitable Canadian content (ibid.). By directly streaming their programming into Canada, the major concern here is that US broadcasters will effectively diminish the value of these programs on Canadian TV networks. The CAB is therefore demanding that the CRTC erect barriers to Internet streaming, claiming that “all reasonable public policy measures and instruments will be needed to maintain the integrity of a separate and distinct Canadian program rights market” (ibid.).

The protectionist argument once used by broadcasters has been clearly turned on its head. Whereas direct involvement by the CRTC was previously legitimized through a discourse of protecting Canadian culture from the onslaught of American programming entering this country from south of the 49th parallel, it is now about ensuring that Canadian broadcasters are given the exclusive right to import this material to help subsidize the production of unprofitable Canadian content. Although no formal changes have been made to public policy, it may no only be a matter of time before the Internet is reconstituted in a way that allows it to be governed like traditional broadcasting. This may never have been possible, however, had the CRTC simply accepted the idea that the Internet was beyond state regulation.
Making Sense of this Decision

Looking back at what transpired over the course of the 13 days of oral hearings, it would be relatively easy to interpret the CRTC’s decision to remain hands-off the Internet as the triumph of big business over public interest. That, like in other sectors, those in private industry have been successful at making the economy a top priority thereby forcing the Commission to relinquish its regulatory capacity over this new technology in the name of free-market enterprise. However, this particular account as to why the CRTC chose not to regulate the Internet is somewhat limited in its explanatory value and oversimplifies many of the complexities inherent in political decision-making.

For one, this neo-Marxist framework assumes that the direction taken by government is merely a reflection of the unequal distribution of power within society. Thus, if we want to make sense of the CRTC’s decision to refrain from regulation, we need only to look at the wealth of social, political and economic resources wielded by corporations such as Bell and Rogers to dictate the course of public policy. But, while being careful not to discount its place in the political process, this approach sees power as somewhat static in nature. That is, power is something that can be possessed and utilized by some groups to achieve certain ends. However, by adopting this perspective, the tendency is for us to concentrate our efforts on trying to define and locate power and, in so doing, we fail to consider how this power is actually exercised.

A second and related concern is that by seeing the CRTC’s decision to remain hands-off as a purely political one, we neglect to take seriously the place of technology. Borrowing loosely from Winner (1996: 21, emphasis added), the assumption here is that “technical things do not matter” and that all things of relevance pertaining to technology – including its regulation – can be explained by revealing underlying power structures. But, as the history of broadcasting in
Canada clearly reveals, the manner in which a technology is understood and conceptualized is inextricably connected to how it is eventually governed. Far from being automatic or taken as given, the very nature of a technology like the Internet – what it is, how it can be used, what it will mean for the future and whether or not it can or should be regulated – is socially produced and open for political debate. As a result, the kinds of decisions we make about new technologies must be seen as politically significant in their own right.

In this chapter, I have addressed both of these concerns by looking at the New Media hearings as a site where various groups attempt to convince the CRTC to accept their conception of the Internet and the way in which it should be governed. Borrowing key theoretical and conceptual tools from ANT, I have examined how the parties who appear in front of the Commission attempt to mobilize and align a host of different actors to create a network of the Internet to which the CRTC can be enrolled and enlisted. By taking this perspective, a more complex and nuanced picture is revealed that does not reduce Internet regulation to a single narrative that points to either Society or Technology as a source of explanation.

In keeping with what many in the field of S&TS (see Law 2002; Law & Mol 2002; Mackenzie 1998; Mackenzie & Wacjman 2002) have argued, the public hearings held by the CRTC serve to demonstrate the constructed and often contested nature of technology. Contrary to the belief that technologies simply emerge on their own accord to produce a common vision of what it is or how it can be used, it is quite clear from the various presentations that there exists a multiple number of ways in which the Internet could have been conceptualized and understood. Whether we want to think about the Internet as a tool for enhancing democracy, as an information commons or something akin to radio or television, none of these conceptual frameworks are automatically given or flow directly from the technology itself. Nor are these
ways of thinking about technology ever accepted without question. Indeed, as the ACLC clearly shows us, any claim made about the “true nature” of the Internet can be disputed or interpreted differently.

Far from being fixed or predetermined, the Internet was open to “interpretive flexibility” (Pinch & Bijker 1992) and therefore could have been received by the CRTC quite differently. For the participants at the New Media hearings – particularly those who were opposed to regulation – the goal was to convince the Commission otherwise. Indeed, one of the main objectives was to construct the nature of this technology as being outside the realm of politics by making it appear as though it had evolved under its own internal dynamic and that its positive impact on Canadian society were beyond question. More importantly, these groups had to persuade the Commission into accepting the idea that the Internet was qualitatively different from older forms of broadcasting and therefore did not need to be regulated in the same manner as TV and radio.

In order to build and hold stable this virtuous image of Internet technology, a constellation of actors had to be mobilized and assembled. Narratives about a new global environment, personal anecdotes of Canadiana online, numbers and figures representing market growth and economic prosperity, various examples of self-regulation at work and a whole host of other actors, were all brought together to form this network of the Internet. Conversely, other parties like the ACLC who did not share this point of view spent much of their time in front of the CRTC deconstructing this network and engineering their own vision of this technology.

In the end, we can understand the CRTC’s decision regarding Internet regulation as the end result of successful and unsuccessful network building. Looking at the written transcripts of the New Media hearings and the subsequent report released by the CRTC, it appears that
proponents of a hands-off approach to the Internet were victorious in mobilizing and persuading the Commission to accept their position that the technology did not require government intervention. Conversely, rather than pointing to the ACLC’s lack of political or economic clout to affect change, we can look towards the group’s failure to establish important network connections as a major barrier to its success. In stark contrast to those in private industry, the ACLC simply could not mobilize and align a constellation of actors to hold stable their claims about this technology. What is more, participants at the New Media hearings who were believed to share similar concerns over social justice could not be enrolled into the ACLC’s network. Quite the opposite, organizations like B’Nai Brith and Palestine Heritage only served to hinder the group’s success by advocating a laissez-faire approach to Internet regulation.

Conclusion

While offering important insights into the regulation of the Internet in Canada, it is important to acknowledge some of the major limitations of this case study. For one, this analysis of the New Media hearings does not explain or take into account the fact that certain groups were either not invited by the CRTC to participate or unable to take part in these discussions. As a result, there are a number of “missing actors” whose absence cannot be easily explained or understood by simply looking at what transpired at the hearings.

Secondly, the study has looked only at the transcripts of the New Media hearings and the subsequent report released by the CRTC. Due to time and resource constraints, no interviews were conducted with any of the key stakeholders who participated in these public discussions. Thus, we can only infer what the various parties were thinking and trying to accomplish at these hearings from a careful reading of these documents. Furthermore, without actually speaking with
the Commissioners at the CRTC, it is impossible to truly know why they opted to remain hands-off the Internet. Instead, we can only speculate that this decision had to do with the ability of certain groups (and, conversely, the inability of others) to enrol and enlist the Commission into their networks and accept their particular perspective regarding the Internet and its regulation.

Nonetheless, while presenting certain limitations, the public hearings held by the CRTC still offers an interesting site for exploring how the agency deals with new technology. More specifically, it provides a location to examine the ways in which various groups attempt to mobilize an array of human and non-human actors to build a “network” of the Internet and how it should be governed. Far from being predetermined and explained away as either a function of Technology or Society, this case study has tried to highlight the complexity and “messiness” of techno-politics by illustrating the constructed and highly contested nature of both the Internet and its regulation.
Chapter 3
Making Internet Users “Safe, Wise and Responsible”

Introduction

Over the last decade, the dramatic rise in Internet use by children and youth has brought with it mounting concerns over personal safety and security. The availability of illegal and offensive content, the luring of young people by sexual predators, identity theft, and online bullying, are just some issues that have garnered public attention and generated calls for government to regulate what takes place in the so-called digital world of “cyberspace.” In reaction to some of these concerns, the Federal Government of Canada published a report entitled, *Illegal and Offensive Content on the Internet: The Canadian Strategy to Promote Safe, Wise and Responsible Internet Use* (2001).

Released in February 2001, the report outlines how the Canadian government intends to deal with the potentially harmful effects that the Internet may have on children and teens. At the outset, the report makes a very clear distinction between illegal and offensive material and notes that each type of content requires its own set of regulatory responses. On one hand, despite the significant challenges posed by rapid technological change, the report emphasizes that “cyberspace is not a no-law land” and that the control of illegal content is still fundamentally an issue for public law enforcement (Government of Canada 2001: 2).

In contrast, the control of pornographic, violent, hate-filled or racist material that does not violate Canadian law, but which may be considered “offensive on social, religious, cultural or moral grounds” and potentially harmful to the “healthy development of children and youth” requires a more expansive and diverse approach (ibid.: 2-3). Unlike illegal content which
remains the sole domain of the public police, protecting children and youth from the possible harms caused by exposure to offensive content is conceptualized as a shared responsibility requiring all levels of government, law enforcement, the private sector and the general public, to work in collaborative partnership to deal with these matters.

The government places much of the responsibility for ensuring “safe, wise and responsible Internet use” in the hands of consumers. More specifically, parents and children are to be made aware of the “potential pitfalls of the Internet” and given the “tools to help control what Internet content they will and will not receive (ibid.: 6-7). To help “educate” and “empower” citizens about this technology, the federal report specifically highlights the work of the Media Awareness Network (MNet) – a non-government, not-for-profit organization that “promotes and supports media education in Canadian homes, schools and communities” (ibid.: 7).

Raising Media Awareness: The Case of MNet

The Media Awareness Network (MNet) initially grew from a recommendation made at a roundtable discussion on children and television violence sponsored by the CRTC in 1993 and was originally set up to serve as an information clearinghouse for media education resources (MNet 1999a). Over time, it has gone from distributing information to producing its own educational materials. The organization was established under the auspices of the National Film Board (NFB) in 1995, incorporated as a not-for-profit organization in 1996 and received charitable status in January 1999.
MNet receives much of its funding through the contributions of private sector sponsors and from various branches of the Canadian government including the Heritage Ministry, Industry Canada and Human Resources and Development Canada (HRDC). The list of private corporations that have provide financial support to MNet includes Microsoft, Bell Canada, Shaw Communications, CTV, CanWest Global, CHUM Television and Rogers (MNet 1999b). Many of these public and private sponsors have been given seats on MNet’s board of directors. Some additional support is received through the annual membership fees of individuals, non-profit organizations and small businesses.

As self-described pioneers in media education and web literacy, MNet has produced a model for online safety and awareness that is now being adopted in countries like Australia and Malaysia. MNet has long advocated and promoted media education as the only way to protect children and youth from the potential risks associated with using the Internet. In 1998, when the CRTC undertook its study of new media to consider whether or not it should regulate this emerging technology, MNet participated in the public hearings held by the Commission and championed “web awareness” as a very viable and effective approach to online safety.

Many of the programs developed by MNet are designed for parents, teachers, public librarians and community leaders to help children and youth “develop the life-long critical thinking skills they require to become safe, wise and responsible users of the Internet” (Government of Canada 2001: 7). The organization claims to be a “world leader in providing educational approaches to emerging Internet-related issues, and is committed to maximizing the positive aspects of all media for the benefit of children and young people” (MNet 1999c). In keeping with this mandate, MNet launched an Internet education campaign in October 1999 called “Web Awareness: Knowing the Issues” that was designed to “make cyberspace a safer and
more useful environment for children” (ibid.). As part of this project, MNet created a website that makes available for free download a variety of educational materials and instructional workshops on a number of different topics.

For instance, the “Safe Passage” section of the MNet site offers practical solutions on how to help kids balance the “benefits and risks” of using the Internet. Much of the information provided here is directed at parents and what they can do to effectively manage Internet use in the home. The site advises parents to start by learning about the Internet and how to effectively navigate through the world of cyberspace. Parents are then taught to have their kids show them where they go and what they do online by suggesting that, “If you talk openly with your kids about their Internet habits, they’ll feel comfortable coming to you if they ever encounter a problem online” (ibid.).

More direct measures that can be taken to actively monitor and control their children’s use of the Internet are also strongly recommended. Among other things, parents are asked to make sure the computer with Internet access is placed in a heavily frequented part of the home, like the family room or kitchen, and that it is never put in a child’s bedroom. Advice is also given on how to purchase proper filtering and blocking software that can be easily installed to limit access to “child-friendly” areas of cyberspace. In addition to the installation of these filters, however, it is further recommended that parents come up with their own list of approved websites that their children are permitted to visit.

But perhaps the main goal of the MNet awareness campaign is to have parents teach their children to be “Internet savvy.” Like many of the street-proofing programs designed for the physical world, kids are taught that the only way they can stay safe online is by becoming
“cyber-smart.” Old adages about never talking to strangers or looking both ways before crossing the street are supplemented with a revised set of rules that are more compatible with the digital environment. To help teach kids about Internet safety, the MNet website provides a list of “online house rules” that parents can review with their children. This list, which can be downloaded, printed and posted next to the home computer, supplies kids with a number of things they should and should not do to ensure their safety when using this technology. For example, children are told that they must never reveal any personal information about themselves without their parents’ permission, to use pretend names or nicknames when online, and to create passwords that are hard to guess but easy to remember (MNet 1999b).

Yet, the process of educating children about how they can be safe online goes far beyond the basic “do’s and don’ts” of the Internet. A much more important task has been to develop “critical thinking” and media literacy skills. Indeed, this need for children to “be critical” is promoted throughout the MNet website. The “Kids for Sale” section, for instance, shows young people how to recognize online marketing strategies and protect their personal privacy from marketers and data-miners (MNet 1998). As a way of teaching these skills, the organization has produced “Privacy Playground: The First Adventure of the Three Little Cyber Pigs” – an interactive online game, downloadable free of charge, that helps children from 7 to 10 years of age learn to “critically evaluate commercial Internet sites” by showing them how “recognize invasive and deceptive online advertising techniques” (ibid.).

Parents must also be involved in teaching children how to spot online marketing strategies and possible privacy concerns. Besides telling them not to click on banner ads or to release personal information on commercial websites, MNet advises parents that they should teach children to “understand that commercial sites, though fun, exist to make money” and to
“recognize how and when they are being sold to.” However, more general tips on parenting in a commercial culture with much loftier goals are also offered. For instance, parents are told to teach their children the value of money and the detrimental impact that over consumption of “plastic, heavily packaged goods and products that easily break” will have on the environment (MNet 1999a). By instilling and fostering these attitudes towards consumerism, the site suggests that parents can help to prepare their children for a “safe and secure future” and “raise a generation of young people who can lead happier and healthier lives as they build better and stronger communities” (ibid., emphasis added).

Finally, critical thinking is advocated as being essential for children in order to correctly authenticate information found on the Internet. The “Fact or Folly” section of the MNet website teaches young people to be critical of anything they come across by constantly questioning and analyzing online material. Noting that there are no “gatekeepers” in cyberspace that can “weed out lies, hoaxes and incomplete or erroneous information,” the site stresses the need for children to learn the appropriate skills needed to find good information and to properly evaluate these materials. In 2000, a second interactive online game entitled “Cyber-Sense and Non-Sense: The Second Adventure of the Three CyberPigs was released to help young people develop these skills. Aimed at children between the ages of 9 and 11, the game shows them how to “detect bias and recognize propaganda on websites, question the truth and accuracy of online information, and protect themselves in places like Internet chat rooms” (MNet 2000b).

MNet is thus a particularly vital source of information about the Internet and its use by young people. Over the years, the organization has been recognized by both the federal government and the CRTC as being the country’s foremost authority regarding online safety and media education. More importantly, through its promotion of media education and web literacy,
MNet has been able to shape the direction of public policy pertaining to the Internet, giving itself a major role in how the use of this technology is governed in Canada.

In this chapter, I explore in greater detail how MNet has been able to successfully build its network of alliances that has allowed it to get its message of awareness, education and critical thinking adopted by the Canadian government as a key strategy for dealing with offensive content on the Internet. I begin this discussion by first illustrating the use of public education as a way of regulating newly emerging communication technologies. Particular attention is paid to the various similarities and differences between what we are currently seeing with the Internet and what was done in the past with the introduction of the telephone.

Old Wine in a New Bottle?

Educating and informing the general public, particularly young people, on how to “properly” and most effectively use new technology is not a new phenomenon. As various historians of communication suggest (see, for example, Fischer 1992; Martin 1991a, 1991b), the introduction of the telephone during the late 1800s brought with it very similar fears to what we are now witnessing with regards to the Internet that were also addressed through education and awareness campaigns. However, whereas users of the Internet are taught how to be “safe, wise and responsible” on this electronic medium, early subscribers of the telephone were educated about rules of proper etiquette.

Although many newspaper advertisements proudly claimed that the new technology of the telephone required no skill or training, the first generation of customers had to be educated in the “art of telephoning” (Martin 1991a: 130). Through circulars and notices printed in telephone
directories, many companies gave their subscribers very basic operating instructions from how to properly turn the crank to lifting the receiver (Fischer 1992: 70; but see also Martin 1991a). Other announcements would later be distributed that informed customers about answering promptly, speaking directly into the transmitter and avoiding banging the receiver when hanging up (ibid.).

Information was also provided about the social practices of “telephone etiquette.” Phone companies insisted that both their customers and employees use “courtesy, consideration and an obliging attitude” when “on the lines” (Martin 1991a: 134). Much of this attention was placed on using polite speech and carrying a considerate demeanour at all times. As Martin (1991a: 159) describes, people were told to use “good manners on the telephone, to employ such general courteous phrases as ‘please’ and ‘thank you’, to apologize for making callers wait, to utilize ‘correct’ language instead of familiar expressions or abridged sentences.”

Many phone companies ran ads and inserted notices in their directories that were specifically aimed at improving telephone courtesy (Fischer 1992: 70). Around the early 1900s, AT&T distributed a card to its customers called “The Telephone Pledge.” The card, which was designed to be attached to the phone, read: “I believe in the Golden Rule and will try to be as courteous and considerate over the telephone as if face-to-face” (ibid.: 70). In yet another attempt to encourage propriety, Bell Telephone ran a contest in 1910 for the best hortatory essay on proper etiquette (ibid.). The winning entry, which stressed the importance of greeting callers in a polite manner, was later distributed to its local companies for insertion in their directories (ibid.).

Another major concern for the phone companies was party-line etiquette. Because private lines were initially quite expensive, those with moderate incomes would commonly share a
single wire with two or more customers to help offset the high costs. While this was a much cheaper alternative, customers on the party-line system had to face the inconveniences of “busy lines, bells ringing for another party and occasional eavesdropping” (ibid.: 47). To deal with some of these problems, phone companies undertook the task of telling customers how to properly share the system. Companies repeatedly warned subscribers against listening in on other people’s conversations (ibid.: 71). Not only was this seen as a matter of privacy, but a technical concern as the open connections caused a significant drain on electrical currents which then reduced transmission strength and made hearing more difficult for the two parties in connection (ibid.; but see also Martin 1991a: 134). Various attempts were also made to teach customers not to occupy the lines with long discussions. Phone companies printed notices, sent warning letters to particularly talkative customers and, in some instances, had operators intervene during lengthy conversations (Fischer 1992: 71).

Many of the rules of telephone etiquette were directed at children. Kids playing with the phone and “taking down the receiver and shouting into the transmitter” was a major source of annoyance (Martin 1991a: 134). The most appropriate and effective response was believed to be proper parenting. Martin (1991a: 134) writes:

The solution to this problem was for families with “good” parents to “instruct the children on what to do, and what not do with the telephone.” In other words, the parents ought to pass onto their children what they themselves had been instructed by the telephone company.

Teaching young people proper courtesy was of particular importance during this time period. An excerpt from Good Manners for Children, published in 1926, reads: “Children usually love to use the telephone and they should be taught to speak courteously on the pain of not being allowed to answer it. Children commit all sorts of discourteies over the telephone if not checked
and one often hears the casual ‘yep’ and ‘what’ and ‘wait’” (cited in Stern & Gwathmey 1994: 104).

So why all of this concern over bad manners “on the lines”? Some scholars (see Martin 1991a; 1991b; Marvin 1988) have argued that much of this anxiety can be directly attributed to the growing fears of the dominant classes and what they saw as the slow erosion of their moral values. As Marvin (1988: 59) claims, the emergence of this new communication technology was viewed by some as a threat to the existing social order:

New forms of communication put communities like the family under stress by making contacts between its members and outsiders difficult to supervise. They permitted the circulation of secrets and fostered irregular association with little chance of community intervention. This meant that essential markers of social distance were in danger, and that critical class distinctions could become unenforceable unless new markers of privacy and publicity could be established.

Once seen as a protected place, the home was now in danger of the telephone’s ability to lessen the family’s control “over what was admitted within its walls” (ibid.: 76).

For one, the telephone created more opportunities for courting and infidelity as well as relationships with “unacceptable persons” from different races or classes (ibid.: 70). Because telephonic communication took away the visual cues available during face-to-face interaction, social distances between certain classes became far more difficult to enforce (ibid.: 88). As a result, the anonymity provided by the telephone was said to have “allowed callers to take refuge from the rules of proper respect in personal invisibility or remote presence” (ibid.: 89).

Despite their best efforts, the various attempts made by the major telephone companies to “civilize” their customers through public education campaigns appear to have been met with very little success (Fischer 1992: 72). Perhaps one of their biggest failures was in trying to prohibit the use of the telephone for purely social purposes. Martin (1991a: 49) explains that
advertisements prior to 1890 strongly condemned lengthy chats on the telephone and disapproved of this practice until 1900. In the face of objections made by the companies that the device was strictly intended for business purposes only, many women from the middle- and upper-classes continued using the telephone to converse with friends and relatives (ibid.: 150). The telephone soon replaced the social visit as a much faster and more convenient way of communicating and keeping in touch.

The “sociability” of the telephone was both unexpected and impossible to prevent, forcing most phone companies to alter their views on the utility of their product (Martin 1991b: 322). Over time, the “delinquent” telephone conversations among women led to obvious changes in advertising policies (Martin 1991a: 150). By 1911, ads began to appear that presented the telephone as a “very comforting thing to call friends and relatives… and have a fine chat” (ibid.: 150). Martin (1991a: 150) argues that companies also started to modify the language in their advertising as a response to women’s recurrent use of the telephone for social purposes, marketing it as a “psychological support against loneliness, stress and fatigue.” The Bell Telephone Co. even remodelled their plans to exclusively distribute phones to business areas in cities and towns and began to take domestic development into account (Martin 1991a: 150; see also Martin 1991b: 322). More contemporary commercials that ask potential consumers to “reach out and touch someone” or “stay connected” serve as further evidence of this disconnect between what the phone companies originally intended the technology to be used for and how it was eventually utilized by its customers.
From Etiquette to Netiquette

For those interested in studying technologies such as the Internet, the different histories of the telephone provided by the various scholars cited above (see Fischer 1992; Martin 1991a, 1991b; Marvin 1988) are instructive for a number of reasons. First, as the work of these scholars clearly demonstrates, viewing technology through an historical lens allows us to trouble our “taken-for-granted” understanding of what these devices do, the way they work and how they are to be used. Indeed, as Marvin (1988) alludes to in the very title of her book, it is only when we think about old technologies at times when they were new that we can fully appreciate their complexity.

More specifically, these critical histories that stress the “social” side of technological change help us to challenge an overly determinist view of technology. Rather than seeing technology as somehow inevitable, operating under its own internal logic and producing certain outcomes that are beyond our control, we are obligated to take into account how human beings are actively engaged in both the production and reception of these new tools. Technologies do not just emerge and simply take shape on their own accord. On the contrary, how they are to be used and what they are to be used for must be constantly invented and re-invented (see Abbate 1999).

However, it is not my intent to advocate the completely opposite position that all technologies are purely socially-determined and used only to serve the political interests of those who control them (see, for example, Winner 1986). As the case of the telephone reveals (see Martin 1991a, 1991b), some technologies get taken up in ways that were unimagined and unanticipated by their original designers. Thus, it is necessary to look at technologies and their trajectories not as being entirely socially or technologically preordained, but open to numerous
contingencies and subject to the work of various actors at play. As Law and Mol (2002; but see also Law 2004) suggest, we must avoid over-simplifying our current understanding of technology and try to embrace the messiness of the complexity that is involved.

A second and perhaps more pragmatic reason for wanting to consider the histories of earlier forms of communication technologies is that they offer a valuable basis for comparison. Although it is well beyond the scope of this chapter to highlight all of the many similarities and differences between the telephone and the Internet, it is nevertheless useful to call attention to the obvious parallels and points of departure that exist.

One striking similarity is that, for both technologies, consumers had to first be educated on how to properly use these communicative tools. As the telephone was slowly introduced into the mainstream and became a more common fixture in people’s homes, public awareness and education campaigns were frequently used as a way to inform new customers on how to properly operate these devices. In recent years, we have started to witness a very similar trend happening with respect to the Internet. From TV commercials urging parents to teach their kids to be “web aware” to local news reports offering concerned citizens various tips on how they can keep their online identities secure from malicious computer hackers, there has been a recent explosion in the amount of information that is now being made available to Internet users.

As with the telephone, maintaining a certain sense of online decorum has and continues to be a major concern for many Internet users. The term “netiquette” – a portmanteau formed from “network etiquette” – is now used to describe the conventions of politeness and respect recognized on Usenet, in mailing lists, in live chat systems and on other electronic forums such as Internet message boards. These conventions work as a “set of rules for behaving properly
online” (Shea 1997). And, although these guidelines are dynamic and may differ across Internet groups and the method of communication that is being used, they are generally intended to allow for conduct that is conducive to pleasant, efficient and agreeable interaction. In her book entitled *Netiquette*, Virginia Shea (1997) explains the general problem with communicating over the Internet:

When you enter any new culture – and cyberspace has its own culture – you’re liable to commit a few social blunders. You might offend people without meaning to. Or you might misunderstand what others say and take offence when it’s not intended. To make matters worse, something about cyberspace makes it easy to forget you’re interacting with other real people – not just ASCII characters on a screen, but live human characters. So, partly as a result of forgetting that people online are still real, and partly because they don’t know the conventions, well-meaning cybernauts, especially new ones, make all kinds of mistakes.

To help “newbies minimize their mistakes,” Shea (1997) offers a list of “core rules” that are to be used as guidelines that should be followed when venturing into cyberspace.

For Shea (1997), the number one rule that Internet users must live by is to “remember the human.” She explains:

It’s ironic, really. Computer networks bring people together who’d otherwise never meet. But the impersonality of the medium changes that meeting to something less – well, less personal. Humans exchanging email often behave the way some people behind the wheel of a car do: They curse at other drivers, make obscene gestures, and generally behave like savages. Most of them would never act that way at work or at home. But the interposition of the machine seems to make it acceptable (ibid.).

Consistent with the moral training of early users of the telephone, the main objective here is to get those on the Internet to see the “human side” of the technology; to acknowledge the fact that, while they might only see the computer screen in front of them, they are still communicating with a “real life” human being and, as such, should employ the “golden rule” and behave in the same way they would if the communication took place in person.
However, despite the ever mounting concern over maintaining a certain sense of civility in the digital world of cyberspace, enforcing the rules of netiquette still remains less of a priority to the much more pressing issue of online safety. This is not to suggest that safety and security were of no concern to early users of the telephone. On the contrary, the anonymity provided by the telephone was particularly troubling to certain segments of the general public. More specifically, the loss of visual cues found in face-to-face interactions not only permitted greater contact between people of different social strata, but also meant that no one could be entirely sure who was really on the other end of the line. Thus, like the Internet today, the stranger on the wire who lures youngsters from the safety of their own homes became a common folk-devil to whom parents and children should guard against.\(^20\)

While public education has been used as a primary means for governing the use of the telephone and the Internet, the way in which these campaigns were rationalized and understood are strikingly different. Whereas many of the early education campaigns for the telephone were aimed at getting customers to use proper etiquette and to maintain a certain sense of civility over the wires, Internet users are taught how to become responsible subjects who can effectively manage the various risks that may emerge in cyberspace. Indeed, the emphasis placed on responsibility and the management of risks – calculatable or otherwise – is central to this project and is what sets apart this particular approach to self-governing from those that preceded it with regards to the telephone.

\(^{20}\) Danger on the wire, however, was not limited to young people. The technology of the telephone became a common tool of the trade for those running confidence schemes. Again, similar to what we are now witnessing with the growing concern over e-mail scams and fraudulent websites, the telephone and the anonymity that it provided, was used by those hoping to somehow take advantage of overly trusting and naïve individuals. And, as with most other confidence schemes, the elderly were often selected by unscrupulous swindlers as their most likely targets.
As mentioned earlier, this ethos of self-governance is clearly evident in the Federal Government of Canada’s report on illegal and offensive content. As it is alluded to in its very title, the document outlines the government’s approach to dealing with the potentially harmful effects of this technology by transforming citizens – particularly, parents, children and teens – into “safe, wise and responsible” Internet users. For many cyber-enthusiasts (see, for example, Barlow 1996; Dyson 1998; Johnson & Post 1996a, 1996b; Rheingold 1993), the system of self-regulation advocated by the Canadian government comes as no surprise. As several of these critics (Dyson 1998; Johnson 1996; Johnson & Post 1996a, 1996b) have argued, the very nature of this technology – designed specifically to “make geography irrelevant and indeterminate” (Post 1997: 2) – makes the application and enforcement of laws by a sovereign authority largely unworkable.

Thus, the only way to effectively govern the use of the Internet is through a process of “active citizenship” where consumers become directly involved in the regulation of this medium. As Johnson and Post (1996b) write:

> Because decentralized action may well be capable of generating responsible self-regulation of the Net, those who propose other forms of collective action might be best advised to hold off any efforts to achieve top down control – lest they prematurely pre-empt the growth of what might be the most efficient and empowering form of net governance. Existing sovereigns need not waive their ultimate power to take action to protect the well being of their citizens, of course. But they should sensibly defer action to see whether the collective actions of domain name registries, sysops, and users, produces a set of operational rules that provide reasonable protection for the vital interests they are charged to protect.

This self-regulatory structure is to materialize organically as a direct function of the technology. On a more individual level, Johnson (1996) suggests that the practice of self-governing is inherent in the user’s ability to “decide where to go, what to read and with whom to interact.” He
argues that what truly sets the Internet apart from other forms of broadcasting technology is the amount of control that it places in the hands of the consumer:

Unlike a broadcast or cable television set, which may well show an unwelcome image when first turned on, your web browser can be set to bring up only the same congenial starting home page every time you boot up. When you surf the web, you alone decide what search terms to enter and what links to follow. Unless you voluntarily subscribe to a “push” product, you need never see any web-based material you have not chosen to view. You can choose to read – or even to filter out entirely – an e-mail from an unknown (or known and disliked) source (ibid.).

So, while the Internet may very well produce certain conditions that some might wish to avoid, the technology also provides the user with the ability to manage what they receive.

A By-Product of Neo-Liberalism?

Yet, despite what many cyber-enthusiasts have argued, it may be unwise to conceptualize the current strategies and practices that govern Internet use as by-products of the technology. To be sure, if there is anything that can be gained from the critical histories written about other communication and broadcasting technologies like the telephone, it is the need to take seriously the ways in which humans participate in both the production and reception of these new devices. Thus, instead of seeing technology as an independent force that somehow shapes society to fit its patterns, we need to consider the social, political, economic and cultural climate in which it emerges.

Viewed in this broader context, the approach to Internet regulation now being adopted can be understood not as a function of technology, but a matter of politics. More specifically, the Canadian government’s strategy to promote “safe, wise and responsible” Internet use seems very much in keeping with the larger trends in government practice that have been taking place in
North America and other parts of the world since the 1960s (see Eggers & O’Leary 1995; Garland 2001; Kelling & Coles 1996; Osborne & Gaebler 1995; Rose 1999). In the United Kingdom, the United States and later in Canada, New Zealand and Australia, there has been a steady emergence of what have been dubbed as “entrepreneurial” or “neo-liberal” governments. These governments attempt to empower citizens by pushing control out of the bureaucracy and into the community, thereby decentralizing authority and embracing participatory management (Osborne & Gaebler 1992: 19). This system of governance emphasizes market mechanisms and focuses on catalyzing all sectors – public, private and voluntary – into actions that can effectively solve “community” problems (ibid.).

On one hand, this move towards a more neo-liberal ideology involves an increasing role for private corporate institutions in the process of governing (Ericson & Stehr 2000: 31). As Ericson and Stehr (2000: 31) suggest,

… governance is increasingly accomplished through privately authorized and controlled electronic technologies of surveillance and accounting technologies of audit. State regulatory agencies pull back from direct intervention in the affairs of private corporations, and instead emphasize the nurturing of corporate cultures and the facilitation of self-governance.

The growth of the corporate social responsibility agenda over the last three or four decades is just one instance of this change in governance (see Power 2003). In addition to the increasing responsibilities of the private sector, however, changes in governing strategies are also present in the current discourse of individual self-regulation and risk-management (Ericson & Stehr 2000: 31).

An example of this type of governance may be found in the adaptive strategies employed by governments to deal with the predicament of contemporary crime control (Garland 1996,
On this issue, David Garland (1996: 447) argues that there is less of a commitment to the penal-welfare framework and a re-evaluation of the state’s claim of exclusive authority. According to Garland (1996: 448), the major effect of this rethinking of crime and the role of government has been to dispel the prevailing myth that the sovereign state is “capable of providing security, law and order, and crime control within its territorial boundaries.”

No longer maintaining the exclusive role as providers of security, present-day governments have developed alternative methods to governing crime (ibid.: 449). In particular, Garland (1996: 452; see also Garland 2001: 124-127) sees the “responsibilization strategy” as one such approach whereby governments act indirectly by passing the responsibility for crime control onto non-state agencies, organizations and individuals, and persuading them to act appropriately. On a more theoretical level, it is a new form of “governing at a distance”; a new mode of defining and exercising power (ibid.: 454).

This discourse of responsibilization is not limited to crime prevention and has been used more broadly in the managing of all sorts of risks (Kemshall 2003: 19; but see also Hunt 2003). Responsible citizens are required to “adopt a calculating attitude toward all of their decisions, whether this be the risks of the labour market or the risks of becoming a crime victim” (ibid.). Moreover, it is this ability to govern one’s self as a “responsible” or “prudent” subject – measured in terms of the individual’s capacity to assess and manage risk – that becomes the basis for moral judgment (see Hunt 2003). As Kemshall (2003: 19) writes, “… the individual becomes the primary site of risk management, not society, and the ‘good’ citizen is recast as the prudential one. Citizens who do not make the desired choice are recast as imprudent and reckless, blameworthy and responsible for their own misfortune.”
Under this neo-liberal or “advanced liberal” system, the role of government shifts from a “social state” to an “enabling state” whereby individuals are to be active in their own governing, making rational choices to achieve the broader goal of self-realization (Rose 1999: 142). The state is no longer required to meet society’s needs for security, order, health and productivity. Rather, the state is to empower or enable entrepreneurial subjects to be responsible for their own well-being. Through education, training, health campaigns and moral revitalization, the state facilitates the individual to make “good” risk choices (Kemshall 2002: 43). Individuals are to become “experts of themselves” and are required to adopt an “educated and knowledgeable relation of self-care in respect of their bodies, their minds, their forms of conduct and that of the members of their own families” (Rose 1996: 59).

Members of the public are thus perceived as “customers” who must become active in seeking to enterprise themselves in order to maximize their quality of life (ibid.). They must be held morally accountable for their protection and safety while government takes on the task of making citizens aware of these responsibilities. Consequently, security becomes a matter of personal self-interest that brings about participation in the creation of a new world order. The “prudent” subject, according to O’Malley (1996: 201-202; but see also 2004), will invest resources in “improving personal and property security – to be seen in the trend towards domestic use of private security agencies, the purchase of insurance and security devices.”

In Canada, the task of managing any possible dangers on the Internet does not fall exclusively to the state. Instead, the responsibility is said to be shared among all levels of government, those in the public and, most importantly, citizens. Armed with the skills of critical thinking and media literacy, Internet users are to be prudent in how they conduct themselves in the virtual worlds. Parents and children are to be made aware of the risks involved when
venturing into cyberspace and made responsible for ensuring their own safety and security. Through education initiatives provided by non-profit, non-governmental organizations like MNet, consumers are to be informed about a variety of measures from installing filtering software to recognizing deceptive advertising techniques that, in turn, will allow them to become “safe, wise and responsible” users of this technology.

Rethinking Responsibilization

While the discourses of neo-liberalism and responsibilization provide us with basic conceptual tools for understanding how it is that advanced liberal subjects govern themselves while using the Internet, there are certain complexities that are never fully addressed in the current body of theoretical literature. First, responsibilization is often used to describe the outcome whereby certain actors are made responsible for their own self-governing, but at the expense of overlooking the processes that are involved in making someone responsible. Responsibilization is therefore “black boxed” and, as a result, tends to be viewed as a simple one-way form of governing, where the exercise of power flows in only one direction as certain actors exercise their authority to responsibilize others to govern themselves.

An implicit assumption here is that the power to make other actors responsible for their own self-governing is something that can be possessed and imposed upon others. The “responsibilized” actor, on the other hand, is assumed to be rational and will take “prudent risk-managing measures” (O’Malley 1996: 200). Consequently, these actors are never truly seen to have agency as it is through their freedom and choices that they are governed (see Rose 1999).
Those unable to accept the responsibility to govern themselves are deemed “irrational” and perceived as lacking the appropriate skills to become responsible.

More recent scholarship on this topic, however, has offered a more critical assessment of responsibilization and the risk/responsibility nexus. Alan Hunt (2003: 184) argues that the “proliferation of risks and their concomitant responsibilities produces an opposite response, which can involve either a refusal of responsibility or, perhaps more significantly, the transfer of responsibility to others.” To illustrate the practice of what he calls “deresponsibilization,” Hunt (2003: 184) points to a number of legal cases where individuals have denied personal responsibility for harms incurred while engaging in certain “risk” conduct by shifting the blame onto those who initially provided the means to undertake this kind of activity.

Some classic cases include smokers who have sued tobacco companies for compensation for smoking-related illnesses, a woman who successfully recovered damages from a fast-food chain when she spilled hot coffee upon herself, and the employee who received payment from her employer for injuries suffered when she caused an automobile accident after drinking alcohol at an office party (ibid.). These lawsuits, according to Hunt (2003: 185), must be understood in relation to the expansion of liability insurance whereby the economic burden of accidents and injuries are shifted onto those who are in a position to bear these costs; namely, private institutions. As Hunt (2003: 185) suggests, “suing an institutional party for injury arising from risky conduct might be regarded not so much as attempting to shift moral responsibility as merely taking advantage of an economic opportunity.”

On a more general level, these instances serve to highlight the fact that, contrary to the current body of governmentality literature, not all strategies or tactics of responsibilization are
successful at getting individuals to engage in practices of self-governance. Instead, as Hunt (2003: 185) explains,

> [t]here is a contradiction at the heart of modern forms of rule. While individuals are activated to take responsibility for mitigating and expanding inventory of everyday risks, there is, at one and the same time, an increasing tendency to deny or refuse responsibilities either by shifting them onto others or simply by blaming others. There are two faces of responsibilization for modern risks. That these two faces cohabit is the outcome of the process whereby accepting risk responsibilities frequently involves becoming encumbered with the moralization which, as has been argued, is the penalty for the assumption of responsibility for engaging with the risks of modernity. In brief, taking on board responsibility for risks is itself a ‘risky’ undertaking.

Responsibilization is therefore not a simple or straight-forward process in which individuals are made responsible for their own self-governing, but one that is always open to resistance and the shifting of blame.

This more critical examination of responsibilization offered by Hunt (2003) helps to shed light on many of the subtle complexities that are rarely addressed in the current body of governmentality scholarship and, more importantly, underscores the need to approach questions over where responsibilities lie, and the forms in which they take, as matters of empirical inquiry. Why are particular notions of risk and its management – advocated by a set of actors deemed as experts – taken up over other competing conceptions to become the dominant frame for how we address a specific issue? These sorts of questions have been largely ignored by those working in the field of governmentality who, instead, appear fixated on trying to illustrate the various shifts in the practice of governing and explaining these changes in relation to broader social, political, economic and cultural trends (see, for example, Garland 1996, 2001).
Getting Away from the Social vs. Technological Determinism Debate

As the discussion presented above clearly reveals, those interested in understanding why it is that consumer self-regulation has become such a dominant approach to governing Internet use in Canada are left with two very opposite, yet equally valid, explanations: On one hand, the current strategy can be understood as a function of the technology. The general argument here is that the Internet – operating under its own internal dynamic and unmediated by any other influence – moulds society to fit its patterns (Winner 1986: 21). The technology of the Internet not only makes traditional, top-down systems of control largely unworkable, but provides the conditions that allow users to become active in their own self-governing. Put simply, it is the nature of this technology that establishes the manner in which its use will be governed.

On the other hand, this idea of creating “safe, wise and responsible” users as a way of dealing with the problems of illegal and offensive content on the Internet may simply be in keeping with the current era of neo-liberalism. From this perspective, there is nothing inherently special about the Internet that determines how it can be regulated. What matters is not the technology itself, but the social, political, economic and cultural system in which it is embedded (see Winner 1986). In essence, we end up caught in a kind of technological versus social determinist debate: Is the move towards Internet self-regulation a result of the technology or simply a matter of politics?

A way out of this dilemma is to approach this topic from an entirely different perspective. More specifically, we can draw from ANT and embrace a more agnostic view that does not already presuppose Internet regulation as either the outcome of Society or Technology. Instead, we can treat Internet regulation as a “quasi-object” (Latour 1993: 95) and follow the network of
actors that has led to its production. So, in much the same way that ANT theorists study the organizing and ordering processes by which certain elements are brought together to produce a scientific fact or technological artefact, I will trace the network of human and non-human actors that has been constructed by MNet, enabling the organization to translate its message of “safe, wise and responsible” Internet use into Canadian public policy.

The primary data examined in this case study come from in-depth semi-structured interviews conducted with both current and former employees and board members of MNet. The interview data are supplemented with a discursive analysis of the various educational resources and materials that are made publicly available, free of charge, by the organization through its website. Finally, the written transcripts of MNet’s oral presentation to the CRTC at its public hearings on New Media held in 1999 were also examined. I begin this discussion of MNet by briefly describing the early history of this organization.

The Little NGO that Could?

Despite its current status as world leaders in the field of online safety, MNet did not initially emerge as an organization with this specific mandate. MNet originally grew from a recommendation made at a roundtable discussion on television violence and its impact on children that was held by the CRTC in 1993. While the Commission concluded that there was no “silver bullet” that could effectively deal with the negative effects that this type of content could have on young viewers, media literacy was singled out as an essential component in any strategy
aimed at tackling this issue and heralded as a more viable alternative to V-Chip technology\textsuperscript{21} and other “technological fixes” that were being offered.

At these meetings, a number of parents and education groups found themselves in general agreement that more information was needed about a whole host of other media-related topics outside of TV violence and got together to ask the NFB for assistance. A couple of years later, under the auspices of the NFB, MNet was established to act as a media information clearinghouse which began by collecting and making available this material to parents, teachers, librarians and other interested parties. Over time, the organization has gone from exclusively distributing this information to actively producing its own educational resources. Since its inception, however, MNet’s primary objective of promoting media literacy among children and youth has remained the same.

To their credit, MNet has quite successfully reinvented itself and translated its message of media literacy to match the new digital world of cyberspace. This feat is even more remarkable when one considers its limited resources. Like many non-governmental organizations (NGOs), MNet operates without any core operational funding from government. Instead, much of its day-to-day costs are paid for through the annual membership fees of individuals, non-profit organizations and small businesses. A number of Canadian broadcast and multimedia companies have also helped out by providing additional financial support. The list of MNet sponsors includes major firms such as Bell Canada, Shaw Communication, CTV, CanWest Global, Chum

\textsuperscript{21} When installed in a television receiver, V-chip technology allows the blocking of programs based on their ratings category. It is intended for use by parents to manage their children’s television viewing.
Television and Rogers. Most recently, MNet has been able to secure some additional funding by selling the licenses to many of their educational resources and programs.

Whatever money it does receive from government sources comes in the form of public grants for specific projects for which the organization must apply. One interviewee attributed this to a drastic change in government attitude towards non-profit organizations that offer its services in the interests of the “public good.” She explains,

it used to be that the government was the big supporters of something being there for the public good, but increasingly, one of the pressures that we have is to bring in revenue... The fact is that government will not be the sole supporter of anything. They want to see you being self-sufficient... We are a public good. That is what we are. So, it’s one thing to say, “You’re a public good and we want you to do all these things for the public,” but also be self-sustaining? There’s an inherent tension in this.

The lack of a core budget, coupled with this pressure to become increasingly self-sufficient, was an obvious source of frustration for many of the interviewees. One MNet employee lamented that the organization spends so much time applying for funding and writing proposals that it had very little time and resources left over to effectively market its programs to the general public. Still, all of the interviewees were quite pleased and proud of the organization’s accomplishment, often highlighting the various programs and projects they have been able to successfully undertake, in spite of the absence of public funding.

With regards to its organizational structure, MNet has two main offices: One located in Ottawa and another in Montreal. Each office has approximately 14 full-time staff members, many of whom were either former educators or had previously worked in the broadcasting industry. Moreover, the majority of MNet’s staff are women. One of the original founders describes MNet as a “Ma & Ma” organization, to acknowledge not only its role as “pioneers” in
media literacy education, but that it was originally founded by a group of women. She then went on to describe that, while educators and librarians have always been very supportive of their work from the very outset, MNet faced some difficulties trying to convince men in the broadcasting industry of the need for media literacy training, more generally, and Internet education, in particular. In her opinion, many of these men were simply “blinded by the technology” and were either more concerned in seeing this industry reach its full economic potential or saw technological remedies like the installation of filtering software programs as a viable way of dealing with the problem of online content.

These circumstances beg a number of important questions: First, how does a relatively small, non-profit and largely female organization with a very broad mandate of promoting media literacy transform itself into world experts on Internet safety? Second, how has MNet been able to secure its place as a central agency involved in the governing of Internet use in Canada? Finally, and most significantly, how has this organization been able to get its message of awareness, education and “critical thinking” recognized by the Canadian government and incorporated into public policy with respect to offensive content on the Internet? Using an ANT framework, I attempt to address these questions by considering the ways in which MNet has been able to construct a network of alliances which, in turn, has allowed the organization to spread its message of “safe, wise and responsible” Internet use and make itself relevant in the governing of this technology. In the section that follows, I identify and describe a number of key factors that have been central to the organization’s success in building its network.
Timing is (Almost) Everything

MNet’s success in becoming a key player in the field of Internet regulation in Canada can be partly attributed to impeccable timing. As discussed earlier, MNet did not begin as a non-profit organization specifically dedicated to Internet-related issues. Quite the contrary, MNet had already been in existence a few years prior to the emergence of the Internet into popular mainstream culture in Canada. This allowed MNet to get involved with the technology very early on and, in so doing, let the organization to promote its particular views and perceptions about the Internet, what its future might be and, perhaps most importantly, the possibilities for state regulation at a time when most governments were still trying to make sense of this new medium. As an organization, then, MNet was able to restructure its mandate of media literacy to fit the new digital landscape and thus positioned itself, and the work it does, as having a place in Canadian public policy aimed at somehow governing the use of this technology.

A former member of MNet’s board of directors credits two of its founders as being “very astute” when it came to the Internet and having the foresight to see the potential impact of this technology. More importantly, he praises these individuals for being “smart enough to see that the Internet is really a blend of other types of media.” Indeed, for these founding members, turning towards the Internet was seen as a “natural progression” for their media literacy programs. Claiming that the Internet was simply another medium within the broad field of media, one interviewee explained:

Primarily, the Internet is a medium. It’s a distinct medium. It has distinct issues. It sort of pushed the envelope so, for us – being web-based and choosing the web as our primarily vehicle [for promoting their programs] – it automatically became an environment we wanted to follow and learn more about.
The interviewee goes on to explain the advantage of being involved with this technology from the very outset:

The advantage of being online very early – we’re almost geriatric as far as educational organizations go – meant that, right from the beginning, we were with the web as it was developing. And it soon became obvious that it was primarily a commercial vehicle and that the commercial nature was driving a lot of things. The first thing that came to our attention was the targeting of children for advertising, and then, specifically, how alcohol marketers were targeting kids on the web.

The fact that MNet was involved with the Internet very early on provided the organization with certain insights about the potential impact that this might have on a particular segment of the population for which it has already taken an active role in protecting: children and teens. And, by claiming to have this wisdom that could somehow only be gained by being there from the get go, MNet was able to make the case that it was needed to do, in the digital environment, what it had been doing for several years in the “physical world”; namely, to provide media literacy training for young Canadians.

To be sure, MNet has used this status as “elder statesmen” (sic.) in the field of media as a way of claiming expertise and credibility in this new digital environment. This is quite evident in MNet’s oral presentation made in front of the CRTC during its hearings on New Media in November 1998. Urging the Commission to consider the importance of Web literacy in the management of this new medium, members of this organization drew upon its experience in media as a source of authority. Speaking on behalf of the organization, then co-director of MNet, Jan D’Arcy noted:

In 1994, when the Media Awareness Network was created in response to the CRTC’s children and television violence initiatives, the World Wide Web was in its infancy. As an organization, we have grown up with the Web. We have watched its potential being realized and we have monitored the risks and the concerns associated with its use. We realized early on that public concern
regarding easy access by children to inappropriate content could only increase. It was clear that the traditional media education topics – bias in reporting, gender stereotyping, minority representation, violence, ownership, [and] cultural sovereignty – would have, if anything, greater significance with the advent of the Information Highway (CRTC 1998f).

Being there “early on” was important for MNet. MNet was not only able to gain a head start in learning more about this technology and its potential impact, but it provided the organization with a certain cache and level of legitimacy that they, in turn, used to their advantage when staking their claims about the importance of Web literacy.

However, it was not enough for MNet to simply draw the obvious parallels between “old” and “new” media. Not only did MNet have to make others see how literacy and critical thinking skills could be applied to the online world, but they also had to convince all interested parties that the Internet was sufficiently different enough from older media to require immediate action. On one hand, the Internet had to be viewed as being akin to other forms of media like radio and television in order for MNet to retain its status of experts and the ability to speak with authority on this topic. Yet, at the same time, the Internet had to be construed in such a way that Web literacy could be deemed essential.

Put simply, web literacy had to be seen as more than just a continuation of current media literacy programs and, instead, a matter of utmost importance in its own right. This “same but different” argument was put forth by the organization at the CRTC’s New Media hearings and can be found in the following exchange that took place between one of the commissioners and a MNet representative during a question and answer period:

COMMISSIONER: What is it about cyberspace, what is it about the new media and Internet which you advise makes media literacy even more important, or is it just a continuation of the media literacy we have come to know?
MNET REPRESENTATIVE: I think it is partly a continuation. Part of its importance rests on the fact that there is greater access than ever before to materials, which may or may not be appropriate for children, and we feel that, in a way, the armour we can send children out into the world with is education. I am talking about slightly older children. Of course, we protect little children, but as soon as children develop the ability to think critically, that’s when we should begin addressing what is on the Internet and help them to recognize hate, for instance, when they see it, recognize what is behind hate propaganda, understand that they are being marketed to, to understand that they are being drawn into games and clubs and fun interactive activities and drawn into characters being made their friends, who talk to them personally. This doesn’t happen in the world of television. So we do see it as more important than ever before (ibid.).

In constructing their particular vision of the Internet, the representative speaking on behalf of MNet carefully sits on the fence and suggests that while web literacy is very much an extension of its current media literacy programs, it is now directed at a new technology that is strikingly different from those that preceded it.

Another way that MNet constructs the Internet as being distinct from other forms of broadcasting and communication is by pointing to the global and decentralized nature of this technology. And, like many other cyber-enthusiasts who drastically oppose government regulation, representatives from the organization suggest that these characteristics make the Internet largely ungovernable. As one founding member explains,

we saw that the Internet was going to be a magnet for children and also saw that it wasn’t going to be regulated. We figured it wasn’t going to be. We didn’t know how anyone could regulate it. And therefore we saw that all the [broadcasting] standards that were in place to protect children in Canada were suddenly not going to be applied. And so, way before the government was saying, ‘look, this [the responsibility for children’s safety] has to shift to the home’, we saw that as being inevitable and saw media education as the response… What we caught on very early with the Internet was the fact that it is borderless. It is difficult to apply Canadian standards or any other national standards to it.

To their credit, those at MNet had the foresight to see the Internet as being beyond regulation and, more importantly, saw how they as an organization could play a role in this technological
change. Consequently, by the time the Canadian government began its investigation into how it was going to address the issue of illegal and offensive content on the Internet, MNet and its “Web Awareness” campaign were already in place.

Still, while a number of interviewees strongly believed that government could not regulate this technology and therefore saw media education as being an “inevitable” alternative, MNet was itself, quite active in promoting this technological determinist vision of the Internet. Once again, appearing in front of the CRTC at its New Media hearings, members of MNet argued that this technology could not be governed the way that earlier systems of broadcasting and telecommunications had been in the past. Instead, the organization called for greater emphasis on consumer self-regulation. As one representative explained:

Due to its limitless and borderless nature, we feel that we cannot approach the Internet and its regulation as we have approached broadcasting and telecommunications in the past. We feel that regulation, in this traditional sense, is both impractical and unmanageable… In response to the unregulated, borderless nature of the Internet, there is an urgent need, in our opinion, for education – a new kind of education that we call “Web literacy.” To help Canadians understand and manage this new medium, we are suggesting two main approaches: First, we need to help young Canadians develop the critical thinking skills that they will use for the rest of their lives – for filtering, analyzing, understanding and learning how to authenticate online information. And we need to teach them how to use this powerful tool for a better democracy.

Promoting web literacy was clearly only half the battle for MNet. In addition, the organization had the equally difficult task of convincing the CRTC and all other interested parties that the use of Internet technology could not be managed in any other way, but through a strategy of awareness and education that would allow users to effectively govern themselves.

To use the language of ANT, MNet problematized the issue of Internet regulation in such a way that those interested in seeking a solution had no other choice but to rely on this
organization for assistance. In particular, by reinforcing the idea that the Internet was “borderless” and “beyond regulation” and that a new kind of education called web literacy was required, MNet was able to transform itself into an “obligatory passage point” (Callon 1986; see also Latour 1986) for which all other actors wishing to govern the use of this technology must “go through.” Problematizing the Internet in a manner that makes relevant the organization and the work it does in the area of media literacy is the first part of the network building project undertaken by MNet.

Contrary to the over-simplified picture of responsibilization painted by governmentality scholars such as Garland (1996, 2001), it is clear that organizations like MNet do not passively receive the responsibility for promoting the message of consumer self-regulation that is simply downloaded onto them by neo-liberal minded governments. Nor do these governments simply invent responsibilization programs aimed at educating the general public on how they can become “safe, wise and responsible users” of new technology. Quite the opposite, MNet was quite active in staking its claim in the field of new media, and actively promoted its message of education and awareness, in order to become major players in how Internet use is governed in Canada.

Along very similar lines, it is equally important not to directly attribute the prominence of web literacy as a matter of technology. Although several of MNet’s founding members noted that they saw web literacy as being “inevitable” given the globalized and borderless nature of the Internet, by no means did these public awareness and education campaigns happen automatically. Indeed, as a number of interviewees recall, getting certain groups – in particular, men in the private broadcasting industry – to buy into their cause and to see the importance of media literacy for young Canadians was an uphill struggle for MNet.
Far from being cultural or technological dupes who lack any type of political power or agency of their own, those at MNet have been tremendously active in championing its cause. In order to do so, however, the organization has had to mobilize the common narrative popularized by many cyber-enthusiasts that this new technology not only makes traditional, top-down forms of state regulation largely unworkable, but demands a system of self-governance where governments must pull away from direct intervention and, instead, take on a “steering” function by responsibilizing members of the general public to play a more active role in maintaining their own safety and security. Rather than being victims of technological or political change, MNet has very much been involved in shaping the future of this technology and how it is to be received by advancing the discourse of technological determinism that surrounds the Internet.

Building Alliances

Much of MNet’s success in becoming major players in the field of online safety in Canada can be largely attributed to the way it has problematized this new medium. However, in order to become relevant and to spread its message of “safe, wise and responsible” Internet use, MNet has had to build strategic alliances with government, educators, those in the private sector and a whole host of other actors.

True to its name, MNet has built a network of partners who share a similar interest in training young Canadians on how to become media literate. According to its website, this “partnership model” allows the organization to bring in a wide range of expertise and perspectives on a variety of different media-related topics which, in turn, “serves to bring the best skill sets to the direction of MNet.” This approach is clearly reflected in the cross-section of
groups and individuals who serve on MNet’s Board of Directors. Currently, the Board has members representing a diverse array of interests including: The Canadian Association of Principals, AOL Canada, The NFB, The Canadian Teachers’ Federation, Telus, CBC Radio and The Vanier Institute of the Family.

Some of the most important partnerships made by MNet have been with different government agencies such as Industry Canada (IC), the Ministry of Heritage and HRDC. Those at MNet were unanimous in stating that these partnerships have been crucial for the success and general survival of the organization. One way that MNet has been able to “team up” with these agencies is through a government exchange program in which a federal employee – often from a ministry with which they work closely – is seconded to work for the organization for a designated period of time. Several interviewees pointed out that this program was vital to MNet’s success in securing government grants as these seconded employees would provide the organization with invaluable “insider” information about potential funding sources and helpful advice on how to put together effective proposals for government projects. So, while MNet proudly calls itself a non-governmental organization, this might be somewhat misleading given that it not only emerged out of a government-led initiative headed by the CRTC, but because of its current connections with government.

Still, regardless of whether or not it can truly be defined as an NGO, those at MNet were quick to point out the importance of these partnerships with government. These partnerships, however, extend far beyond MNet’s participation in the federal government’s employee exchange program. As several interviewees note, MNet began forging its relationship with government partners very early on by offering seats on its board of directors to representatives from a number of different ministerial bodies. This not only allowed for greater dialogue
between MNet and these various agencies, but also gave the organization the opportunity to speak with people in positions of authority.

The direct contact MNet had with representatives from Industry Canada allowed the organization to have a tremendous influence on the federal government’s report on illegal and offensive content that was released in 2001. One interviewee explains how MNet got involved with this particular project:

We had intersection [with those involved in creating the Report on Illegal and Offensive Content]. The fellow who was leading the program from Industry Canada was on our board at that time. We provided a lot of advice there. We get a lot of mention in the [report]. Industry Canada, which drove the process, was fully supportive of MNet so there were no surprises there. We knew what was going on [and] we were asked for our advice.

By virtue of the working relationship it had already formed with IC, MNet was easily called upon to provide input and offer direction to the federal government on how it should approach the regulation of this type of online material. A quick glance at the final document clearly reveals the kind of influence MNet had in its production. Indeed, as one interviewee remarked, even the phrase “safe, wise and responsible Internet use” that sub-titles this report was taken from MNet.

Expanding the Network

Although its partnership with those at IC was crucial for MNet in getting its message of media literacy and critical thinking out to a mass audience, by no means is this the only partnership that the organization has formed. True to its name, MNet has been quite creative and strategic in the kinds of “networks” it has forged and has used these partnerships as a way of raising the organization’s profile. One interviewee explained that this was very much in keeping
with MNet’s philosophy of “raising awareness” in areas where they feel that greater “awareness” is needed.

The adoption of this philosophy has resulted in a number of very interesting initiatives. For example, MNet has joined forces with the Girl Guides of Canada in a campaign called “You Go Girl in Technology” (YGGT) – an Internet literacy project that is specifically designed to help girls become more critical users of technology and to encourage Guiders to become more involved in the online world of kids. MNet’s involvement in this project is quite evident: The Girl Guides of Canada website clearly reads that the goal of the YGGT program is to “help girls in Guiding become wise, safe and responsible Internet users.”

As part of this program, the Girl Guides of Canada – in consultation with MNet – have created “YGGT Challenges” to help guides fulfil this goal of becoming “wise, safe and responsible” users of this technology. The YGGT Challenges, designed specifically for the various age groups ranging from Sparks (5-6 years old) to Senior Branches (15 to 17+ years old), include a number of activities and background information for Guide leaders that they can then use with their groups. Girls must participate in at least two activities to complete the challenge. Those who successfully complete the YGGT Challenge can receive a crest – available for purchase at a local guide store – to highlight their accomplishment.

Not surprisingly, many of the activities for the guides are carbon copies of those already being offered by MNet on its website. For example, getting kids to create an “online pledge” as a way for them to develop a better understanding of what rules they should follow to ensure their online safety is just one of several activities originally created by MNet for parents that are now
to be undertaken by Guide leaders. In fact, the instructional material that accompanies this activity encourages leaders to read through a couple of MNet resources beforehand.

While having Girl Guide groups develop their own online pledges may take some of the power away from parents to decide on what is appropriate use of the Internet in their own homes, the program does allow this type of education to get to children who may not otherwise receive it or prompt parents to discuss online safety issues with their kids. Rather than being directly responsibilized to play a greater part in managing their child’s use of the Internet by MNet, the message of “web awareness” is now brought home to parents by their own children. In so doing, MNet is able to convey its message of “web awareness” to a wider and more diverse audience.

A more recent partnership formed with the Canadian Paediatric Society (CPS) provides another interesting illustration of how MNet has been able to translate its unique approach to online safety into other settings. This alliance between the CPS and MNet has led to the creation of MediaPulse, a national initiative aimed at raising awareness among health care professionals about the influence of media on the healthy development of children and youth (MNet 2003a). One of the primary goals of the MediaPulse campaign is to “provide practical information and advice to help physicians talk to patients and their families and encourage parental involvement” (ibid.).

As part of this project, a handbook for health practitioners called MediaPulse: Measuring the Media in Kids’ Lives was produced and distributed to over 15,500 paediatricians and family doctors. Among a variety of other things, the handbook advises physicians to inquire about the types of programs, video games and websites to which their patients are exposed and to talk to them and their parents about the “significance of media influences on health and lifestyle
choices.” In keeping with its sub-title of “measuring the media in kids’ lives,” the handbook presents some of the major findings from two national surveys carried out by MNet – one that involved 6,000 Canadian students and one that involved 1,100 parents.

What is more, the MediaPulse handbook also provides physicians with a “media history form” to help them measure media and habits in their patients’ homes. Highlighting the importance of collecting this type of information, the handbook reads:

Given the pervasiveness of media in our young patients’ lives, it would make sense to ask about media use and media-consumption habits. Yet, how many health professionals include this line of questioning in patient histories or psychosocial assessments? A survey of paediatric residency programs in the United States found that despite increased awareness of media influences on child health, less than one-third of paediatric residency programs teach about media exposure. By asking the right questions, health professional can play an important role in helping to ensure that media are positive forces in young people’s lives (ibid.).

Physicians are therefore encouraged to either adopt the media history form in its entirety or select from it a number of key questions that can be included in assessing a child’s medical background.

The media history form, which is to be completed by the parent(s), includes many questions that are aimed at measuring the amount of media to which the child is exposed (e.g., on weekdays, how much television does your child watch each day? How long does your child spend using the Internet each day?). However, the form also attempts to take stock of what parents might be doing (or not doing) to effectively manage their children’s exposure to media. For example, parents are asked whether or not they, as a family, discuss TV shows and commercials or use television ratings to choose programs. With regards to the Internet, parents are asked if they have rules about Internet use (e.g., time spent, purpose, chatting or meeting with
strangers, protecting privacy, etc.) and are aware of how their child uses the Internet (e.g., uses chat rooms, visits websites, downloads information, etc.). Consequently, these media history forms not only place the child’s media consumption under careful scrutiny of the family physician, but also make visible the habits of the parent. And, if the physician feels it is necessary, she or he can recommend changes in parenting practices that may help to ensure that their child’s exposure to media is positive.

Similar to other programs offered by MNet, then, health practitioners are encouraged to get parents to become more actively involved in managing their child’s exposure to media and the negative consequences that this may have on their safety, health and general well-being. The MediaPulse guide even includes a practical tip sheet that physicians can distribute to parents. Like many of the resources used by the Girl Guides of Canada, these tips are taken directly from pre-existing MNet materials. They range from very simple measures like keeping televisions, Internet-connected computers and gaming equipment out of a child’s bedroom to more complicated strategies that require greater parental involvement such as encouraging children to sample a variety of “quality media experiences” and guiding them to make “good media choices.”

These latter strategies are very much in line with MNet’s belief in media literacy. As will be discussed in greater detail later in this chapter, MNet prides itself on the fact that it is not a “pull the plug organization.” That is, it does not vilify all forms of media as being inherently harmful and something that young people must avoid at all costs. Quite the contrary, the organization claims that it presents a more “balanced view” and often highlights the many positive aspects related to media as well. Thus, rather than deny children and teens access to media and “pulling the plug” on this type of technology, MNet simply encourages them to think
critically about what is being presented on TV or the Internet and to become better consumers of this content.

This need for “critical thinking” is clearly taken up and promoted by the CPS. In a press release announcing the launch of the MediaPulse campaign, Dr. Peter Nieman, a Calgary-based paediatrician who was directly involved in this joint initiative is quoted as saying, “It’s important to emphasize that, while there is evidence that some media can have a negative impact on the health and well-being of kids, media can also provide incredible opportunities for learning, growth and communication… We want physicians to help raise their patients’ awareness and show them how to think critically about media messages” (MNet 19 June 2003, emphasis added). This sentiment is echoed in the MediaPulse handbook. In an introductory statement directed towards paediatricians and family doctors, the handbook reads:

As conscientious child- and youth-health professionals, we need to be aware of the ubiquitous and powerful influence of media in our young patients’ lives. We urge you to become familiar with the research that does exist, to encourage critical thinking about media messages and to incorporate media awareness into the practice setting. Adopt the media history form included in this booklet and use it as a tool to raise awareness about the impact media has on health, attitudes and behaviours. Visit the Web sites of the Media Awareness Network (www.media-awareness.ca) and the Canadian Paediatric Society (www.cps.ca) to learn more and to share your feedback with us (MNet 2003b).

From an ANT perspective, the media history form and the MediaPulse handbook, more generally, acts as an importance intermediary (see Callon 1992; but see also Murdoch 1995) between MNet and the healthcare practitioners whose assistance they are seeking. The text serve two primary functions: First, it greatly simplifies and makes easier the physician’s task of educating patients and their parents about some of the negative impacts related to media. Instead of having to explain in detail what they, as parents, can do to ensure their child’s exposure to media is positive, the physician can simply provide them with the “tip sheet” that outlines the
kinds of practices they should be adopting. Physicians can also direct parents to the other materials found on the MNet or CPS websites for further information.

Second, and related to the first, the *MediaPulse* handbook allows MNet to keep physicians in line. In essence, the document prevents these actors from “making off” on their own. By having to rely on these resources – from using the media history form as part of their routine assessment of patients to directing concerned parents to the “tip sheet” provided in the handbook – the work of the enlisted physician is made predictable by making any sort of deviation from this script extremely difficult. The paediatrician or family doctor who adopts these practices into their own work is now firmly anchored into MNet’s assembled network. Moreover, by successfully getting these actors to accept the role of “raising awareness,” MNet becomes this network’s “obligatory passage point” (Callon 1986; see also Latour 1986); the organization becomes indispensable as these enlisted physicians are now forced to accept their claims about media technology and how best to manage its use.

On another level, the message of media awareness and critical thinking promoted by MNet is now being delivered by a variety of different actors and, as such, has moved into entirely different realms. Given the multiplicity of sources and contexts in which it can now be heard, the organization’s target audience of parents, children and teens may be much more likely to come across its material in some fashion. The advertising and promotion of MNet’s media literacy campaign is no longer limited to Public Service Announcements (PSAs) on the radio or TV, but can now also be delivered through a Girl Guide activity or presented at a routine visit to the family physician.
In addition to getting its message spread to a wider audience, the kinds of partnerships that MNet has formed may also have direct consequences for how this message is received. In particular, one might argue that the actors MNet has enrolled and enlisted into its network may have a much greater influence on parents and young people. So, while some individuals may have a difficult time simply accepting what a non-profit organization has to say about Internet safety and media literacy, they may be far more willing to believe the exact same message when it comes from their trusted doctors. Likewise, parents may be more willing to see the virtues of this type of education the moment it becomes part of the Girl Guides’ curriculum. Acutely aware of this power of association, MNet has carefully placed its company logo alongside those of the Girl Guide’s of Canada and the CPS on all of the educational and promotional materials that have been produced for these respective campaigns.

Money: The Missing Actor

Although the expansion of its reach is one primary reason for why MNet has adopted this “network” approach, securing funding is another. While the organization is philosophically grounded in the belief that media culture transcends traditional education and schooling and that they must therefore ally themselves with groups like the CPS whom they believe can help to “raise awareness” about Internet literacy and other media-related issues, the real challenge for MNet lies in finding partners with resources. As one interviewee explains, “Our difficulty is not getting partnerships. It’s so easy for us to get partners. The problem is money because most of our partners also have no money.”
Like many non-profit organizations, MNet has had to form partnerships with those in the private sector. And though many of the companies that have provided financial assistance share a genuine interest in the health and well-being of children, a number of interviewees were well aware of the fact that their involvement with the organization was also driven by personal self-interest. By providing support to groups like MNet, private corporations could demonstrate to government that they were taking an active role in the self-regulation of this industry and that heavy-handed regulations was simply unnecessary. As one interviewee put it, “MNet is strong and solid and [it] helps in the argument that regulation is not needed. And big business does not like regulation. I wouldn’t say that they are using MNet to avoid regulation, but it helps.”

In addition to impressing government regulators, providing financial assistance to groups such as MNet is a useful public relations tool for private companies wanting to show their customers that they are playing an active part in helping to protect the safety and well being of young people who venture online. Given their focus on critical thinking, companies can also use its partnership with MNet as a way of de-responsibilizing themselves from having to bear the entire burden of maintaining a safe environment online. Indeed, many of the Internet providers that have partnered with MNet such as Rogers and Bell have links on their websites that direct concerned customers to the organization’s website.

In 2004, MNet joined forces with Microsoft and Bell Canada in a national Internet safety awareness campaign aimed at parents called “Be Web Aware.” Among other things, this initiative led to several PSAs on television, radio, print and outdoor billboards that directed parents to the Be Web Aware website. Developed by MNet, the site contained a variety of information to help parents teach their children how to effectively handle the risks associated with going online.
But, while the PSAs may have helped to increase the profile of the organization, they have not been without controversy. According to a number of representatives from MNet, the ads generated tremendous criticism from some individuals who felt that they were dramatically oversensationalizing the dangers that the Internet poses to young people. For example, in one commercial that aired on Canadian television in 2004 and 2005, a young girl is shown, by herself, playing on a swing set in a public park. Over this image, an ominous male voiceover narrates, “This is Caitlin. She’s waiting for a friend.” For several more seconds, the child is shown continuing to rock back and forth on the swing until she gets high enough that she completely disappears from the shot. As the swing returns back into view, we see that the child is no longer there as the camera slowly zooms in on the empty swing seat. The narration continues, “It turns out, who Caitlin met, wasn’t a friend at all. Teach your kids to become “web aware.” Finally, a blue computer screen appears upon which the following message is typed out for the viewer to read: “25% of kids have been asked to meet someone they’ve only met online.” As the statistic is revealed, the invisible narrator advises the viewer, “The media awareness network can help. Visit bewebaware.ca.” The web address “bewebaware.ca” is then typed out on the bottom of the blue screen below the statistic.

When asked about the criticism levelled against the alarmism of the PSAs, one interviewee from MNet noted that the organization, itself, had very similar concerns. Nevertheless, she explains the logic behind taking the approach that they did:

For us, we built a website that contained a lot of information on all issues and we tried to really broaden it. The whole point was that when you launch a public awareness campaign, you have to get people’s attention. So, we went with the experts on that, which was “we’re going to shock people.” We’re going to drive them to the website where there’s going to be a lot of in-depth information, good information for parents. That was the tactic that was taken. And we have had negative feedback on the PSAs… because they do perpetuate a stereotype that was not accurate. So, whether the means to the ends are justified is difficult to say.
In further justifying this tactic, the interviewee notes:

I would feel very badly if we continued to propagate the idea that the Internet is bad and what kids are doing online is bad. I think what we need is a real understanding of why kids are using the Internet in a certain way; why they don’t care about their information; why they’re using it as a harassment tool; why are they doing that. Well, actually, why they’re doing that is because... they’re going through developmental stages which are totally normal. And they’re doing things online that they would normally do away from parental supervision. So, really they’re just using it as another way to explore sexuality, build social networks, do all those things they would have done before that they would’ve done away from parents. But now they’re doing it from inside the house and their parents are more aware of it. And the parents don’t understand the technology and, at the same time, they don’t understand the environment the kids are in. These are the issues that are really important for parents to understand. So, maybe you have to hit them over the head the first to say, “You have to be more involved.” Whether that’s the right approach or not remains to be seen.

Although the rationale presented above may be the “official” story told by those at MNet, the strategy that was eventually adopted in the Be Web Aware initiative may have also been one that was forced upon them. The interviewee later revealed that Microsoft and Bell Canada were able to use their financial leverage to steer the direction of the ad campaign in this particular direction. According to this one source, MNet had very little choice but to go along with this strategy or risk losing two of its major sponsors.

However, based on the interviews conducted, this particular incident was unique and appears to be the exception rather than the rule. Indeed, only one representative from MNet mentioned this event in their interview. Still, this example of the Be Web Aware PSAs speaks to the more general issue facing NGOs that must rely on private funding sources, while at the same time, maintaining an image of autonomy and independence from corporate donors. Although the representatives from MNet strongly insisted that its association with private industry has never compromised the organization’s general integrity, many acknowledged that they had to remain sensitive to how these partnerships might appear to the general public. One interviewee explains:
We haven’t had our hands tied by our sponsors, but we know that the optics are there so we have to be sensitive of that... All non-profits take money from corporate sponsors, so we’re all facing a sensitivity, but everyone understands that corporations sponsor non-profits. It’s just the environment we live in. We wouldn’t survive without corporate sponsorship.

Another interviewee, who noted that the question of independence was one that the organization was asked quite often, further suggested that this was part of a growing commercialization of educators to which they, themselves, have become increasingly sensitive.

To help ensure that the organization operates independently, MNet has implemented a number of sponsorship guidelines that prevent donors from interfering with the organization’s content. Other organizational by-laws are now in place that prohibits MNet from endorsing products and services of sponsors. There are even rules that forbid corporate sponsors from putting brand name labels or logos on materials that may go to children.

When asked directly as to whether or not their partnerships with private companies has had any influence on how the organization operates, all of the representatives from MNet responded with a resounding “no.” Quite the opposite, several respondents were quick to point out specific instances where they have publicly criticized their own corporate sponsors for engaging in certain practices that the organization sees as being potentially harmful to children. One interviewee recounts the following story:

In our [public] presentations on privacy, at one point one of our sponsors had very lax privacy [protocols] on their website that kids were going to. I used them as an example and they were aware that I was using them as an example. And they cleaned it up.

Thus, despite relying heavily on private sponsorship for its own survival, many at MNet felt that they had never shied away from openly criticizing their own donors for doing things that they
felt were problematic or went against their own particular views about responsible corporate behaviour.

While the problem of securing funding was mentioned quite often, many of the interviewees made it explicitly clear that they had never accepted money to undertake projects that would go against MNet’s underlying philosophy of media literacy and critical thinking. In fact, the cash-strapped organization has actually turned down certain collaborations with a number of big businesses for this very reason. Most recently, MNet has refused to participate with representatives from the music recording industry who wanted the organization to take a stance against piracy and copyright infringement that was highly inconsistent with its education and awareness mandate.

One interviewee describes the problem that MNet has had in trying to find funding programs that address the issue of illegal downloading in a manner that the organization sees fit:

It’s a problem because those who would like to fund us would like us to have a definite slant [that illegal downloading is wrong] and we’re not going to slap hands. I actually see downloading MP3s as civil disobedience on a really interesting scale. I see it as part of an evolution where society is driving the technology against outdated modes of delivering products, where you pay $23 [for a CD] for one good song… For us to tackle this issue, we would want to point out, “here is what the industry says and here are the ramifications.” But, unfortunately, those who have the money to fund us want us to say, “You are evil if you [illegally download].” It becomes difficult to address this in a thoughtful way; it becomes difficult to get funding to address this in a thoughtful way.

Ironically, the interviewee was quick to highlight the fact that the Canadian music industry has recently adopted less coercive measures to curb illegal downloading that are remarkably different
from the strong arm tactics employed by their American counterparts which aim to scare individuals into compliance with the threat of criminal prosecution.\textsuperscript{22}

On the whole, representatives from MNet believed that, while having to constantly search for funding remains a major challenge, it has not stopped the organization from doing what it feels is good work. As one interviewee remarked:

I’m very proud of us, organizationally, because it has been a real challenge finding the issues we think are important and trying to make those issues appealing enough to government departments to get funding. That said, we still have core areas that we have never been able to find funding for and that is frustrating.

At times, this situation forces the organization to be strategic in their grant applications by either proposing projects on topics they think are “hot” and will likely get financial support from government or by being creative with the project guidelines provided to them by funding agencies.

When asked if having to do all of these things in order to get money somehow compromised the work of the organization, one interviewee responded, “It compromises what we’d like to do, but it doesn’t compromise what we do, do. We think of ourselves as a little subversive and we work really hard within the parameters of the funding to do what we want to do and do it well... We all know that when you are reliant on government funding, the

\textsuperscript{22} The “Keep Music Coming” campaign is one example of this switch from sticks to carrots. Launched by the Canadian Recording Industry Association (CRIA), the primary goal of this initiative is to teach teens that not buying music will cause the numbers of musicians to dwindle. To help convince young people of the negative consequences of their downloading, a website has been created that tries to communicate the overall cost, as well as the number of people involved, in developing and producing musical talent. So, rather than demonize the activity and point out the illegality of file-sharing, this campaign tries to reason with young people by explaining to them the negative impact that this has on the industry. The underlying message of this campaign is quite simple: You must support the music industry if you want to “keep the music coming.”
government has its own little pet areas. We’ve had some very unusual funding combinations to make things happen. Sometimes we choose a topic because it’s hot.”

**Displaying Strength in Numbers**

One final benefit that the forging of networks provides MNet is the ability to display its strength in numbers. By bringing together such a large and diverse group of actors, the organization is able to convey the idea that what they are promoting is something that is accepted by everyone from Bell Canada to the Canadian Teachers’ Federation; particularly, that the overwhelming consensus is that teaching young people how to become media savvy and Internet literate is the most effective way of managing their use of this new technology. However, it is not simply a matter of how many people the organization is able to get onboard with its media awareness mandate, but the type of individuals as well.

MNet has used its identity as a network and the general support it receives from a very diverse group of actors to its advantage. For example, at the CRTC’s New Media hearings, the organization was represented by a total of six individuals. Three were employees at MNet, while the remainder either served on its board of directors or had some other connection with the organization. Arguably, this was done to convince the Commission that MNet’s position on Internet regulation and new media, more generally, was not developed in isolation, but in direct consultation with these various actors with whom they have partnered. As such, the views held by the organization were portrayed as reflecting the many interests and concerns of the different members that make up MNet’s network, and the end product of internal dialogue and debate regarding these issues.
Not surprisingly, the people selected to appear in front of the CRTC not only reflected the multiple partnerships that MNet has formed, but were also individuals in positions of authority who have had previous dealings with the Commission. At the very outset of their presentation, Fil Fraser, then Chair of MNet, made it a point to highlight the credentials of the various individuals who were representing the organization, noting that all of the presenters “bring a considerable wealth of experience to the table” (CRTC 1998f). The list of participants appearing on behalf of MNet on this day included: the Chair of the Ontario Regional Broadcast Standards Council; the Vice-President, Federal Government Relations at Bell Canada; the Government Film Commissioner and Chairperson of the National Film Board; and the President of the Communications Management Incorporated organization, introduced by Fraser, as “one of Canada’s pre-eminent Internet experts” (ibid.). Moreover, Fraser also listed a number of board members who could not be in attendance that day including the Vice-President of Shaw Communications, the Chief Executive Officer of MicroIntel – a new media production house based out of Montreal and the Director of Profession Development Services of the Canadian Teachers’ Federation.

Despite this long list of individuals who come from very different sectors of Canadian society, all of these participants were said to be representing the common interests of MNet. As Fraser remarked, “I want to begin… by saying that we all come here only wearing our Media Awareness Network hats” (ibid.). More significantly, while this distinct collection of people may not always agree on certain positions, they stood united in their opinion that education is the best approach to dealing with the challenges of new media and that Internet literacy is the most effective way of ensuring that children reap the full benefits of this new technology, while still remaining safe in this digital environment.
When asked about the connections between industry self-regulation and media education, a member of MNet’s board of directors responded by saying:

The Media Awareness Network has been supported, in fact kept alive, by the private sector, and not just by one industry within the private sector but by a number of industries that you may not traditionally expect to see sitting at the same table supporting the same organization. You have the telephone companies, you have the cable industry, you have the broadcasters, you have producers, you have a variety of interests who all believe that it is important to ensure education. It goes to the story give a person a fish and you feed them; teach them how to fish and you equip them for life. This is essentially the purpose of the Media Awareness Network, and I think it is because the industries who are working in this environment really believe it is important.

The main argument here is quite clear: If a group with such a diverse set of interests such as MNet can all see the inherent value of media education, then it must obviously be the “right” approach to take with respect to Internet regulation.

Creating a Common Goal: Protecting Children from Risk

As the interviews with MNet staff reveal, building networks is not a simple and straightforward task. Quite the opposite, MNet’s network of actors is in a precarious state that is always liable to breakdown. To prevent this from happening, the organization must continue to work at ensuring that the enlisted actors stay interested in MNet’s initiatives and never “make off on their own.” An equally pressing concern, however, is the possibility that the actors that they have enrolled will somehow “betray” MNet by pulling it farther away from its intended goals and closer towards their own.

According to several interviewees, the eclectic mix of people who make up the media awareness “network” are connected and held together by MNet’s concern for the safety and
general welfare of young Canadians. For teachers and librarians, this focus on children, coupled with its emphasis on media education and Internet literacy, makes MNet a very obvious organization with which to align forces. Likewise, by focusing on the health and safety of kids, the organization has been able to carry out joint projects with groups such as the CPS and the Girl Guides of Canada that have long been involved in this area. One could argue that, from the perspective of these enlisted actors, joining MNet’s network simply makes sense as it lets them work towards achieving the common goal of keeping kids safe.

Finally, while not denying the fact that they may have a genuine interest in protecting children from certain harms associated with media exposure, private corporations who donate money to MNet can benefit from being seen in a very positive light by sponsoring a worthwhile cause; namely, child safety. As one interviewee noted, “No one will deny that [private companies] have corporate responsibility objectives they have to meet. They’re not all altruistic. They get gains from that. We don’t hide that. They get promoted on our website [by being listed as sponsors]. They get that kind of exposure.”

When asked about why MNet has devoted itself exclusively to children, one interviewee did acknowledge that it was much easier to sell the issue of child safety to the general public, but provided other pragmatic reasons for targeting this particular group. He reasons, “It makes sense that kids are targeted. I don’t think we use that as our selling point, but perhaps it is. But that’s not the main reason. The main reason is that little kids are like sponges and can absorb more information than adults can. [It’s] a better use of resources to invest in media education a media literate society at an early age.”
Although other interviewees mentioned that young people were most vulnerable to the possible harms associated with media exposure and that it therefore made sense to pay close attention to this particular segment of the population, many were also quite direct in suggesting that, as an organization, children were an easy and effective demographic to target. Noting that all campaigns require a common goal behind which people could fully back, one respondent argued that media awareness and critical thinking initiatives would not have garnered the same type of support had they not focused exclusively on children.

Another interviewee was even more frank and stressed that MNet was far more likely to receive funding and general support for programs that could somehow be connected to child safety and risk management. She explains, “It’s easier to get money for these [safety] issues, which is why “Be Web Aware” was the kind of program it was because people understand safety.” The respondent continued by rationalizing this over-emphasis on safety and risk as a necessary evil for MNet and one way the organization is able to bring attention to other media-related topics:

If that is what’s going to get people’s attention. If you can start to insinuate the deeper issues [e.g., racial and gender stereotypes in media; increasing commercialization in children’s lives; environmental issues; consumerism and globalization] then that’s what you have to do sometimes. You have to stay alive as an organization. Especially with the general public, you have to blow a big horn sometimes. There’s so information [out there] and so many issues to be involved in. Media education is not on people’s radar screens.

Though several of the interviewees acknowledged that this was simply the reality for most non-profit organizations, many were also quite discouraged by the fact that the organization had to rely so heavily on safety and risk in order to secure funding.
One interviewee lamented that, while it still remains an important issue that needs to be fully addressed, the current preoccupation with online safety has come at the expense of other equally pressing matters. Noting that the fears about the Internet have largely been overblown, she argues:

It’s no problem selling the safety stuff. All the other stuff, people are not as interested. [But] safety is just this one little part. It’s been a real frustration to us that huge amounts of government money have gone into safety. Yet, to our knowledge, Canada has not lost one child [from an online predator]. It’s not that it’s not important, of course it is. Safety is important, [but] huge amounts of money are going to this. Instead, as a society, we should be looking at the total impact of things, which affect kids.

Thus, despite their best efforts at presenting a “balanced” view of new technology, the issue of online safety is what has generated the most public attention. As a result, much of the funding that MNet has been able to secure are for programs directed at keeping kids safe.

Indeed, the less connected the issue is to the physical and mental health and well being of children, the more difficult it is to gain public support. As an organization, it seems much easier for MNet to secure funding for projects that address the dangers of child luring – no matter how unlikely this is to occur – than it is for initiatives aimed at dealing with the potential harm that may be caused by the increasing commercialization of children’s lives. One of the interviewees described this as the difference between selling “hard” and “soft” topics: A hard topic is one where the connection to the safety of children is immediate and easily recognizable (e.g., the dangers of child luring), while a soft topic is one where this connection to risk and harm is less obvious. The interviewee explains:

We’re taking the big picture approach. We’re not looking at the immediate and that’s what makes things more difficult. This is part of a healthy society; informed citizenry, engaged citizenry as media consumers. It’s quite complex. It would be simple to say, “Here is our issue.” And that’s the challenge. We don’t have one little hook. It’s so broad and so soft and so difficult to measure.
Part of the difficulty with trying to raise awareness and obtain funding for “soft topic” projects is that they cannot be easily quantifiable. By comparison, the interviewee draws on the example of crime noting that, “You can measure crime. Bring out the statistics! Has crime gone down as a result of funding three more policemen (sic.) in that community?”

**Making the Risks Real and Measurable**

Before they can even begin to persuade actors into believing that media literacy and critical thinking is the best approach to managing the use of this new technology by young people, MNet must first demonstrate that this is actually a problem that needs to be addressed. From the very outset, those at MNet have clearly understood that in order for others to take them seriously and to fully appreciate the importance of the work that they do, they had to provide some type of evidence to legitimize their concerns. One way that MNet has done this is by getting involved in a number of major studies regarding Internet use in Canada.

In 2001, the organization released a major report entitled *Young Canadians in a Wired World*. This report, prepared for MNet and the Government of Canada by Environics Research Group, presented key findings from a major study examining the use of the Internet by Canadian youth. Dubbed the first of its kind in Canada, this research project looked specifically at how young people were using this technology, the extent to which they place themselves at risk, and their perceptions of parental knowledge and supervision of their Internet use (Environics Research Group 2001: 7). The data for this study was taken from a self-administered survey conducted among 5,682 Canadian youths, aged nine to 17 years (ibid.).
The report also contained comparative data from a national telephone survey called “Canada’s Children in a Wired World: The Parents’ View,” which was conducted among 1,081 parents with children six to 16 years of age who have a personal computer at home (ibid.). This particular survey examined parents’ views on their children’s Internet use, their awareness of the risks and benefits of this technology and their opinions on who should be responsible for dealing with Internet-related issues and on the measures that should be taken to address them (ibid.).

Although the research project was initiated and funded by Industry Canada in partnership with Health Canada and HRDC, MNet had a tremendous say in deciding the overall focus of the study by drafting the questions that were to be included in the surveys. Several representatives from MNet explained that, because of the newness of this technology and the lack of available information about how it was being used by young people, it was decided very early on that one of the primary aims would be to shed light on the different kinds of “risky” activities that children and teens were engaging in online. Particularly, the questionnaires asked respondents about their experiences exploring private and adult-only chat rooms, meeting Internet acquaintances in person, being exposed to sexually explicit and hateful material, and sharing personal information.

The results of the survey revealed a number of interesting findings. In terms of parental supervision or monitoring, most youth said that there were very few rules about Internet in their home and that their parents did not discuss their Internet use with them or checked to see what websites they were visiting (ibid.: 11). With regards to exposure to inappropriate content, most youth said that they had been exposed to pornography on the Internet, while a significant number had also been exposed to violent and “hateful” material or sent material that had bothered them (ibid.). Finally, the survey found that a small number of youth have met in person someone they
first met on the Internet. Among these, most took someone with them, although rarely an adult. A few experienced encounters that were threatening or difficult.

The survey of parents and their perceptions about the nature, safety and value of children’s online activities was equally revealing. According to the final report released in 2001, Canadian parents are “optimistic about their children’s use of the Internet” with eighty percent thinking that the technology is the “way of the future” (MNet 2001: 3). The results of the survey also suggested that parent were aware of the benefits of this new medium and recognized that, because this technology was still in its formative stages, they could influence the way children will use it (ibid.). In keeping with these findings, the majority of parents (94%) believed that educating children about “safe, responsible Internet use” is a top priority with more than half of them (55%) believing that users have to take responsibility for family Internet use (ibid.).

Respondents were also asked of their views regarding the “control” of the Internet. More specifically, they were given the following statements and asked to decide which of the two was closer to their own opinion:

Some people think that the Internet needs to be controlled to protect people’s personal lives and privacy. Others think that the Internet can never really be “controlled,” so we need to learn to find ways to live with it, taking individual responsibility for protecting ourselves, and our families” (ibid.: 16).

The results from the survey show that a very slight majority (54%) agreed with the latter statement, while 44% of the respondents sided with the former (ibid.: 16).

One can easily see the value of these findings for MNet. These figures may be used as evidence to substantiate the claim that a majority of parents surveyed – albeit a very slight one – are in general agreement with the organization’s view that individuals need to take greater responsibility for themselves and their families when venturing online. The responsibilization of
the end user is no longer taken as merely the opinion of MNet, but one that is even shared those who are to be responsibilized; namely, parents. The idea that the majority of parents surveyed are on board with MNet’s position that they need to take on greater personal responsibility for protecting themselves and their families when using this technology is transformed into a statistical fact that can now be taken up and mobilized to generate a variety of different effects.

Even statistics that may seem somewhat counter to the interests of the organization can be spun to fit MNet’s needs. For example, one of the more interesting findings of the parent’s survey showed that a majority of respondents (51%) cited accessing sites with “inappropriate material” as being their biggest concern regarding their children’s use of the Internet. In contrast, only eighteen percent mentioned concerns relating to “security” or interaction with strangers. Surprisingly, twenty-three percent of individuals surveyed stated they had no concerns about their children being on the Internet.

While the fear over the availability of inappropriate content may have been expected, the other results may have come as a shock to MNet. That very few parents were concerned about their children’s security or who they were interacting with online, and that an even higher proportion suggested that they had no concerns at all, does not bode well for an organization that is dedicated to addressing these sorts of issues. These results, however, were interpreted in another way. In the summary of the final report, the authors concluded:

23 This figure of “inappropriate content” is broken down as follows: “pornography” (31%); “inappropriate sites in general” (26%); “violence” (3%) and “hate sites” (2%).

24 This figure of “interaction/security” is broken down as follows: “chat rooms” (11%) and “predators/security” (10%).
The survey results show that parents are not as concerned about the hazards of e-mail, chat rooms or instant messaging activities as they are about inappropriate Internet content – primarily pornography. This would indicate that Canadian parents have yet to grasp the full interactive capabilities that the Internet is offering to their children, and the potential risks this interactivity introduces (ibid.).

The findings are thus explained away as a matter of ignorance on the part of parents who fail to see the various dangers and potential risks associated with online interactions. Rather than being taken as an indication that meeting people on the Internet may not be a pressing issue after all, MNet has done the very opposite by claiming that the results show an even greater need for the kinds of education and awareness programs that it offers.

Crunching the Numbers

Whether they are used to demonstrate support for a particular cause or as evidence that certain initiatives are needed, numbers and figures do a great deal of work for MNet. The use of statistics adds a tremendous amount of legitimacy and credibility to the various claims being made by making them appear less like subjective opinion and more a matter of objective fact. And, by making their concerns seem more “real,” MNet can draw upon this data to convince other actors to join this network and take on the project of promoting media awareness. Clearly, from an ANT perspective, this type of statistical data can be viewed as an important actor (or “actant”) in MNet’s network as they provide for some form of action (e.g., getting other individuals or groups to form partnerships with MNet, encouraging parents to take responsibility for their children’s use of the Internet, convincing government agencies or private corporations to provide funding, etc.) to take place.
The importance of the various studies which it has been involved in conducting was certainly not lost among those at MNet. As one employee noted:

It [the study] brings weight to our arguments. It proves a lot of the thing we’ve been saying. And the statistics are a major component of what people look for. They look for hard numbers. And when they’re studying media or when they’re talking about media, they need to be able to back up the things they are saying. This study was about the Internet and kids uses of the Internet because in 2001 there was not a lot of information about what exactly kids are doing online. Parents knew that their kids were doing this ‘Internet thing’, but they didn’t really know what it was kids were doing and how they were using this technology to their advantage. So, I think what we tried to do is answer some of these questions in our survey.

Given the dearth of information on Internet use by children in Canada, the ability to draw upon “hard numbers” to substantiate their claims makes these statistics invaluable to MNet. Not only does this data help the organization gain support by convincing others about the need for greater media education directed at children, but it also serves to inform the various programs and resources that MNet provides. One interviewee explained, “[the study] feeds [into] everything we do in the area of Internet education, so we know that what we’re producing is germane, is relevant, is what they need in the classroom [and] what parents need.”

According to a couple of interviewees, the data derived from these studies has also had an impact on other agencies and institutions. One respondent claims that the 2001 survey of kids’ use of the Internet is “still the one that is quoted” and “used by everyone.” She continues, “[the study] has been really critical for the development of all our resources and it has influenced policy at the federal and provincial levels, it has influenced policies in libraries and educations systems, so it was a really important study in Canada.”

With the lack of available data regarding children’s use of the Internet in Canada, MNet has been able to rely heavily upon the research that they have helped to produce as a major
source of authority. The organization has clearly taken on the role of knowledge brokers with regards to information about the Internet in general and the potential risks that it poses to young people, in particular. Perhaps not surprisingly, the numbers and figures that may elicit public fear and be viewed as cause for concern are often used to legitimize the various risk management practices that MNet encourages children and parents to adopt.

A key statistic that appears to have garnered the most attention for the organization comes from the 2000 survey of students that suggests 25% of kids have been asked to meet someone in person who they have only met online. This “scary number” (see Best 2004) is quite prominent in some of the PSAs for the Be Web Aware campaign discussed earlier. In one commercial, this statistic is typed out on a computer screen for viewers to read as a way of bringing attention to the dangers of child luring on the Internet. Arguably, the number makes this risk appear far more “real” to the parent who may have thought that the chances of this actually happening were quite slim. Thus, if the disturbing image of a young girl disappearing off a swing is not enough to convince the viewer to go to the Be Web Aware website and learn about what they can do to protect their children from online paedophiles, then the statistic should.

MNet is not the only organization to report and rely upon this scary number. Reporters from various news outlets who write about Internet safety often cite the 25% figure in their stories. According to one interviewee, this statistic is also used quite heavily by law enforcement agencies seeking budget increases to deal with this specific topic and other forms of online crime. Ironically, while they themselves may be guilty of overstating the risks associated with using this new technology, many at MNet were concerned that this statistic was being misused to demonstrate, empirically, that the Internet is a potentially dangerous place for children. Several
interviewees were particularly concerned that this number was completely taken out of context and, as a result, served to perpetuate unwarranted fears about kids going online.

One interviewee clearly describes her frustration with what she sees as a misrepresentation of the data and the implications that this may have for how we think about and understand the nature of this technology. She explains:

I think that a lot of the risks about the Internet are overstated. The risk of luring… These are serious risks, but statistically they are so small. We can’t pretend that there aren’t risks, but we tend to look at what the mainstream is doing… Last time, we found out that 25% of kids have been asked to meet somebody offline [who they have only met online]. That statistic has been used a lot by law-enforcement and government. Fifteen percent of kids went to meet somebody offline. That’s huge. We’re not comfortable with that because we want to know who these kids are meeting. Were just [meeting] someone from their community? Or was it a 45 year-old man from Texas crossing the border?

Another representative from MNet shared similar concerns about the vagueness of this statistic, but noted that this finding was still quite valuable in that it showed how kids between the ages of nine to fifteen years were using the technology as a way to set up anonymous meetings with other people.

Nevertheless, because of the potential for misinterpretation, those at MNet took great care at explaining this number whenever possible. When asked about whether or not he was at all concerned about this data being misconstrued, one respondent replied:

I guess that’s the fear with any statistic or any number. We try to interpret it as much as possible and we try to always provide some perspective to the reason behind the numbers as much as possible. And, I think our top sheet survey points to the pitfalls in the survey as any survey does. I guess you have to look at the survey for what it is and look at the questions in an objective way as well.

In addition to including a variety of caveats in their information packages that explains the limitations of the survey data, another MNet employee stated that they would also take great
efforts at contextualizing these numbers when speaking with reporters, but still felt that they had very little control for how this would be presented by the media once the information was out of their hands: “If we’re able to speak with the reporter, we certainly explain the statistics to the best of our ability. But, in most cases, they’re just taken from the report in different ways.”

On a more theoretical level, the ability of these statistics to be mobilized by others to generate a variety of different effects speaks to the inability of MNet to hold this actor in its place within the network. This survey, which the organization originally conducted as a way of gaining credibility and legitimacy for the work it performs, has been allowed to “make off on its own” and, as a result, has “betrayed” MNet. Instead of helping to reinforce and spread the message that the Internet provides many positive benefits to children, these statistics have done the exact opposite by placing much of the attention on the rather negative aspects of this technology.

While those at MNet can be held partly responsible for creating the mass hysteria over the child stalker who lurks within the shadows of cyberspace, several respondents lamented that this has made it much more difficult for the organization to its more message across to the general public:

There were broader issues that the Be Web Aware campaign was trying to address… [One focus] was “be safe,” but also that you [should] communicate with your parents, which is more important than “be careful there are strangers on the Internet.” The Internet is more than just strangers on every corner. So, maybe it misrepresented what the general campaign was… Yes, you want to tell people that there are dangers. No one is saying that the Internet is all flowers and nice (sic.). But that’s not all there is and you have to be careful with how that is presented to people. Again, we’re not here as an advocacy organization telling people that the Internet is inherently bad. We’re saying that the Internet is a tool and a part of our lives, [and] how to use it and remain safe and secure in your homes.
Despite their best efforts to control the data, MNet has been unable to prevent other actors from taking up these numbers for their own purposes. As a result, the risks associated with children using the Internet have been largely blown out of proportion. This scary number has thus been a double-edged sword for MNet: While the statistic has helped the organization gain public attention and support for its cause, it has also reinforced a very negative image of this technology that MNet has long been trying to dispel.

**Not Taking a Stand: Advocating Non-Advocacy through Critical Thinking**

The final factor that may help to explain how MNet has been able to build its network is the “non-advocacy” stance that the organization has chosen to adopt. Indeed, all of the representatives from MNet were quick to point out that they were not an advocacy group and that this was a central feature that clearly set the organization apart from other NGOs. However, this is not to suggest MNet holds no official position regarding the Internet and media, more generally. Looking closely at MNet’s website, one can easily see that the organization strongly advocates for greater media education in Canadian homes, schools and public libraries, and that it holds particular points of view regarding a variety of different media-related topics. The fact that the organization presented in front of the CRTC during its New Media hearings serves as even further evidence that MNet does, in fact, engage in advocacy work from time to time. As one interviewee admitted, “To be quite honest, we’re not totally unbiased. But we try as much as possible. We advocate being informed.”

Instead of taking a moral position with regards to media and arguing for or against the censorship of certain types of content, MNet has continued to promote the importance of media
literacy and critical thinking among young people. A former board member of MNet clearly describes the difference between these two different approaches:

The advocacy approach usually means you have a shrill voice from one perspective. “Television is bad, so don’t watch it. Keep your kids away from it.” The problem with that is when the broadcasters hear that position, their backs get up… MNet didn’t take an advocacy approach. They said what they need to do is equip children, equip parents, equip teachers to be able to be an informed consumer of all of those media. I think it was a very smart approach to take because the moment you start pointing fingers…

By placing the focus on education, the responsibility for dealing with the potential dangers associated with the Internet and other forms of media shift away from the producers and distributors of this material and is passed onto public citizens who must now teach children and teens how to think critically. Highlighting the advantages of this approach, the interviewee continues:

Advocacy puts you in a corner. MNet has been able to move around the field very easily because it is fair. It doesn’t slam the toy manufacturer for doing ads in a certain fashion. It says, “Fine, that’s their business. They’re going about it their way.” But what I’m going to tell you is that I’m going to provide the tools for media classroom settings, for parents and for kids, themselves, to start placing critical judgment against what they are seeing. In other words, they’re questioning it. So it allows a much broader base of support.

Adopting this “non-advocacy” position clearly allows the organization the ability to build important partnerships with a variety of different players. Most significant in this regard are the alliances they are able to forge with private industry:

By taking a side on any media issue we couldn’t have any credibility with the Canadian population if we’re seen as supporting one ideal or another. Even if they are universally accepted ideals, we’d be seen as having some kind of agenda and a mission that is to change something in media, and we wouldn’t get any cooperation from broadcasters or media companies. By staying neutral – if we can say that – and saying that developing critical thinking skills is the best solution – and I think it is, we get better results in the end than trying to squash any type of content we don’t like – I think our approach or mission is better achieved.
Ironically, not being seen as a “political” organization is, in itself, a political move that the organization has consciously made in order to build its network. Not surprisingly, then, rather than identify themselves as an advocacy group, those at the organization prefer the title “media educators” to describe what they do.

When asked whether or not the organization ever tells children what the “right answers” are or what they should do once they have thought critically about a certain issue, one individual responded:

That’s the interesting part about MNet. We show kids how to ask the right questions, but we don’t provide them with answers because they need to come with the answers themselves with the values that their parents pass along to them; they’ll be able to make their own choices... Throughout everything we promote, we always teach kids to get their parents involved because we recognize that kids might not always make the best choices when it comes to media so, if they’re faced with something they don’t know, they should ask their parents.

This places children in a peculiar paradox: While they are encouraged to think critically and question whatever it is they stumble across when venturing into cyberspace, they are nevertheless expected to defer to parental authority.

The Game of Critical Thinking

To help children develop their critical thinking skills, MNet has produced an interactive video game called “Privacy Playground: The First Adventure of the Three Little Cyber Pigs.” The online game, which is downloadable free of charge from the MNet website, is directed at helping children aged 7 to 10 learn to “critically evaluate commercial Internet sites” by showing them how to spot invasive and deceptive online advertising techniques. Like many of the other games produced by MNet, players are basically asked to put themselves in the various situations
in which the main characters find themselves. These situations are designed to closely resemble “real life” experiences that a child might encounter when online.

Throughout the game, the main character runs into different scenarios where she or he must make a crucial decision. The attention is then turned onto the player who must decide on what the character will do next by answering a yes/no “cyber quiz” question. After every decision that is made, the player is praised or scolded for their choice and given additional information that either reinforces a “good” decision or helps them make a “better” decision in the future. However, in keeping with the underlying philosophy of staying neutral and allowing children to come to their own conclusions, players are never actually told that they have made a “wrong” or “right” decision.

In order to progress through the game, the player must respond to the cyber quiz question by clicking on either the “yes” or “no” button. The player who happens to answer “yes” is greeted with the following message:

I must check your oxygen level, Earthling – you are not thinking clearly. Websites like Virtual Pigsty exist for two reasons. First, to sell you things. Second, to find out more about you – so they can sell you more things. Don’t be fooled. Keep your personal information private.

The above message is a perfect example of MNet’s “critical thinking” philosophy being put into practice. Indeed, what makes this example so interesting is that children are never explicitly told that they have either made the “right” or “wrong” choice. Nor are they told that they should avoid filling out online surveys or disclose personal information about themselves.

The child who happens to think that Les Pig should fill out the survey is told that companies that do business online exist to make money and warned that this information is being collected about them so that they can be sold to. Although they are never told why deceptive
online marketing techniques are bad or why they should protect their personal privacy, the assumption here is that the child will somehow come to the realization that nothing is “free” on the Internet and be “turned off” by a company that is simply out to get their money.

Another important aspect of this online game is that, while it does not present private corporations in the most positive light, they are also never truly vilified. Children are only told that companies exist to make money and that they collect survey data in order to sell more products to consumers. However, nowhere in this game or on the MNet website are these companies demonized or labelled unethical for engaging in deceptive online marketing schemes aimed at children. More generally, while it has never totally shied away from criticizing corporations that use these marketing ploys, MNet has never lobbied for greater government restrictions on advertising or campaigned against companies that engage in these kinds of practices. Nor has it attempt to launch a broader attack on the current capitalist system. Instead, MNet takes a more neo-liberal approach and focuses on equipping and empowering consumers with the ability to think critically so that they can recognize when they are being sold to and respond in a manner that they feel is most appropriate.

Whether it is in regards to deceptive marketing techniques, gender stereotyping or online hate, MNet puts the responsibility for dealing with online content firmly in the hands of the consumer who receives this material, rather than those who produce it. One can certainly see how this particular approach may be appealing to private industry. As several interviewees pointed out, corporations are far more likely to back an organization that is not overly critical of the work it does. By promoting the need for critical thinking and media education, more generally, MNet not only presents itself as being an organization without a political agenda, but also helps to displace any responsibility that private corporations for the materials they produce
and disseminate. All of which are necessary if the organization is to enrol and enlist these companies into its network.

**Conclusion**

This chapter has looked at the work of MNet and has examined how this relatively small, non-profit organization has been able to transform itself into major players in the field of Internet safety. Using key theoretical and conceptual tools from ANT, I have approached MNet’s success as a function of its ability to form partnerships and build networks which, among other things, allows the organization to secure funding for projects and spread its message of awareness and education to a much broader and more diverse audience. But, like other networks, MNet has to constantly work at keeping these partnerships stable and preventing actors from making off on their own.

Several factors were identified as being essential to MNet’s success at network building. Focusing on children’s health and well-being, using numbers and statistics to legitimize their claims, adopting a “non-advocacy” stance and promoting the virtues of media literacy and critical thinking are all elements that help to explain how this organization has been able translate its message of “safe, wise and responsible Internet use” into a major governing strategy that is now being adopted in Canada and other parts of the world.

However, none of these factors should be seen as determinative in nature. As a number of interviewees have pointed out, emphasizing the possible harm posed to children or relying upon “hard” figures to demonstrate potential risks does not automatically guarantee that a specific issue will generate public attention, appeal to public or private sponsors and receive project
funding. On the contrary, all of these factors appear highly dependent upon each other. To use the language of ANT, these factors are all actors (or “actants”) in the socio-technical network called MNet that must be aligned and stabilized into a working whole if the organization is to be successful. These actors all perform an equally significant function – at least analytically – in MNet’s network and, if you remove any one of these actors from the equation, the network is liable to breakdown and fall apart.

Given the important role that each actor plays in this network and their dependence upon one another, it becomes difficult to isolate causality in any one location. MNet’s authority as experts in the field of online safety should therefore not be understood as coming from any one single source, but from its network building capacity. As I have tried to illustrate in this chapter, MNet has worked extremely hard at constructing and conveying a particular vision of this technology in which traditional forms of regulation are obsolete and where the development of critical thinking skills among young people is taken as the most viable alternative. What is more, the organization has had to convince others to buy into its project and accept its conception of the Internet – in terms of how the technology works, what it does, the possible risks it poses to young people, how it can be effectively managed and what it means for the future – in order to make itself, and the work it does, relevant.

Similarly, using ANT to examine the work of MNet also forces us to re-evaluate how we understand the very nature of online governance. Contrary to many of the technological determinist claims made by various cyber-enthusiasts (see, for example, Barlow 1996; Dyson 1998; Johnson & Post 1996a, 1996b; Rheingold 1993), the Internet does not appear to automatically produce a system of self-regulation in which users of this technology – empowered by the freedom provided by this new means of communication and the communal spirit that it
fosters – naturally start governing themselves. Indeed, to accept this premise would be to ignore the work that MNet has had to do in order to get citizens to take on greater responsibility for managing Internet use in the home, and the amount of training that it provides to parents, teachers, librarians and community leaders to help teach young people how to be “safe, wise and responsible” users of this technology.

At the same time, the findings from this case study suggest that it may be equally unwise to assume that the ethos of self-governance emerging on the Internet is the result of rising neo-liberalism and the crisis in social welfare. Although several representatives from MNet did acknowledge that they were performing a function that government has left for them to undertake, none of them believed that they were acting on behalf of the state or simply picking up the regulatory responsibility that has been downloaded onto the organization. Nor did they see themselves as participants of a larger state project in which the mandate was the production of more responsibilized subjects.

Quite the opposite, those at MNet saw the idea of Internet literacy as a strategy for dealing with this new technology as their own creation. As noted earlier, the very phrase “safe, wise and responsible Internet use” was directly taken from the organization and inserted into the federal government’s 2001 report on illegal and offensive content. Furthermore, given the little amount of financial support that is being provided to them, many interviewees lamented that the organization existed not because of government, but largely in spite of it. Thus, rather than being viewed as automatons who have been burdened by the state to educate and empower citizens to

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25 As one interviewee explained, “If MNet wasn’t there, they [government] would have to do it. It would cost them five times as much for twenty percent of the output. They’d screw it up. It is absolutely amazing what has been created by this small organization with little resources.”
effectively govern themselves while online, MNet can be seen as an organization that has worked tirelessly to become experts in the field of Internet safety and to promote its own vision for how the use of this technology can be properly managed.

As I have demonstrated in this chapter, MNet’s success cannot easily be attributed to a single factor or reduced to one simple explanatory account. It is not simply a story about the influence of technology on society or the hegemonic influence of corporate interests. Nor is this all about neo-liberalism, the death of social welfare or the growing concern over risk and its management. Instead, the story that I have documented here about how this relatively small non-profit, non-governmental organization becomes a significant governing agency with respect to Internet use in Canada is one of complexity and contingencies.

And it is here that we can see the value of ANT as a theoretical framework. By adopting an “agnostic” approach to empirical research and using ANT as a lens through which to study this organization and the work it performs, we can move away from seeking global explanations for why certain systems of online governance have emerged and begin considering how these have taken shape in the first place. In so doing, we can avoid getting caught up in an unending technological versus social determinism debate and, instead, focus our attention on the various micro-politics that are at play.

The use of ANT also allows us to re-examine the concept of power and how it is that certain agencies gain the ability to govern. Rather than thinking about power as something that can be possessed, contained and located within a particular site, we can re-conceptualize the ability to govern as something more fluid, dynamic and negotiable. We can re-imagine power as the ability to draw various nodes into one coherent network. True to its name, MNet’s success
comes from its ability to enlist, mobilize and hold together this socio-technical network of human and non-human actors. MNet’s power is not derived from any one single node or point along this network, but through the “networking” that it performs and its capacity to connect and hold in place these various actors into this coherent whole.
Chapter 4
Putting Cyberspace in its Place

Introduction

Cyberspace. A consensual hallucination experienced daily by billions of legitimate operators, in every nation... A graphic representation of data abstracted from the banks of every computer in the human system. Unthinkable complexity. Lines of light ranged in the nonspace of the mind, clusters and constellations of data. Like city lights, receding.

William Gibson (1984)

The above excerpt is taken from William Gibson’s 1984 science-fiction novel *Neuromancer* and is frequently cited by academics and Internet enthusiasts as the very first appearance of the word “cyberspace.” Although the term was coined well before the massive explosion of e-mail, chatrooms and the World Wide Web, cyberspace is now commonly used to refer to the domain of human activity and social interaction made possible through the advancements in computer-mediated communications and the development of the Internet. More than twenty years after the initial publication of *Neuromancer*, the term has become a part of most people’s vocabulary and has even made its way into the online version of the *Oxford English Dictionary* (2004), which defines it as:

The notional environment within which electronic communication occurs, esp. when represented as the inside of a computer system; space perceived as such by an observer but generated by a computer system and having no real existence; the space of virtual reality.

What is clear from this definition and Gibson’s (1984) description presented at the beginning of this chapter is that cyberspace has no real physical geography. It is not a tangible place like a living room or a library. On the contrary, it is a spatial metaphor that describes the “consensual hallucination” of a “virtual reality” experienced by those who happen to “go online.”
Despite the fact that it cannot be located geographically, the use of the term cyberspace and other references to it “as a place” allows us to ignore the various technical complexities surrounding this new medium. The language of Domain Name System (DNS) server addresses and TCP/IP protocols that is foreign to most is replaced with spatial images that are more familiar and easily understood. But, as Richard Ford (2003: 154, emphasis in original) suggests, thinking about it spatially will “not help us to understand the Internet so much as it will affect the way we understand the Internet.” Indeed, the manner in which we choose to conceptualize the Internet can directly shape how we approach this technology. More specifically, the forms of knowledge that become readily accepted and relied upon have immediate consequences for how the Internet is regulated and governed.

Like in other countries, the courts in Canada have recently faced the challenge of deciding whether or not other nation-states can rightfully impose their laws on Canadian citizens for activities that transpire over the “global” network of the Internet. Given the legal tradition of determining jurisdiction on the basis of territory, the courts have been forced to address the very difficult question of where in the (physical) world an activity takes place when it occurs “online.” Yet, in order to do so, the courts have had to first make sense of this new technology and establish a general framework for understanding how computer-mediated communication works. Perhaps not surprisingly, the courts have avoided the use of highly technical jargon and, instead, have opted to import the cyberspace metaphor and other spatial references as a way of conceptualizing the nature of Internet technology.

The courtroom has thus become a site where cyberspace has been “translated” into legal thought. Indeed, by taking up and mobilizing this concept, the courts have turned cyberspace into a “real” place within the context of the law and transformed it from a virtual to a legal reality.
This recognition of cyberspace “as a place” has figured prominently in terms of how legal jurisdiction on the Internet has been decided in Canada. However, much like the translation of text from one language to another, the transportation of cyberspace from a literary to a legal register does not always render a precise reiteration. As a consequence, the cyberspace that is constructed and produced by the courts is far different from the utopian vision imagined by early Internet enthusiasts.

Borrowing key analytical tools from ANT and S&TS, more generally, this chapter considers how the spatial metaphor of cyberspace is taken up and translated into law by examining the various Canadian court judgements where the term appears. Rather than engaging in the current debate over whether or not the “cyberspace as place” metaphor is an appropriate one (see, for example, Hunter 2003; Lemley 2003), the chapter looks at the ways in which the courts spatially conceptualize and articulate this technology, and the effects that are generated from the formation of these knowledges. More specifically, I will focus on how the “cyberspace as place” metaphor has been adopted in cases that deal with the question of legal jurisdiction on the Internet and the impact this has had on judicial decision-making. Particular attention is paid to how conceptualizing the Internet in spatial terms has allowed the courts in Canada to render online disputes, especially those involving parties from different jurisdictions, “justiciable.” I begin this discussion by documenting how spatial discourse has been used to talk about and make sense of computer-mediated communications.
“Building Cyberspace” and Thinking about the Internet “Spatially”

During the very early stages of its development, access to the Internet was limited to researchers, those in certain areas of government and various academics (See Castells 1996; Gutstein 1999). Not until the invention of the modem in 1978 was network connectivity made available to those outside of this select group. With this new piece of hardware, individual computers were now able to directly communicate and transfer files without the assistance of a host system. Further advancements in technology then made it possible to link computers together over regular telephone lines. Computer users, who were not affiliated with a university or research institute and thus excluded from the private network of the Internet, had now found a way of connecting with each other on their own.

This new technology, however, created more than just an alternative means of communication. In addition, it has allowed for the bonding or “communion” among Internet users (Watson 1997: 104). Thousands and thousands of networks emerged to support discussions on topics ranging from politics and religion to sex and research. Howard Rheingold (1993: 5), one of the early “pioneers” of the Internet, views these shared discussions as the primary foundations of the “virtual community,” which he defines as the “social aggregations that emerge from the Net when enough people carry on those public discussions long enough, with sufficient human feeling, to form webs of personal relationships in cyberspace.”

Yet, over the last two decades, the Internet has undergone a variety of changes. It has grown from a network open only to select group of individuals to a global means of mass communication. Although it was once thought to be inappropriate to utilize the Internet for commercial purposes, users can now purchase anything from groceries to automobiles at the
click of a mouse. In North America, dial-up connection to the Internet has almost become obsolete, as DSL (Digital Subscriber Line) technology, high-speed cable access, and wireless networks become the industry norm. But, while the technology and its availability have drastically changed, the ways in which we think about and conceptualize the Internet appear to remain the same.

Many users still commonly employ the term cyberspace as a metaphor describes the abstract and virtual domain created by the advancements in computer-mediated communication. Metaphors such as this one are generally used to help make sense of the new or unknown by drawing connections to the things we know about. They are constructed by mapping familiar and understandable qualities onto unfamiliar objects and, as a result, can generate new thoughts about how these objects work that were not there in the first place.

The Internet is heavily dominated by spatial and territorial imagery. Stephen Graham (1998: 166, emphasis in original) goes even further to suggest that the “expanding lexicon of the Internet” is “not only replete with, but actually constituted by, the use of geographical metaphors.” As a result, this way of seeing the Internet seems almost inescapable. We often talk about using a web browser like Internet Explorer or Netscape Navigator or getting on the information superhighway to visit websites, surf the Net or construct home pages.

Other groups have taken up these spatial metaphors in more specific ways. Holding on to the utopian dream shared amongst the early developers of this technology, cyber-libertarians continue to maintain an Athenian image of the Internet as an “information commons” and a space for public discourse where “all can speak, all can hear, and all can consider, in a process of open and constructive debate” (Herbert 2000: 101). In stark contrast, Microsoft has tried to
capitalize on this imagery of discovery and exploration to sell more products. In the mid-1990s, the company ran an enormous ad campaign to promote its latest Windows operating system (which came fully equipped with the Internet Explorer web browser) that asked consumers, “Where do you want to go today”? By showing footage of people and places from around the world, these advertisements conveyed the idea that there were endless destinations – geographic, social, intellectual or otherwise – which could easily be reached by installing the right software on your home PC (Kirn 2007).

Obviously, however, no one really goes anywhere when using the Internet. Though we may have the visual or sensory experience of travel, we do not actually leave our physical environment to “enter” cyberspace. In fact, a number of scholars have questioned the appropriateness of this “cyberspace as place” metaphor. Mark Lemley (2003: 524), for instance, argues that the “idea of cyberspace as a physical place is all the more curious because the instantiation that most resembles travel to the casual user – the World Wide Web – is in fact much more like a traditional communications medium.” People do not actually “visit” websites; instead, they send a request for information to the provider of the website who, in turn, sends back data in the form of a web page (ibid.). But, because this process is automatic and almost instantaneous, there is an appearance that the user has actually “arrived” at another page by clicking on a hypertext link. The fact that these pages can come from anyone and anywhere in the world may push us further into believing that this process is more like travelling and very different from communicating over the telephone.

Along these lines, some critics have argued that spatial metaphors are purposefully used to separate the Internet from other means of communication. Jonathan Koppell (2000) explains,
one reason that cyberspace is described as a place is to avoid downgrading it to the status of a mere medium, and perhaps especially to avoid comparisons with television. Those who would distinguish the Internet from television point out that Web denizens are not mere passive recipients of electronic signals. That may be (partly) true. But telephones and the postal system are also communications media that allow two-way communication. We don’t regard them as places.

He further suggests that thinking of the Internet as a place makes it seem more intriguing and provides computer companies and ISPs with a powerful marketing tool to sell more computers and Internet services. As Koppell (2000) writes, “The various websites, IPOs, and dot-coms-of-the-day feed on the fervour surrounding our exploration of this strange new land. By morphing the Internet into a destination, cyberspace has become the Klondike of our age.”

But, regardless of whether or not we buy in to these spatial metaphors, it is important not to discount their value. These metaphors are more than just literary tools that help us colourfully describe what are, in effect, “abstract flows of electronic signals, coded as information, representation, and exchange” (Graham 1998: 166). Quite the opposite, they directly influence the way we think about and understand this technology. As Graham (1998: 166) points out:

The metaphors that become associated with information technologies are, like those representations surrounding the material production of space and territory, active, ideological constructs. Concepts like the ‘information society’ and the ‘information superhighway’ have important roles in shaping the ways in which technologies are socially constructed, the uses to which they are put, and the effects and power relations surrounding their developments. Metaphors also encapsulate normative concepts of how technologies do or should relate to society and social change.

Viewed from this perspective, metaphors can be seen as actors that can be mobilized and deployed to generate particular effects. They can therefore be understood as both a tool to achieve certain goals and a reflection of the desires and interests of those who use them. And, because these metaphors can be used by different groups (e.g., policy makers, industry
spokespeople, journalists, academics, etc.) to convey certain ideas about what the Internet is or should be in the future, Wyatt (2004: 244-245) cautions that these images and symbols need to be taken seriously as they can help to turn the imaginary into reality.

Another way of viewing metaphors is to see them as forms of knowledge (see Ford 2003). The use of the term “cyberspace” offers us a much simpler way of understanding how information is transmitted vis-à-vis the Internet. Rather than thinking about the technical aspects of network connections and packet-switching design, we can reduce the level of complexity by relying on these spatial metaphors as shorthand references. Instead of describing websites as recombined bits of data that are transmitted from a computer on one end of a network at the request of another, we can simply talk about sites being “put up on the web” or “posted in cyberspace.”

Yet, the more the term cyberspace gets taken up and used, the less we need to think of the machinery that lies behind it. Arguably, most Internet users rarely ever consider all of the underlying and intermediary steps that occur when they sit in front of a computer and browse a website or send an e-mail. In effect, the technology of the Internet and the various complexities surrounding online communications have been “black boxed” and replaced with a very basic understanding that information and data are simply uploaded to and downloaded from cyberspace.

Metaphors and Analogies at Work in Law

The “cyberspace as place” metaphor allows us to think about Internet communications as having the same spatial characteristics as the physical world. More than just a literary or
linguistic device, this metaphor can actually “form part of the core of our cognitive conceptual system” (Hunter 2003: 470). However, metaphors can also be analogized to make a variety of inferences. Indeed, by making this initial connection between the Internet and space, it becomes possible to draw other analogies with the “real world” and produce further metaphorical deductions. Thus, as Dan Hunter (2003: 472) points out, if we accept that cyberspace is a place, then it can be “zoned, trespassed upon, interfered with, and divided up into a series of small landholdings that are just like real world property holdings.”

Like in other areas of social life, metaphors and analogies play a key role in law. Cass Sunstein (1993) suggests that analogical reasoning is the most familiar form and conventional method by which lawyers and non-lawyers think about legal and moral questions. He describes the four basic steps involved in this type of legal thought as follows:

(1) Some fact pattern A has a certain characteristic X, or characteristics X, Y, and Z; (2) Fact pattern B differs from A in some respects but shares characteristics X, or characteristics X, Y, and Z; (3) The law treats A in a certain way; (4) Because B shares certain characteristics with A, the law should treat B the same way (ibid.: 745).

In order for analogies to work, it is important to know that A and B are “relevantly” similar and that relevant differences do not exist between them. The major challenge, however, is in deciding when these differences are particularly relevant that the analogy no longer applies.

Given the level of complexity surrounding computer-mediated communication, it is perhaps not surprising to see legal actors relying on metaphors and analogies as a way of making “legal” sense of this new technology. Looking at the responses to the Internet in criminal, tort, and constitutional law in the United States, Hunter (2003) has examined the influence of the “cyberspace as place” metaphor and its social and legal consequences. As one example, Hunter
(2003) demonstrates how US courts have taken up the spatial conception of the Internet by adopting the notion of “computer trespass” and shows how pre-Internet computer laws like the

*Computer Fraud and Abuse Act* (CFAA) of 1986 have been used to regulate this new technology.

Under the CFAA (1986), it is a criminal offence to “access” a computer system without permission. But when applied to the Internet, the predominance of the “cyberspace as place” metaphor drastically alters this notion of “access.” Hunter (2003: 481-482) writes:

> Viewed through the filter of the cyberspace as place metaphor, computer trespass does not just involve an infringement on my right to use the personal property of my computer system. Instead, the action becomes a trespass against a form of quasi-land that exists online.

In a number of cases, US courts have come to the conclusion that anyone using a publicly accessible website is “entering” a place and should be treated “just like an invitee at common law” (ibid.). Consequently, those who enter without authorization are trespassing. Moreover, much like the real world where conditions of entry may be posted on the doors of private establishments, websites can have digital signs in the form of “Terms of Access” documents that serve the exact same purpose. If the person oversteps the bounds of their invitation, then, they too, become trespassers and can be subject to the full force of the criminal law.

Hunter (2003: 442) laments that thinking about the Internet in spatial terms has led to “undesirable private control” and the irreversible “tragedy of the digital anti-commons.” He suggests that by drawing analogies to the physical environment, a legal framework has been established that imposes notions of private property upon the Internet. This, in turn, has allowed commercial interests to dominate and “enclose” cyberspace by forcing the courts to recognize
and acknowledge online property rights (ibid.). Thus, much like the real world, property now exists in cyberspace that can be “privately owned, parcelled out, and exploited.”

In response to Hunter (2003), Mark Lemley (2003) provides an alternate reading of US case law pertaining to the Internet and offers a far less pessimistic view of the future. While he agrees with Hunter’s (2003) observations about the courts’ reliance on the “cyberspace as place” metaphor and the subsequent consequences of its adoption in law, Lemley (2003: 523) suggests that courts and commentators still “have ample room to make reasoned policy decisions.” As Lemley (2003: 523) offers, “though metaphor can mislead us, we need not be its slaves.”

In making this claim, Lemley discusses the reasons why spatial metaphors of the Internet are highly inaccurate and emphasizes that there is no such place as “cyberspace.” Pointing to the fact that it is data – in various forms such as e-mail, downloaded information, MP3 files or viruses – and not people doing the travelling on the Internet, Lemley is particularly concerned that courts are relying on these analogies to the physical world and are thus applying laws to the Internet without a clear understanding of how the technology actually works. Referring to the application of the CFAA (1986) on the Internet and publicly accessible websites, he explains that the courts have failed to see that no one “enters” websites and that the defendant in these cases merely sent requests for information to a web server the plaintiff had, itself, made open to the public, and that the plaintiff’s own server sent information in return (ibid.).

Still, even if we do decide to adopt these spatial metaphors and accept a one-for-one correspondence between cyberspace and the real world, there are clearly differences that the courts need to take into account. For Lemley, these exceptions are critical. He notes, for instance, that unlike the physical world where an individual can occupy only one place at a time, the
Internet allows you to be everywhere at once. There is also no sense of proximity to one another in cyberspace as there is in the physical world. Nor is there a “public street or sidewalk from which one might observe behaviour that occurs in a particular Internet space” (ibid.: 526).

Despite these concerns, Lemley points out a number of cases where the courts have taken note of these differences without having to completely reject the cyberspace as place metaphor. He suggests that the courts have gotten “these cases right” by using this metaphor as a “point of departure,” proving that they can be receptive to the idea that Internet law can use a framework designed for the real world through modifications that account for the peculiarities of cyberspace (ibid.). For example, the application of personal jurisdiction rules and the metaphors of the physical world have often led the courts to the conclusion that anyone who puts up a website can be sued by anyone in the world, on the basis that they have put their “products” in cyberspace and thus into each and every forum. Although a number of early cases took this position, most courts came to the realization that more was needed. The result has been the development of “interactivity” tests for jurisdiction where a “sliding scale” is established between “passive” and “active” uses of the Internet (discussed in more detail below). Though the tests are still somewhat problematic, Lemley suggests that these cases are clear examples of courts applying traditional standards for determining personal jurisdiction while still being sensitive to the nature of the Internet.

Yet, even with the courts recognizing the limitations of these metaphors and the ways in which cyberspace is not like the physical world, Lemley still remains cautious. Like Hunter, Lemley is concerned that the cyber-spatial metaphor has led to the emergence of private property on the Internet. Nevertheless, he believes that the “cyberspace as place” metaphor is not global or inevitable and that, in applying this metaphor, the courts still have to decide whether or not
this space should be public or private. According to Lemley, the courts must begin to understand that a metaphor is no substitute for legal analysis.

Dan Hunter (2003) and Mark Lemley (2003) eloquently illustrate how the metaphor of cyberspace has greatly influenced judicial decision-making. Both scholars, however, seem to share the view that this kind of imagery has forced judges into seeing the Internet in spatial terms. The major assumption here is that metaphors operate in only one direction and that judges are merely passive recipients who naively accept the cyberspace as place metaphor. Judges are assumed to be technologically inept and blindly embrace this conception of the Internet without question. From a very different perspective, however, one could argue that judges are fully aware of the fact that this notion of cyberspace is just a metaphor. And, rather than being slaves to these metaphors, judges are taking them up as a way of thinking about the Internet that helps to inform and justify their decisions. Thus, like other social actors, judges actively rely upon and take advantage of this spatial conception of the Internet to generate specific outcomes.

Despite these criticisms, Hunter (2003) and Lemley (2003) have greatly contributed to the existing body of research in the area of Internet law by recognizing the importance of spatial metaphors in judicial decision-making. Taking their work as a point of departure, I expand on this type of socio-legal inquiry in the sections below by considering how judges in Canada have mobilized the “cyberspace as place” metaphor to produce particular effects. Using ANT as an analytical framework, this study looks at court cases where the term “cyberspace” appears and traces how this conception of the Internet gets “translated” into legal thought. I begin this discussion by providing a brief overview of how ANT has been recently incorporated into socio-legal scholarship.
Actor-Network Theory (ANT) and Socio-legal Research

As discussed in detail in Chapter 1, ANT offers a particular approach to investigating the ways in which scientific facts and technological artefacts come to be produced. Like many other branches of S&TS, ANT posits that knowledge is a social product rather than something generated through the operation of a privileged scientific method. ANT also focuses on science and technology in the making by rejecting any preconceptions as to what constitutes knowledge or technology and looking closely at the ways in which scientific facts and technological artefacts become stable entities, processes or laws, dissociated from the circumstances of their production (Latour 1987: Introduction). Put simply, the goal is to examine how it is that science and technology become “black boxed.”

ANT theorists do not look for intrinsic qualities that determine the objectivity or subjectivity of a claim, or the efficiency or perfection of a mechanism. Instead, this type of analysis considers the later transformations that these objects undergo in the hands of others (Latour 1987: 258, see also Chapter 1). The “black boxing” of facts and machines is thus a collective process. When confronted with a black box, we make a numbers of decisions as to whether or not we take it up, reject it, re-open it or drop it through lack of interest (Latour 1987: 29). These later decisions, however, have very direct consequences. If we buy a machine or believe a fact without question, then we make the black box more solid (ibid.). But, if we reject the fact or machine, they are weakened and their spread is interrupted.

It is by looking at these networks or “chains of translation” that ANT theorists try to explain and make sense of how certain achievements are attained (Manning 2002: 651). If the translation is successful and the constellation of heterogeneous materials that make up the network are organized and held in order, then the network disappears and is replaced by the
action itself and the seemingly simple author of that action (Law 1992: 5; but see also Callon 1986). Indeed, once stabilized, the network can produce particular outcomes – knowledges, technologies, social practices, organizations, etc. – that hide from view the various actors that have been mobilized and aligned to attain these results.

As we can see here, the notion of translation is central to ANT (for a detailed discussion on “translation” see Callon 1986; Latour 1987). The term was originally taken from the work of Michel Serres by Michel Callon (1980) and involves making convergences and “homologies” by relating things that were previously different (Gherardi & Nicolini 2000: 333). It also conveys the mechanical and physical meaning of causing movement in the same direction, as well as the linguistic definition of “undertaking a change from one language to another in which betrayal is inextricably implicated” (ibid.: 333). As a result, what is passed through the network is never the same at the beginning as it is at the end.

Along these lines, Valverde and colleagues (2003; but see also Levi 2003; Moore 2007; Valverde 2003) have borrowed some of the key insights from ANT to document how various forms of knowledge move in and out of legal settings. Drawing on case studies of Megan’s law and community notification practices, Toronto’s Drug Treatment Courts and the legal discussions regarding the criminalization of soliciting for the purposes of prostitution, they argue that “expert witness testimony” should no longer be viewed as epistemologically homogenous, but seen as a network comprised of heterogeneous objects (such as exhibits, precedents, advocacy skills, rhetorical moves and so on) that have been aligned or “tactically arranged” to achieve certain results (Valverde et al. 2003: 16). Thus, contrary to those who suggest that the law simply absorbs, transforms or dominates “expert” knowledges (scientific or otherwise), the authors emphasize the dynamic and interactive nature of this relationship by showing that various legal
actors can and do make use of extra-legal information and the general authority of science to generate specific effects (ibid.: 4).

By taking the position that the term cyberspace and other spatial references are more than just metaphors and must be understood as a type of knowledge regarding Internet technology, I adopt a similar socio-legal approach and follow how this knowledge gets “translated” into legal thought. Rather than simply documenting the number of instances where the term cyberspace is taken up in law, I consider the ways in which this form of knowledge is used by judges to inform legal decision-making. Particular attention is paid to the mobilization and movement of this “spatial” knowledge regarding the Internet and how it gets reproduced within legal settings. The court decisions are thus read more empirically, while still bearing in mind the doctrinal and institutional contexts from which they emerge.

The “Cyberspace as Place” Metaphor in the Canadian Legal Context

At the time of writing, a keyword search for “cyberspace” in Canadian judgements on the Lexis/Nexis Quicklaw Database yielded 45 matches.26 Looking at all of these cases, the term continues to be used as a spatial metaphor to describe the “virtual” environment of social interaction and human activity made possible by the Internet. And while this term has only

26 The Canadian Judgments Plus (CJP) database was used here. As of 15 July 2008, a total of 45 judgments were found that included the term “cyberspace.” This relatively small number may be expected given that the term has only recently entered our lexicon. One could certainly predict that this number will continue to increase as it becomes more commonly used in our everyday language. Nonetheless, the cases that do exist provide an interesting site for examining how this “cyberspace as place” metaphor gets taken up in law.
recently entered into our lexicon, most judges have used the word “cyberspace” without offering any further explanation or definition of its meaning.

In the majority of the cases examined, judges flippantly use the term in comments made in passing. For example, judges have referred to people using the Internet as “engaging in cyberspace” or having “met others in cyberspace.” The term has even been used rather facetiously to describe a place where one can “reside.” In a family court case involving child custody and access, the presiding judge depicted an absentee father in the following way: “From the children’s perspective, [the father] did not just leave their mother; he left them as well when he chose to pursue a relationship with another woman. Even today, they do not know where their father has been living or is now living. He seems to exist, from their vantage point, in cyberspace or on the road with his employment” (Fraser v. McKinlay [2004], emphasis added). This was in reference to the fact that much of the father’s contact with his children was done through e-mail.

In another case, “cyberspace” was used as a spatial metaphor to describe a type of virtual abyss where digital information gets lost. In Crisanti v. Canada (1996) the Tax Court of Canada dismissed an appeal from an appellant regarding late penalties imposed against him for his 1993 income tax returns, which he had submitted electronically. In dismissing this appeal, the presiding judge remarked, “There is nothing before me which would indicate that the appellant’s tax return was transmitted before the deadline and that it was sitting in storage, or floating in cyberspace, before being accepted by the Revenue Canada computer…” (Crisanti v. Canada [1996], emphasis added).
Separating Cyberspace from other Media

On another level, judges have taken up the term as a literary tool to differentiate Internet technology from other communicative devices. For example, in two separate child pornography cases, the nature of digital materials and the ease with which they could be reproduced and circulated throughout the vast expanse of cyberspace were seen as important factors in sentencing. In *R. v. Treleaven* (2006), the accused, an administrator of an Internet chatroom that permitted peer-to-peer file sharing among its members, was found to have approximately 20 gigabytes of child pornography on his computer – a startling amount that the trial judge described as “unprecedented in its nature and quantity.” After conducting its investigation, the Edmonton Police Service arrived at the accused’s home and arrested the individual. At the time of arrest, the accused was on his computer and in the chatroom with 90 users queued up to access these pornographic files. He later pleaded guilty to one count of distributing child pornography and, at the recommendation of both Crown and Defence, was sentenced to a period of imprisonment of 3½ years with several ancillary orders.27

In explaining his decision, the presiding judge noted that, while a greater term of imprisonment might have been warranted, the court could not find the joint submission by the parties to be unreasonable. The judge also listed a number of issues, ranging from the quantity and nature of the material in question to the offender’s guilty plea and expression of remorse, that were all taken into account when coming to this conclusion. Among the many aggravating factors, the judge specifically highlighted in his sentencing report the “extent of the distribution

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27 The court also imposed a DNA order and a lifetime prohibition order requiring that the offender not be in the presence of children under the age of 14. The offender was further prohibited from using a computer for the purpose of communicating with a person under the age of 14 years. In addition, the computer equipment used in the commission of the offence was forfeited.
of this material, i.e., around the world, throughout *cyberspace* (R. v. Treleaven [2006], emphasis added). Thus, according to the judge, it was not simply that the images were of a particularly repugnant and hideous nature that made this crime so egregious, but that they were also being circulated globally within this virtual domain of “cyberspace.”

Conversely, while the use of the Internet to disseminate illegal content was taken as an aggravating factor in *R. v. Treleaven* (2006), *not* using this technology helped to reduce an offender’s sentence in another case involving child pornography. In *R. v Ayers* (2005), the accused, Lloyd Ayers, was convicted of production and possession of child pornography. The materials in question were pictures of his five year-old son with whom he had recently reunited. They were nude pictures, but did not involve specific sexual activity. Moreover, unlike the previous case, these pictures were not in a digital format and, instead, were shot with a standard film camera. Ayers took the rolls of film to a store for development, at which point in time, a store employee – who felt that the pictures were disturbing – notified the police. After a search of his home, the police found more nude pictures of his son. However, there was no evidence that these pictures were ever distributed to others.

Ayers pleaded guilty and was sentenced to four months imprisonment. In reaching this conclusion, the trial judge made mention of a number of aggravating factors including: The nature of the crime; Ayers’ dated criminal record; and, most significantly, the breach of trust. Yet, the judge also pointed to the offender’s “low-tech” approach to the crime as a key mitigating issue affecting this particular case. In his oral judgement, J.N. Wilson J. claimed:

> It is difficult to consider in the traditional sense what mitigating factors may be present here other than Mr. Ayers’ relatively early guilty plea. Other aspects of this matter might be considered less aggravating. They, in my view, include an unsophisticated approach by the use of a traditional camera with film and prints in the traditional format, the taking of the film to a local store for development of the
A clear distinction is thus drawn between traditional and new media. Whereas digital images can be distributed and copied with very little effort, this is not the case with photographs shot on a film camera. And, because of the antiquated and “unsophisticated approach” used to capture these images, they are reproduced in a format that does not have the same lasting legacy as those taken with newer technologies which can easily be posted online. However, to drive this point even further, Judge Wilson specifically uses the term “cyberspace” to denote this place where digital pictures can possibly reside for time immemorial.

There are a handful of other Canadian cases in which the spatial metaphor of “cyberspace” is taken up by judges as a way of separating this technology from other modes of communication. In Barrick Gold Corp. v. Lopehandia (2004), the plaintiffs – Barrick Gold Corporation – appealed an earlier court decision dismissing their claims for punitive damages and injunctive relief for defamatory comments posted on the Internet by the defendant, Lopehandia. Lopehandia had claimed that Barrick fraudulently obtained control of certain mining claims. When Barrick refused to settle these claims, Lopehandia posted hundreds of messages on Internet websites accusing Barrick of fraud, tax evasion, money laundering and genocide.

Barrick filed a libel notice, but Lopehandia continued to post the messages. Barrick then brought an action against Lopehandia and his company that they did not defend. On granting default judgement, the motions judge awarded $15,000 in general damages to Barrick, but dismissed their claims for punitive damages and injunctive relief. Among other things, the judge
held that a reasonable reader was unlikely to take what Lopehandia had posted seriously and that they did not have a great impact on the company’s reputation.

Barrick appealed this default judgement and won. The company was awarded $75,000 awarded for general damages and $50,000 in punitive damages. Barrick was also granted a permanent injunction restraining Lopehandia from publishing defamatory statements against the company, its officers, directors or employees. However, what is worth noting about this case is that, in reaching its verdict, the Ontario Court of Appeal ruled that the judge “failed to take into account the distinctive capacity of the Internet to cause instantaneous and irreparable damage to Barrick’s business reputation by reason of its interactive and globally all-pervasive nature” (Barrick Gold Corp. v. Lopehandia [2004]). Thus, much like the two child pornography cases discussed earlier, the fact that the defamation happened on the Internet raised the degree of seriousness of the offence.

But, while it is the permanence of pornographic images posted online that is particularly troubling, it is the immediacy and reach of defamatory statements placed on the Internet that increases their level of gravity. In explaining the Court’s ruling, Blair J.A. writes: “Is there something about defamation on the Internet – “cyber libel” as it is sometimes called – that distinguishes it, for purposes of damages, from defamation in another medium? My response to that question is “Yes” (ibid.). The judge then goes on to suggest that the standard factors to consider when determining damages for defamation, which include the plaintiff’s position and standing, the nature and seriousness of the defamatory statements, the mode and extent of publication, the absence or refusal of any retraction of apology, the whole conduct and motive of the defendant from publication through judgment, and any evidence of aggravating or mitigating circumstances, must be understood within the context of the Internet and examined “in the light
of what one judge has characterized as the ‘ubiquity, universality and utility’ of that medium’ (ibid.).

In making this claim about the nature of the Internet, the Ontario Court of Appeal cited Kirby J. of the High Court of Australia who, in *Dow Jones & Company v. Gutnick* (2002), stated that:

The Internet is essentially a decentralized, self-maintained telecommunication network. It is made up of inter-linking small networks from all parts of the world. *It is ubiquitous, borderless, global and ambient in its nature. Hence the term “cyberspace.” This is a word that recognizes that the interrelationships created by the Internet exist outside conventional geographic boundaries and comprise a single interconnected body of data, potentially amounting to a single body of knowledge.* The Internet is accessible in virtually all places on Earth where access can be obtained either by wire connection or by wireless (including satellite) links. *Effectively, the only constraint on access to the Internet is possession of the means of securing connection to a telecommunications system and possession of the basic hardware* (cited in *Barrick Gold Corp v. Lopehandia* [2004], emphasis in original).

Using this spatial conception of the Internet, the Court reasoned that the “instantaneous, seamless, inter-active, blunt, borderless and far-reaching” nature of online communication via the Internet, coupled with the impersonal and anonymous quality of these statements (which may create a greater risk for the defamatory remarks to be believed), must be carefully considered.

To further substantiate this claim that defamatory statements posted on the Internet were qualitatively different from those distributed on traditional media, the Court turned to an article written by Lyrissa Lidsky (2000), entitled “Silencing John Doe: Defamatory and Discourse in Cyberspace,” published in the *Duke Law Journal*. In his written report, Blair J.A. directly quotes the following passages:

Internet communications lack this formal distance. Because communication can occur almost instantaneously, participants in online discussions place a premium on speed. Indeed, in many fora, speed takes precedence over all other values,
including not just accuracy but even grammar, spelling and punctuation. Hyperbole and exaggeration are common, and “venting” is at least as common as careful and considered argumentation. The fact that many Internet speakers employ online pseudonyms tends to heighten this sense that “anything goes,” and some commentators have linked cyberspace to a frontier society free from the conventions and constraints that limit discourse in the real world. While this view is undoubtedly overstated, certainly the immediacy and informality of Internet communications may be central to its widespread appeal.

*Although Internet communications may have the ephemeral qualities of gossip with regard to accuracy, they are communication through a medium more pervasive than print, and for this reason they have tremendous power to harm reputation.* Once a message enters cyberspace, millions of people worldwide can gain access to it. Even if the message is posted in a discussion forum frequented by only a handful of people, any one of them can republish the message by printing it or, as is more likely, by forwarding it instantly to a different discussion forum. And if the message is sufficiently provocative, it may be republished again and again. The extraordinary capacity of the Internet to replicate almost endlessly any defamatory message lends credence to the notion that “the truth rarely catches up with a lie.” The problem for libel law, then, is how to protect reputation without squelching the potential of the Internet as a medium of public discourse (*Barrick Gold Corp v. Lopehandia* [2004], emphasis in original).

In writing about the Internet, Lidsky (2000) clearly relies upon the spatial imagery of cyberspace to distinguish online communications from others mediums.

For Lidsky (2000), cyberspace symbolizes a frontier space where the rules and conventions that constrain discourse and dialogue in the “real world” no longer apply. Within this “anything goes” environment, the immediacy of a message takes precedence over its accuracy. Hyperbole and over-exaggerations – common on the Internet – are typically taken at face value, more so than if they were written in print. Secondly, this spatial metaphor is mobilized to highlight the pervasiveness of materials found on the Internet. Messages that enter cyberspace are not only accessible to millions of people worldwide, but can easily be republished or forwarded to others on the Web ad infinitum.
Blair J.A. adopts this particular reading of the technology to help differentiate the publication of defamatory materials on the Internet from those published in traditional media outlets. He writes:

It is true that in the modern era defamatory material may be communicated broadly and rapidly via other media as well. The international distribution of newspapers, syndicated wire services, facsimile transmissions, radio and satellite television broadcasting are but some examples. Nevertheless, Internet defamation is distinguished from its less pervasive cousins, in terms of its potential to damage the reputation of individuals and corporations, by the features described above, especially its interactive nature, its potential for being taken at face value, and its absolute and immediate worldwide ubiquity and accessibility. The mode and extent of publication is therefore a particularly significant consideration in assessing damages in Internet defamation cases (*Barrick Gold Corp. v. Lopehandia* [2004]).

These findings regarding the nature of this medium, as well as the Court’s reference to Lidsky (2000), have been taken up elsewhere by other judges to highlight the aspects of Internet communications that make it unique.

In *Canada (Human Rights Commission) v. Winnicki* (2005), the Federal Court granted a motion by the Canadian Human Rights Commission (CHRC) for an interlocutory injunction restraining the respondent, Tomasz Winnicki, from communicating messages over the Internet which would likely exposes person to hatred or contempt by reason of race, national or ethnic origin, colour or religion, pending a final order by the Canadian Human Rights Tribunal. In granting this motion, the Court held that the “type of expression in this case existed on the outer margins of the values that were at the core of fundamental freedoms” (ibid.). However, what made these messages even more troubling was the fact that they were posted online.

In coming to this conclusion, the presiding judge referred to *Canada (Human Rights Commission) v. Canadian Liberty Net* (1992) in which the Supreme Court drew an interesting
contrast between hate messages and defamatory comments. While the former is aimed at “debasing and undermining the self worth of a whole group of people” and the latter targets a single individual, the Supreme Court noted that defamatory statements have a widespread circulation compared with the “slow, insidious effect of a relatively isolated bigoted commentary” (ibid.). In this particular case, however, the hate messages in question were communicated through a telephone hotline and not by way of the Internet.

Acknowledging the differences between the technologies used in the two cases, de Montigny J. argued that the “‘relatively isolated bigoted commentary’ has now changed and is able to have widespread circulation” (ibid.). He continued:

This new form of communication is much more easily accessible and pervasive than any previous telecommunication medium. The content of a website can also easily be mirrored and replicated \textit{ad infinitum}, with virtually no control by the originator (ibid.).

To further illustrate the unique qualities of Internet communications, the judge turned to the same passage from the Lidsky (2000) article cited in \textit{Barrick Gold Corp. v. Lopehandia} (2002). Lidsky (2000) and her use of the term cyberspace to describe the nature of this technology were once again mobilized to highlight the pervasiveness of online messages that “enter” into this virtual domain and the ease with which they can be accessed, republished and forwarded by millions of people worldwide.

More recently, in \textit{R. v. Noble} (2008), the British Columbia Supreme Court referred to Lidsky’s (2000) description of the Internet to help come to grips with the public versus private character of online communications. In this case, the accused, Keith Noble, was charged with wilfully promoting hatred against identifiable groups contrary to s.319 (2) of the \textit{Criminal Code}. As a result of an investigation conducted by the Royal Canadian Mounted Police, hate materials
were found on Noble’s home computer which had been uploaded onto his website called “www.exterminance.org.” One of the key issues at trial was whether or not these materials were part of a “private communication” between the accused and visitors to his website and therefore not in violation of any laws.

The BC Supreme Court turned to the precedent set out in the Barrick Gold and Winnicki cases and their reference to Lidsky (2000) to reaffirm the unique qualities of the Internet that set it apart from other communication technologies. More specifically, the Court directly quoted the trial judge in Canada (Human Rights Commission) vs. Winnicki (2006) who claimed that this “new form of communication is much more easily accessible and pervasive than any previous telecommunication medium.” The Court, however, took this reading of the Internet one step further by suggesting that, given the present state of technology and software, it was also possible to “create levels of protection and security that restrict access to certain areas of computers and/or websites.” As W.G. Parrett J. explains:

> It is not difficult to conceive of precautions being taken which restrict access and bring an individual within a level of security which would potentially allow a person to consider his communications to be private. In the present case, no such precautions were taken and no issue of accident or negligence arises. The communications and postings in this case were wide open and accessible to anyone who had the technology and chose to look. In my view, the content and circumstances here do not bring these communications within the private conversation exception (R. v. Noble [2008]).

In addition to being pervasive and ubiquitous, postings on a website could be read by anyone with access to this technology and therefore must be seen as public in nature. That, unless certain precautions are taken to restrict this access, these messages cannot be viewed as private conversations.
What is worth noting about this decision is that, while the BC Supreme Court shied away from actually using the word “cyberspace” or making any direct reference to the Internet as a place, communications of this sort were still thought of in spatial terms. By claiming that access to certain areas of computers and websites can be restricted, the Court has taken the view that messages on the Internet reside in some kind of virtual public space. That, unlike telephone or chatroom conversations which happen instantaneously or in “real time,” the use of websites to send messages back and forth is seen as a much more mediated form of communication in that materials must first be “posted” on the Internet to be seen. Thus, what makes these online discussions “public” is not so much the manner or speed by which the communication transpires, but that it is believed to take place in a spatial environment – that is, in cyberspace – where other Internet users can see.

Cyberspace and Legal Jurisdiction

This idea that online postings happen in a virtual space is very much in keeping with how the courts in Canada have come to understand the nature of Internet communications in cases regarding legal jurisdiction. In *Braintech v. Kostiuk* (1999), the defendant Mr. Kostiuk, a resident of British Columbia (BC), allegedly posted defamatory messages on a Bulletin Board System (BBS) site about the plaintiff, Braintech Inc. Though Braintech Inc. is also located in BC, the company sued the defendant in Texas where it has a research facility. A Texas court found in favour of Braintech Inc. and awarded them approximately $400,000 in damages. The company then tried to have the Texas judgement enforced in BC. While the trial court in BC held in favour of Braintech Inc., the Court of Appeal reversed the decision and held, among other things, that Texas had improperly asserted its jurisdiction in this matter.
One of the key legal questions in this case was whether or not the defendant, Mr. Kostiuk, had committed a tort in Texas by transmitting and publishing defamatory and disparaging untruths. In other words, does posting a message on an Internet BBS constitute “real and substantial presence” in Texas? The BC Court of Appeal ruled against the plaintiffs, reasoning that:

In these circumstances the complainant must offer better proof that the defendant has entered Texas than the mere possibility that someone in that jurisdiction might have reached out to cyberspace to bring the defamatory material to a screen in Texas. There is no allegation or evidence Kostiuk had a commercial purpose that utilized the highway provided by Internet to enter any particular jurisdiction (*Braintech v. Kostiuk* [1999]).

This decision rested largely on the Court’s adoption of the “interactivity” test established in *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.* (1997) which held that jurisdictional analysis in Internet cases should be based on the “nature and quality of the activity conducted on the Internet” (Geist 2002: 24).

Consistent with well-developed principles of personal jurisdiction, the Zippo case called for a sliding scale to distinguish between “passive” and “active” uses of the Internet. By making this distinction, personal jurisdiction is deemed proper only in cases where the defendant “clearly does business over the Internet” or “enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet” (*Zippo Manufacturing Co. v. Zippo Dot Com, Inc.* [1997]). On the other end of this spectrum are instances where a defendant has “simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions” (ibid.). These “passive web sites” do “little more than make information available to those who are interested” and therefore provide no grounds for the exercise of personal jurisdiction (ibid.). In adopting this approach, the BC Court of Appeal suggested that:
The allegation of publication fails as it rests on the mere transitory, passive presence in cyberspace of the alleged defamatory material. Such a contact does not constitute a real and substantial presence. On the American authorities this is an insufficient basis for the exercise of an in personam jurisdiction over a non-resident (ibid.).

What is striking about this decision is how the Court relied on the concept of cyberspace to justify their claims regarding legal jurisdiction.

In both of the passages presented above, cyberspace is used by the Court to denote the intermediary place where electronic data are posted. Cyberspace thus gets translated into legal thought and becomes the domain where information transmitted over the Internet “exists.” The alleged defamatory messages made by the defendant on an electronic BBS do not “enter” Texas or remain in BC, but are present in a type of digital “middle-ground.” And, by invoking this spatial imagery and claiming that the message had a “mere transitory, passive presence in cyberspace,” the BC Court was able to deny the Texas court’s assertion of jurisdiction on the grounds that information posted on the Internet – even if it could be read by someone in Texas – did not constitute a “real and substantial presence” in that state.

Instead, the Court ruled that the nature of the communication in question and not the means by which it was communicated is what needs to be considered in these cases. Thus, in order to claim jurisdiction, the plaintiff must somehow demonstrate that the defamatory materials were not just put on the Internet and floating in cyberspace for other users to see, but that they were actually aimed at people in the state of Texas. To paraphrase Marshall McLuhan, it is more about the “message” than the actual medium that determines legal jurisdiction. In taking this position, the Court also recognized and made mention of the “crippling effect on freedom of
expression” that this would create, if the simple viewing of material on the Internet alone could be used as the basis for a country to claim jurisdiction.

The legal precedent set in *Braintech v. Kostiuk* (1999) regarding jurisdiction on the Internet is later taken up in a civil trial heard by the Ontario Superior Court. In *Pro-C Ltd. v. Computer City Inc.* (2000), the plaintiffs, Pro-C Ltd., sought damages against the defendants, Computer City Inc., for trademark infringement. Pro-C Ltd. is a company based in Waterloo, Ontario that merchandises software and provides consulting services. The company owns the trademark WINGEN in Canada, produces software under this name, and has registered the website URL address: www.wingen.com. Computer City, a Delaware-based computer superstore chain with retail locations throughout the US, Europe and Canada, marketed computers under the same WINGEN name. These computers were sold over the company’s website and through stores in the US. While Computer City was aware of Pro-C’s trademark and had ample time to change the WINGEN name, the company went ahead and sold the computers under this name. Consumers seeking information about the WINGEN computers caused havoc with Pro-C’s business by crashing its website and overflowing its e-mail capabilities. Pro-C Ltd. contacted Computer City about these problems and, while Computer City offered their assistance, they proposed no solutions and continued to market these computers.

At the very outset of the written decision, the presiding judge begins by describing cyberspace in relation to Internet technology. Whitten J. writes:

The Internet, in reality a network of networks, has created a whole new territory independent of conventional geography. The conceptual location of this electronic interactivity available to us through our computers is oft referred to as “cyberspace.” Unlike a “real” territory with fixed borders, the Internet is constantly growing and at a phenomenal rate…
The Internet has become an immense mass of information or data. Again, in contrast to a real territory, it is not mapped in the sense of its limits and features being charted. The cartographers of the net are the various directories and search engines but they are hampered by the sheer immensity and growth rate of the Internet. The search for any “site” is keyword driven (Pro-C Ltd. v. Computer City Inc. [2000]).

A distinction is thus drawn between the “reality” of the Internet as a “network of networks” and the “conceptual location” of electronic interactivity referred to as cyberspace. Referring to an article on the jurisdiction of cyberspace by William S. Byassee (1995) that was published in the Wake Forest Law Review and cited by a US court, the judge goes on to describe cyberspace as a “whole new territory independent of conventional geography” and sets it apart from “real territory” with fixed borders.

It is this particular conception of the Internet that gets taken up and translated into legal reasoning. Indeed, as the presiding judge explains, it is “against this backdrop” that the matter takes place. At issue in this case was whether or not Computer City’s “use” of the WINGEN trademark comes within the scope of the Canadian Trademarks Act. Whitten J. states:

“Use” in Canada is the jurisdictional paradigm. The Act can only confer the property right within Canada and likewise can only protect the right from unsanctioned usage in Canada. Consequently, any liability in Canada from a breach of this statutory regime has to be based on unsanctioned usage in Canada. The “use” by Computer City of the WINGEN trademark must be in Canada (Pro-C Ltd. v. Computer City Inc. [2000]).

If it does, and if this use offends the provisions of the statute, the court may award damages. Although the computers bearing the WINGEN name were never sold in Canadian stores, they were marketed on the Computer City website and accessible to Internet users in Canada.

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28 At the time this article was published, William S. Byassee was the Chair of the Multimedia and Interactive Technologies Law Committee, American Bar Association Section of Science and Technology.
situation begs the following question: Is the fact that Canadian residences can access a particular website originating from outside Canada sufficient to constitute “use” in Canada?

In making its determination regarding “use,” the court relied upon the legal precedent set forth in *Braintech v. Kostiuk* (1999) and its adoption of the interactivity test that was originally established in the Zippo case. Whitten J. states:

Both Zippo and Braintech illustrate the conceptual problems with Internet use and jurisdiction, the latter of which under the *Trade-marks Act* translates into “use” in Canada. The basic issue is invariably, does the website remain “out there” in cyberspace or is there a connection established with a particular geographical entity or state of such a magnitude that the entity could claim jurisdiction. The degree of interactivity between the website and the state is in the absence of other traditional indicia, for example a physical presence within the state, a helpful starting point for any such analysis (*Pro-C Ltd. v. Computer City Inc.* [2000]).

What is interesting about this case is that the presiding judge not only adopts the same legal approach to determining jurisdiction, but also takes up the concept of cyberspace as a means of conceptualizing how this technology is used. Like in the Braintech case, cyberspace is taken up here as a spatial metaphor to describe a digital place “out there” where websites and online advertising exists. As a result, cyberspace and the notion of interactivity are both translated into this new context of trademark law. The same legal test used to decide “clear and substantial presence” is now being applied to address the question of trademark “use.”

Although the court ruled that www.computercity.com was a “passive” website, it argued that the interactivity test was not the only basis for deciding what constituted a trademark use in Canada. Noting that, “Invariably Canadians will reach out into cyberspace and access the webpage,” the presiding judge determined that the site must also be “seen in the context of the overall merchandising strategy of Computer City” and its direct targeting of Canadian consumers (ibid.). The court found that Computer City’s use of the WINGEN trademark on its website was
“a use” in Canada under the *Trade-marks Act* and in accordance to principles of jurisdiction and tort law, and subsequently ordered the company to pay Pro-C Ltd. $750,000 in punitive damages.

In *R. v. Bahr* (2006), the presiding judge makes a similar decision to adopt a spatial conception of the Internet. In this particular case, a preliminary hearing was held to determine whether or not the accused, Glenn Bahr, could be committed to stand trial on the offence of wilfully promoting hatred contrary to s. 319(2) of the Canadian *Criminal Code*. Bahr was alleged to have created a website called “Western Canada For Us” (WCFU) on which four different documents that wilfully promote hatred against identifiable groups – namely those of the Jewish faith and Blacks – were made available for download. This material and the WCFU website were both hosted on the hard drive of a server controlled by a firm that was located in New Jersey. Though the police were unable to provide a definitive answer as to where the actual server was located, it seemed likely that it too was located in that state.

One of the key issues considered here was whether or not the Alberta Provincial Court had jurisdiction over this case given the fact that the server on which this material was stored was located outside the country. At the very outset of his judgement, M.G. Allen turned to the Supreme Court’s decision in *Society of Composers, Authors and Music Publishers of Canada (SOCAN) v. Canadian Association of Internet Providers (CAIP)* (2004) for a basic understanding of this technology. In this particular case, Binnie J., writing for the majority, described the Internet in the following way:

The Internet is a huge communications facility which consists of a worldwide network of computer networks deployed to communicate information. A “content provider” uploads his or her data, usually in the form of a website, to a host server. The content is then forwarded to a destination computer (the end user). End users and content providers can connect to the Internet with a modem under contract with an Internet service provider.
An Internet transmission is generally made in response to a request set over the Internet from the end user (referred to as a “pull”). The host server provider transmits content (usually in accordance with its contractual obligation to the content provider)…. (Society of Composers, Authors and Music Publishers of Canada (SOCAN) v. Canadian Association of Internet Providers (CAIP) [2004]).

Viewed from this perspective, one could certainly argue that materials posted on a website technically reside on the hard drive of a host server until they are “pulled” by an end user and received on the destination computer. In fact, Bahr’s lawyer tried to make this exact claim by suggesting that the allegedly offensive content was located on a server in New Jersey where there was no law equivalent to s. 319(2) of the Criminal Code.

Yet, in making his determination regarding jurisdiction, the presiding judge chose not to rely on this conception of how this technology works and, instead, turned to a handful of other court decisions that offered very different interpretations of online communications. As M.G. Allen explains:

Although the physical location of the website may be in New Jersey, the information is accessible to anyone anywhere in the world through the Internet. Often, individuals knowledgeable in the area of the workings of computer websites indicate that the location of the information is in “cyberspace.” Justice Stevens in ACLU v Reno ([1997] 521 U.S. 844 [U.S.S.C.] [A.C.L.U.]) pointed out that cyberspace is “located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet.” While the allegedly offensive material may be in cyberspace, no one can have access to cyberspace without a computer. Therefore, the geographical location of computers can serve to define jurisdiction for the purpose of prosecution (R. v. Bahr [2006]).

However, while not completely buying in to the idea that the offensive material exists in the ethers of cyberspace, the presiding judge was also quick to point out that the physical location of the computer server was not entirely determinative of jurisdiction.
To support this claim, the judge referred back to the Supreme Court decision in *SOCAN v. CAIP* (2004) that reaffirmed the use of the “real and substantial connection” test to determine jurisdiction on the Internet. On this issue, M.G. Allen quotes Binnie J. who wrote:

... [I]n my view, a telecommunication from a foreign state to Canada, or a telecommunication from Canada to a foreign state, is “both here and there.” Receipt may be no less “significant” a connecting factor than the point of origin (not to mention the physical location of the host server, which may be in a third country)... In the factual situation at issue in Citron v. Zundel, for example, the fact that the host server was located in California was scarcely conclusive in a situation where both the content provider (Zundel) and a major part of his target audience were located in Canada...

From the outset, the real and substantial connect test has been viewed as an appropriate way to “prevent overreaching... and [to restrict] the exercise of jurisdiction over extraterritorial and transnational transactions.” The test reflects the underlying reality of “the territorial limits of law under the international legal order” and respect for the legitimate actions of other states inherent in the principle of international comity (*Society of Composers, Authors and Music Publishers of Canada (SOCAN) v. Canadian Association of Internet Providers (CAIP) [2004]*)..

Finally, with regards to the question of whether or not the geographic place of a host server was enough to establish legal jurisdiction, the presiding judge once again cites Binnie J. who explains that, in the case of copyright liability,

the correct view is that a content provider is not immunized from copyright liability by virtue only of the fact it employs a host server outside the country. Conversely, a host server does not attract liability just because it is located in Canada. A simple “host server” test would catch communications that have no connection to Canada other than the location of a piece of physical equipment, serving a neutral role as a technological conduit (ibid.).

The technology of the Internet – the hardware needed to distribute messages and information over the network of computer servers – is thus kept separate from the actual act of communicating online. According to the court, it is the nature of the message and not the
medium used that must be considered in order to make this determination as to where the activity took place.

In the end, the presiding judge concluded from these earlier decisions that Canadian courts have jurisdiction “related to an offence where there is a real and substantial link between that offence and this country.” He goes on to suggest that, in this particular case, that a “real and substantial link” exists in that a significant portion of the activities constituting the offence (e.g., that the website was created by a Canadian citizen in Canada, that the website’s content was directed at and made accessible to individuals living in Western Canada, etc.) happened in Canada and, more specifically, in Edmonton. According to the judge, the mere fact that the server was in the United States did not preclude the offence from occurring in this country.

As Braintech v. Kostiuk (1999), Pro-C Ltd. v. Computer City Inc. (2000) and R. v. Bahr (2006) clearly demonstrate, the way in which the courts make sense of this technology plays a central role in how questions of online jurisdiction are decided. In all three of these cases, the judges have chosen not to define the Internet in technical terms. Rather than focusing on the bits and bytes of data that get sent across a transnational network of computer servers, a more basic understanding of this technology is taken up that reduces it to a system of global communication where information is simply “uploaded” onto a website for others to see. And while the Internet is technically more similar to traditional media like TV or the telephone (see Lemley 2003: 524), Canadian courts have opted not to conceptualize it in this way. Instead of seeing websites as a medium of exchange that allows for the sending of digital data between a website provider and a website user, judges have constructed this legal domain called cyberspace where online materials are said to reside. Because the data is believed to exist in this virtual world of cyberspace, the courts have looked to a whole host of other factors to determine whether or not these materials
have actually crossed national boundaries to constitute a “real and substantial presence” within a specific geographic location.

From Interactivity to Targeting

Canadian courts have continued to employ various tests to determine whose laws should apply online. Over the last several years, there has been a steady move away from looking at the interactivity of a website to what Michael Geist (2004) describes as a “targeting test.” As Geist (2004) explains, this test reaffirms the belief that courts should not assert jurisdiction over a website merely because its content is accessible in that particular location. Instead, there must be “evidence that the site actively targeted an audience within the jurisdiction.” While the criteria for determining “targeting” still remains unclear, the courts have looked at the language and content of the site, the terms and conditions posted on the site, as well as the website operator’s general awareness that the content may have an effect within a particular location, to help establish a “real and substantial connection” to the country in which legal jurisdiction is being claimed (ibid.).

This “target test” was reaffirmed by the Ontario Court of Appeal in Bangoura v The Washington Post (2005), reversing a lower court’s ruling that asserted jurisdiction over the Post in a dispute regarding an article published in 1997. The case involved Cheickh Bangoura, who was a United Nations official posted to various countries around the world throughout the 1980s and 1990s. Bangoura became a resident of Canada in 1996, received landed immigrant status in 1997 and Canadian citizenship in 2001. He has lived in Ontario for the past several years.
While stationed in Kenya in 1997 as a leading official in a UN Drug Control Program, Bangoura was featured in several articles in the Washington Post accusing him of misconduct and mismanagement. Although many years have passed since the articles first appeared, Bangoura recently sued the Post for defamation in an Ontario court, claiming that the articles remain available on the Post’s website and therefore accessible to residents in Ontario. In response, the Post sought to have the case stayed, arguing that the Ontario courts should not be entitled to assert jurisdiction over the matter since there was no real and substantial connection with the province. The judge in this case denied the motion, ruling instead, that the paper “should have reasonably foreseen that the story would follow the plaintiff wherever he resided” *(Bangoura v The Washington Post [2005]).*

According to Geist (2004; 2005), the lower court’s decision in this case established a “moving target” test for Internet jurisdiction that would create a chilling effect on online publishers who might refrain from posting certain content on their websites for fear of liability in other jurisdictions. As Geist (2004) explains:

While the Ontario court was right to use foreseeability as the basis upon which it determined whether a publisher can be hauled into a foreign court, it seems unfair to expect the Washington Post to foresee that Bangoura, residing in Kenya at the time the article was first published, would years later reside in Ontario and sue in Ontario courts. Taken to its logical conclusion, the Ontario decision suggests that online publishers face potential liability in every jurisdiction, since foreseeability would be a fluid concept that literally moves with the prospective plaintiff. The targeting test developed as a means of providing all Internet participants with a degree of certainty about their potential liability for online activities. The Ontario court has instead created a moving target test that will create the prospect for uncertainty among publishers worldwide as they fear that they too may be someday hauled into an Ontario courtroom.
The lower court’s decision and its use of this “moving target test” to determine “real and substantial connection” to the province, however, was overturned a year later by the Ontario Court of Appeal.

The appellate court unanimously reversed the decision, noting that “the connection between Ontario and Mr. Bangoura’s claim is minimal at best. In fact, there was no connection with Ontario until more than three years after the publication of the articles in question” (Bangoura v The Washington Post [2005]). The Court further concluded that “it was not reasonably foreseeable in January 1997 that Mr. Bangoura would end up as a resident of Ontario three years later. To hold otherwise would mean that a defendant could be sued almost anywhere in the world based upon where a plaintiff may decide to establish his or her residence long after the publication of the defamation” (ibid.).

Since Bangoura v. The Washington Post (2005), Canadian courts have continued to employ various tests to determine legal jurisdiction. As a result, simply putting up content on a website that can be accessed by others in another country is no longer enough to haul an online publisher into a courtroom. On the contrary, judges have tried to prevent an overreach on the exercise of jurisdiction upon extra-territorial and transnational transactions by looking to a number of different factors to establish a “real and substantial” connection with a specific location.

But, while having to prove a real and substantial presence seems like a logical threshold for determining jurisdiction on the Internet, this type of legal reasoning is by no means inevitable and is only made possible when one adopts a conception of this technology that focuses on the message rather than the medium. Had judges chosen to draw parallels with the telephone and
looked specifically at how data is transmitted across national boundaries along this global network of computer servers, a very different outcome may have resulted.

From “Place” to “Space”

There are currently very few cases in Canada where the word cyberspace is used and even fewer where it plays a central role in legal reasoning and decision-making. Interestingly enough, the three cases in which this term figures most prominently deal with the question of jurisdiction on the Internet. In *Braintech v. Kostiuk* (1999), *Pro-C Ltd. v. Computer City Inc.* (2000) and *R. v. Bahr* (2006), the courts have taken up cyberspace as a spatial metaphor to describe the domain of social interaction created by the Internet. As one judge put it, cyberspace is a “conceptual location” of “electronic interactivity” and a “whole new territory independent of conventional geography” (*Pro-C Ltd. v. Computer City Inc.* [2000]).

Some critics (see Barlow 1996; Johnson & Post 1996a, 1996b; Post 1997) have taken this notion of a cyberspace as a basis for rejecting any form of government intervention on the Internet. They claim that cyberspace is separate from the “real world” and, like any other territory, should be recognized as its own sovereign nation. To these cyber-libertarians, any attempt by an existing nation-state to impose its law on “citizens of the Internet” is viewed as an “extra-territorial power grab” and a “form of colonialism” that must be met with strong opposition (Johnson & Post 1996b; Post 1997; but see also Barlow 1996).

Many of these same critics (see Johnson & Post 1996a) also argue that the very nature of this technology makes centralized control and the enforcement of rules “from above” virtually impossible. Because data over the Internet regularly travels across national borders, laws
determined by a certain geographic jurisdiction become extremely difficult to apply on this network “designed precisely to make geography irrelevant and indeterminate” (Post 1997; but see also Johnson & Post 1996a, 1996b; Johnson 1996).

This very American-centric conception of cyberspace as a “new frontier” is strikingly different from the one employed by the Canadian courts. The judges in these cases do not view cyberspace as an autonomous nation-state populated by Internet users or “netizens.” On the contrary, it is perceived as a digital wasteland that lies somewhere in between the traditionally recognized borders of sovereign territories. The courts understand cyberspace less as a “place” and more as an intermediary “space” where data and information transmitted via the Internet “exists” (or, in some instances, “go missing”). Materials posted on a website or a BBS do not automatically “enter” a jurisdiction where they are viewed. Nor do they reside inside a specific Internet server. Instead, they are believed to be in cyberspace.

So, while the technical reality is that the Internet operates more like a traditional communications medium whereby data is immediately sent back and forth between two computers, this particular view has been largely ignored in favour of a more spatial understanding of the technology. And it is this more common or lay knowledge about the Internet that the courts in Canada have taken up and translated into legal thought when dealing with the question of online jurisdiction. This vision of cyberspace adopted by the courts not only provides a way of thinking about the Internet, but also allows for the traditional practice of connecting jurisdiction with physical territory to still be legally relevant in these cases.

As discussed earlier, some American scholars (See Hunter 2003; Lemley 2003) have argued that the adoption of the “cyberspace as place” metaphor has led to the increasing
privatization and “enclosure” of this new medium. However, it is equally important to consider the more positive implications in taking this approach. Indeed, by recognizing cyberspace as a digital “no man’s (sic.) land” that is positioned somewhere in between the borders of the two parties involved, the Canadian courts have been able to avoid applying the general practice of linking jurisdiction with geographic territory to a technology that was specifically designed to make geography “irrelevant and indeterminate” (Post 1997; but see also Johnson 1996; Johnson & Post 1996a, 1996b).

Instead of assessing jurisdiction on the mere presence of material posted on a BBS or a website, the courts in Braintech Inc. v. Kostiuk (1999) and Pro-C Ltd. v. Computer City Inc. (2000) and R. v. Bahr (2006) relied upon the interactivity test established in the Zippo case as a way of distinguishing between “active” and “passive” uses of the Internet. The courts have thus moved away from a territorial conception of jurisdiction to one that is more relational and takes into account the quality and nature of the online communication. In doing so, the courts have steered clear of determining legal forum on the sole basis of the material “crossing” into the place where it is viewed and the possible application of jurisdiction on anyone, anywhere. These decisions, however, may have only been reached by first thinking about the Internet in spatial terms and placing the materials in question “out there” in cyberspace.

Making Cyberspace a Legal “Reality”

Richard Ford (2003: 151; but see also 1999) argues that “territories are made, not found.” Although it may appear to be something that has evolved naturally, Ford (2003: 151) views territorial jurisdiction as a “technology that was ‘invented’ or ‘introduced’ in a given social
setting at a particular time” and explains its emergence as the “product of the coincidence of two innovations”: the science of cartography and the ideology of rational, humanist government.

In a similar vein, the virtual world of cyberspace only becomes a “reality” because we make it so (ibid.). One way cyberspace is “made real” is by having others accept it as more than just a spatial metaphor. So, while Internet enthusiasts like John Perry Barlow and Howard Rheingold would have us believe that “cyberspace” is truly a “real” place where “real” people reside, it is important to consider whether or not this particular view of the Internet is being adopted or “translated” into other settings. As I have shown in this chapter, the courtroom is one specific site where cyberspace is being “black boxed” and transformed from a spatial metaphor to a legal reality.

But, while the technology is still thought about and described spatially, the different actors that have transported and mobilized the concept of cyberspace into law have been relatively unfaithful to the work of early Internet “pioneers.” In cases regarding online jurisdiction, the Canadian courts have not seen cyberspace as a sovereign territory whose autonomy must be respected. Rather, the courts have taken up this concept in a way that suits their needs and have perceived it as a digital middle ground that exists somewhere outside the cartographic borders of any territorial jurisdiction. Put simply, much of what these Internet enthusiasts envisioned for cyberspace has been “lost in translation.” Still, by taking this view and adopting it into judicial decision-making, the courts have transformed cyberspace into a legal construct, which, in turn, has had a very “real” and direct impact for how they approach the question of jurisdiction on the Internet.
Conclusion

This chapter has examined the use of the term “cyberspace” in Canadian court judgements and illustrated how it has been translated into legal thought. More specifically, I have documented the various ways in which the term “cyberspace” has been taken up by judges as a framework for understanding and making sense of Internet technology. While this spatial conception has been used in very different cases to generate a number of legal outcomes, it is commonly employed to separate this form of communication from others. Indeed, whether it is to highlight the ubiquity or pervasiveness of Internet posts or the public vs. private nature of online discussions, thinking about the technology in spatial terms has drastically shaped how it is treated in law.

Rather than relying upon technical knowledge or expertise, the courts in Canada have turned to the spatial metaphor of cyberspace and thus a more common or lay understanding of how the Internet operates to help guide their legal decision-making. Ironically, viewing the Internet “spatially” appears to have helped Canadian judges re-examine claims of jurisdiction as a matter of territorial boundaries and to consider more complex questions regarding the quality of the communication. At the same time, the importation of this spatial discourse into law has turned cyberspace from a literary device used to describe the technology of the Internet to a legal “reality.”
Chapter 5
Making Network Connections

The Mother of Gore’s Invention?

*If Gore invented the Internet, then I invented Spell-Check.*

Dan Quayle
Former US Vice President

During a 1999 interview with Cable News Network (CNN) reporter Wolf Blitzer, former US Vice President Al Gore was asked to differentiate himself from other politicians in general, and from his main rival at the time, Bill Bradley, in particular. Gore responded by boasting, among other things, that during his service in the United States Congress, he took the initiative in creating the Internet. Unbeknownst to Gore, this remark would become the comedic fodder for late night talk show hosts for weeks to come and confirm his place in the history of American political folklore. Prompted by an article in *Wired Magazine* that questioned the Vice President’s claim, it would not take long for Republicans and journalists to pick up on this story and transform it into a tale about how Al Gore claimed to have invented the Internet.

Although Gore never actually said that he had invented the Internet, the quote continued to circulate without ever being corrected and instantly took a life of its own. Almost overnight, Gore had become the target of ridicule and the butt of many jokes. On December 3, 1999, David Letterman’s nightly “Top Ten List” was entitled “Top Ten Other Achievements Claimed by Al Gore.” At number one: “Gave mankind (*sic.*) fire.” Gore, himself, got into the act. At a town hall
meeting held in front of a group of students at the University of Michigan, Gore joked, “I invented the environment.”

To his political opponents, however, the comment was just another example of Gore’s propensity to overstate his personal accomplishments. In the midst of a race for the US presidency, the George W. Bush campaign capitalized on the controversy by running television ads with a female voice muttering in the background, “If Al gore invented the Internet, then I invented the remote control.” The Republicans went so far as to sponsor a website called “gorewillsayanything.com” which suggested that the Vice President was padding his resume and making up facts about himself in order to win people’s votes.

The timing of this incident and Gore’s history of exaggeration notwithstanding, much of the attention that this story has garnered can be directly attributed to the public’s understanding of technology and how they are created. Indeed, what made Gore’s supposed claim of having invented the Internet so audacious is that, for many observers, the invention of new technological devices is an accomplishment reserved for scientists and engineers working in laboratories or design studios. That Gore, a politician with an undergraduate degree in government from Harvard was neither of these things, coupled with the belief that the Internet was actually invented back in the late 1960s, made the statement seem that much more unbelievable and outlandish.

In his defence, however, many of the individuals who have been recognized as being the “genuine” inventors of this technology have praised Al Gore for playing a key role in the

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29 Al Gore had once told reporters that he and his wife, Tipper, were the inspiration for the novel Love Story which, as it turned out, came as news to the author, Erich Segal.
creation of the Internet. Vincent Cerf, a Senior Vice President with MCI Worldcom who has been called the father of the Internet was once quoted as saying that, “The Internet would not be where it is in the United States without the strong support given to it and related research areas by the Vice President in his current role and his earlier role as Senator” (Jacobsen 1999). Marc Andersen, the inventor of the Mosaic web browser, credits Gore with making his work possible by creating federal research grants through his High Performance Computing and Communication Act (1991) (ibid.).

Though certainly in the minority, a small handful of journalists had also tried to highlight some of the things that Gore had done to help make the Internet a reality. An editorial in the Arizona Republic, for instance, noted that, “In fact, as the chairman of a key science subcommittee in 1986, Gore did foster the creation of five supercomputer centres through the National Science Foundation that became the cornerstone of the Internet” (cited in Wiggins 2000). But even those willing to give Gore credit for being one of the earliest supporters of high-speed data networking are quick to distinguish this from invention. Indeed, while providing legislative and intellectual backing for the development of the Internet is impressive and notable, it is still a long way from having actually engineered or patented the technology.

Yet, for S&TS scholars, this definition of “invention” is far too restrictive and fails to take into account the work of a whole host of other actors that are needed to transform technological devices into reality. In her book entitled Inventing the Internet, Janet Abbate (1999) adopts this broader interpretation of the term by looking at how government and military agencies, graduate students, telecommunications companies, standards organizations, and network users, were all integral in the making of this technology. According to Abbate (1999), the development of the Internet is not an isolated act of invention that ends at the building of
network servers and web browsers. Beyond the technical artefacts, the very meaning of the technology and its identity as a communication medium had to also be invented and reinvented through a series of social choices (ibid.: 6). Viewed from this perspective, the ingenuity of the system’s builders and the practices of its users have proved just as crucial in helping to define the structure and purpose of the Internet as computers and telephone circuits (ibid.).

This dissertation has expanded on Abbate’s (1999) work by examining how the Internet is imagined and “made governable.” More specifically, I have looked at the regulation of the Internet as a site where the very nature of this technology – in terms of what it does, how it can be used and whether or not it can or should be regulated – gets invented and reinvented. Drawing on case studies of the CRTC, MNet and the courts, I have documented how different institutions have responded to the emergence of this new medium and the kinds of knowledges about the Internet that get produced as a result. Thus, rather than bracketing the building of technology from its regulation, I have considered these processes as being mutually constitutive.

**Imagining the Internet and Making it Governable**

In Chapter 2, I looked at this interplay between the conceptualization of technology and its governance by examining how the various parties who appeared at the CRTC’s New Media hearings tried to mobilize and align a constellation of heterogeneous actors to construct their own framework for understanding the Internet and how it should be governed. From recounting narratives about a new global environment to presenting numbers and figures representing market growth and economic prosperity, these groups employed a variety of strategies to enrol
the CRTC into their respective networks and to persuade the Commission to adopt a particular stance with regards to this technology.

Viewed in this light, a more detailed picture of the hearings is presented that does not explain away the CRTC’s decision to remain hands-off the Internet as either socially or technologically predetermined, but sees it as the end result of the successful (and unsuccessful) building of networks by the various parties involved. At the same time, the hearings held by the CRTC serve to highlight the “interpretive flexibility” (Pinch & Bijker 1992) surrounding the Internet and how it can be used and clearly illustrate the constructed and highly contested nature of this technology.

For those opposed to government regulation, the main goal was to convince the Commission that the Internet was quite different from other broadcasting technologies. That, unlike radio and television, the Internet was simply too big and too important for Canadian society to be controlled. Conversely, for parties like the ACLC who did not share this point of view, much of their time in front of the CRTC was spent disputing this interpretation of the Internet and the supposedly democratizing potential of this technology. According to these groups, state intervention was necessary to ensure that all Canadians have equal access to and representation on this new medium.

In the end, proponents of a hands-off approach to the Internet were largely successful at persuading the Commission to accept their position that the technology did not require government regulation. However, rather than admitting that it simply could not regulate this technology, the CRTC issued an exemption order temporarily suspending the application of the Broadcasting Act (1991) on broadcasting services delivered over the Internet in Canada. Thus,
Despite their best efforts, these parties were unable to sway the CRTC into admitting that the Internet was ungovernable.

Quite the opposite, the Commission came away from these hearings maintaining its regulatory authority over those aspects of Internet service closely resembling traditional broadcasting. The CRTC was therefore able to construct a “governable future” for the Internet in which it could remain relevant and, if necessary, impose regulation. Interestingly enough, many of the private broadcasters who, less than a decade ago, were lobbying for the Commission to stay away from new media are now demanding greater government involvement by claiming that the Internet is really not all that different from radio or TV and that, like these older technologies, also requires protection from the state to make certain that Canadian content is readily available.

In Chapter 3, I turned the focus away from government to looking at the work of a small, non-profit organization called the Media Awareness Network (MNet). Using data collected through semi-structured interviews with current and former members of MNet, this case study explored how this organization has been able to translate its message of “safe, wise and responsible” Internet use into the dominant discourse in Canadian public policy pertaining to the regulation of this technology. However, rather than explaining the prominence of MNet and its strategy for Internet self-governance as merely a function of a new communication technology or the end result of a rising ethos of neo-liberalism, particular attention was paid to the negotiation and network-building performed by this organization to make itself, and the work it does, relevant.
As I demonstrate in this chapter, MNet has been quite successful at conveying the idea that traditional forms of regulation are largely unworkable on the Internet and that the development of critical thinking skills among children and young people is the most viable solution to the problem of online safety. Indeed, by mobilizing a variety of different actors, MNet has been able to construct the Internet as a technology that can only be governed through media education and web literacy. True to its name, much of the organization’s success comes from its ability to form “networks” of groups and individuals who not only accept but further promote this conception of the Internet and how it should be regulated. Thus, contrary to many early cyber-enthusiasts (see, for example, Barlow 1996; Dyson 1998; Johnson & Post 1996a, 1996b; Rheingold 1993) who hold strongly to the belief that this new means of communication would automatically foster a spirit of community and give users the power and freedom to govern themselves, the system of self-regulation that we are presently witnessing on the Internet does not “naturally” emerge from the technology. Instead, citizens must also be educated and made into “safe, wise and responsible” Internet users by organizations like MNet and the various actors it has enlisted into its network.

Finally, while the first two case studies examined the ways in which the Internet is constructed and made governable, the last study explored how the concept of “cyberspace” has been translated into law. In Chapter 4, I looked specifically at Canadian court judgements where the term “cyberspace” appears and illustrated how judges have relied upon this more common or lay understanding of the Internet to help inform their decisions. In many of these cases, thinking about the Internet in spatial terms has provided judges with a very simple way of distinguishing the Internet from other types of media. Whether it was to highlight the pervasiveness of messages posted online or to emphasize the public nature of online discussions, the term
“cyberspace” was used by judges to denote some distinct characteristic or feature of online communication.

However, as I argue in this chapter, this geographic metaphor is more than just a literary device that helps judges visualize and imagine what are, in effect, “abstract flows of electronic signals, coded as information, representation, and exchange” (Graham 1998: 166). Rather, by taking up this spatial conception of the Internet, the courts have effectively transformed cyberspace into a legal construct that has had a profound impact on judicial decision-making. Most notably, by conceiving cyberspace as a legal place, judges have been able re-examine claims of jurisdiction made solely on the basis of territorial boundaries to consider the quality of the communication as a means of determining legal forum. Acknowledging the chilling effect that these cases may have for freedom of expression, the Canadian courts have resisted the idea that the simple viewing of content in a particular location is enough to impose foreign laws on individuals who happen to post certain materials online. However, this conclusion could have only been reached and further legitimized by thinking about the Internet in spatial terms and locating these materials somewhere “out there” in cyberspace.

Using ANT to Open Up the Black-Box of Internet Regulation

In this project, I have chosen to use ANT as the main conceptual framework for understanding how the Internet is “made” governable. In keeping with the social constructivist tradition, ANT tries to get away from very broad notions of technological determinism or technological imperative by looking more closely at the “inner workings of real technologies and their histories to see what is actually taking place” (Winner 1993: 364). The primary aim here is
to “open up the black box” of historical and contemporary technology and provide a comprehensive account as to the underlying structures and social origins of these technological developments (ibid.: 365). By doing so, this form of research tries to demonstrate that the shape that certain objects end up taking could have easily been otherwise.

Rather than seeing technological change as a matter of necessity, social constructivists emphasize contingency and choice in the making of artefacts (ibid.: 367). The goal is to show the array of technical possibilities and alternatives that are available at any given time and to consider why it is that particular devices, designs and social constituencies are selected over others (ibid.: 366, 388). The course of technological development is therefore not predetermined by outside forces, but the “product of complex social interactions” (ibid.: 375).

For social constructivists, the devil is in the detail. Instead of proposing grand theories for how technologies arise, social constructivists focus their attention on precise descriptions and explanations that highlight the complexities of technical change. This is often done through detailed case studies of technological innovations – ranging from the development of bicycles to the building of missiles – that serve to illustrate the “interpretive flexibility” (Pinch & Bijker 1992) of technical artefacts and their uses. Indeed, as Winner (1993: 356) points out, this type of analysis helps to reveal that

… people in different situations interpret the meaning of a particular machine or design of an instrument in different ways. People may use the same kind of artefact for widely different purposes. The meanings attached to a particular artefact and its uses can vary widely as well.

However, while social constructivists share this general concern for opening up the black boxes of science and technology, there are different ways in which this is accomplished.
ANT sees the world as a constellation of networks that are made up of both human and non-human actors. For ANT theorists, the goal of research is to document how these various elements are brought together so that they form an apparently coherent whole representing a scientific fact or technical artefact. What sets ANT apart from other constructivist approaches is its refusal to draw what they believe to be artificial distinctions between the social and technical spheres. From this perspective, material objects (e.g., doorstops, charts, automobiles, etc.) and the work they perform are equally important – at least analytically – to understanding the shape of science and technology as scientists and engineers.

The approach offered by ANT theorists to studying how scientific facts and technical artefacts are made bears a striking resemblance to the way in which governmentality scholars analyze the subject of governance. For one, both reject grand theorizing and the attempt to produce “one-size-fits-all” accounts that explain their respective objects of investigation in global terms. Thus, like ANT theorists who refuse to see science as the product of either Society or Nature, governmentality scholars have similarly moved away from looking at broad concepts like the state or globalization to understand how we are governed.

Instead, both ANT and governmentality promote a spirit of enquiry that encourages researchers to focus not on why certain phenomena have taken place, but how these have come to be. In order to do so, both approaches suggest that we need to pay greater attention to the mundane and everyday practices that happen at the micro-level. For governmentality scholars, this means having to investigate the role of psychologists, by-law inspectors, insurance agents and a whole host of other “minor” players who are involved in the governing of people, places and things. Likewise, for those who choose to adopt an ANT framework, one must take into
account the work of a variety of heterogeneous actors beyond the list of usual suspects who are often implicated in the making of science and technology.

In both cases, this form of analysis does not have to be limited to human beings. Indeed, while it does not fully subscribe to the view proffered by Callon and Latour that all objects have agency, governmentality studies shares a similar interest in examining how material structures (e.g., prison cells and their design) can have political effects apart from the class and other interests of the people controlling them (Rose et al. 2006: 93). That objects, ideas and other non-human entities are important and analytically relevant is clearly shared by both schools of thought.

In keeping with the way that S&TS have rejected reductionist accounts of technological change, this project directly challenges the belief that Internet regulation is somehow inevitable or technologically predetermined by demonstrating that the ways in which the technology is governed are highly dependent upon the social, political and legal processes and contestations that effectively shape how the technology is received, understood and conceptualized. As such, the different regulatory institutions studied in this dissertation – the CRTC, MNet and the Canadian courts – must not only be seen as sites of governing, but viewed as places where knowledges about the Internet get produced.

Limitations and Criticisms

The approach to studying Internet regulation adopted in this project, however, is not without limitations or criticism. One obvious concern is that, while ANT provides the analytical freedom to simply follow the actors in a network, it offers no proper guidance as to who or what
should be studied. These decisions are left to the researcher who must figure out for herself what actors are important and which are not. As a consequence, ANT can easily be accused of lacking the methodological rigor needed to ensure that the researcher remains objective and detached from what it is she is studying. Put differently, there is nothing to guarantee that the findings from a study are valid and reliable and are not in anyway influenced by personal bias.

Because it is up to the researcher to subjectively decide which actors to follow and, perhaps more importantly, which actors make up a network, no two studies of the same topic will ever yield the same results. The kinds of stories that are told about a particular phenomenon depend heavily upon the actor or actors one chooses to focus. In this project, for example, my case study of the CRTC provides us with certain insight into how the various parties who appeared at the New Media hearings tried to convince the Commission to accept their vision of the Internet and its regulation. The study, however, tells us very little as to why the CRTC decided to align themselves with one particular network and not another.

So, while ANT does not set limits as to what can be studied, there are no criteria that outline how much description is enough and whether or not the analysis of a network is ever complete. For social scientists who subscribe to a more positivist stance to research, the degree of analytical freedom given to the researcher and the lack of inter-rater reliability raises serious questions about whether this type of investigation can truly reveal certain “truths” about the world. That there are no specific rules or guidelines that can help the researcher determine that what they are seeing is objectively “there” and not simply a reflection of what she wants to see is particularly troubling for critics of ANT.
In response, proponents of ANT and other social constructivists have defended this approach by claiming that there is no objective reality “out there” that can be properly measured or observed (Hess 1997: 35). On the contrary, these scholars propose that the natural world is not so much discovered as it is constructed or “made” by scientists who impose a structure upon it (ibid.). Even less radical constructivists who suggest that a “real” world does exist argue that the theories generated through careful observation are invariably shaped by cultural values and/or social considerations. From this perspective, no methodological framework can ensure that researchers remain completely detached from their objects of study and prevent their own personal biases and theoretical interests from influencing the results they produce.

On another level, ANT and social constructivism, more generally, is often criticized for focusing on the micro-detail at the expense of looking at the bigger picture. For example, in his critique of the constructivist approach to the study of technology, Langdon Winner (1993: 367) argues that, in its attempt to provide empirical models of technological change that better reveal the actual course of events, this body of research has left out of view a number of important questions about technology and human experience which are very much alive in other theoretical perspectives.

For Winner (1993: 368), one of the main shortcomings of social constructivism is that, while it attempts to show why it is that certain devices prevail over others, the consequences of these choices are seldom the focus of study. As a result, this sociology of technology offers very little in terms of how technologies transform personal experience and social relations. Instead, the bulk of the attention is paid to understanding how technical artefacts are socially constructed with far less emphasis placed on why these innovations matter within the broader context.
A second and related issue is that, in their effort to describe, in explicit detail, what is “really” going on in with regards to technological change, constructivists have refrained from identifying broader forces and social conditions that underlie technology making. As Winner (1993: 371) explains:

The possibility that the ebb and flow of social interaction among social groups may reflect other, more deeply seated processes in society is not an idea that the social constructivists choose to explore. They usually find it sufficient to gather evidence of social activities most clearly connected to technological change. Insofar as there exist deeper cultural, intellectual, or economic origins of social choices about technology or deeper issues surrounding these choices, the social constructivists choose not to reveal them.

By undertaking case studies of very specific technical achievements (or failures) and pointing out the many peculiarities that account for why it is that certain technologies develop (or do not develop) in the way they do, social constructivists have been unable or, perhaps unwilling, to make more generalizable claims about the nature of technology. The project of broader explanation has thus been avoided for one that is entirely descriptive in character.

This focus on description over generalized explanation, coupled with their failure to take seriously the consequences of technological choices, have led critics to accuse social constructivists of being uncritical in their assessments of technology. Rather than making normative pronouncements as to whether certain technological discoveries are “good” or “bad,” social constructivists have simply chosen to take an agnostic stance with regards to these sorts of questions (Winner 1993: 372).

According to Winner (1993: 372), this disengagement with matters of politics and social justice is extremely problematic and, to his disappointment, appears intrinsic to this particular field of research. He laments:
As far as I can tell, [researchers in the social construction of technology] have no theoretical or practical position on technology and human well being at all. In fact, to announce such a position seems forbidden on methodological grounds. And because purity of social science methodology is of such pre-eminent concern, it is likely that social constructivists will continue their research without taking a stand on the larger questions about technology and the human condition that matter most in modern history (ibid.).

For Winner (1993: 375), it is this inability to offer any substantive judgments as to what technological change means for society that renders social constructivism a far less useful approach to understanding technology than those that precede it.

Although social constructivism offers the insight that choices are available and that the course of technological development is not foreordained, it fails to take a general position on the social and technological patterns under study. So, while Marxists have drawn attention to the structural relationships between classes that underscore technological change and scholars like Lewis Mumford have advocated a move away from a mechanistic obsession with modernity towards a more humane and organic sense of technical possibilities, social constructivists provide no such diagnosis or prospects for positive transformation (ibid.: 375-376).

Instead, Winner (1993: 376) bemoans that what we are basically left with is a “blasé, depoliticized scholasticism” that “shows no inclination to reach further, to fashion conceptual links to the larger question about technology and the human condition that have engaged social and political thinkers throughout the 19th and 20th centuries.” In essence, social constructivists have opened up the black box of technology, but have failed to do anything meaningfully with its contents.
From Critique to Being Critical

In much the same way that social constructivists are criticized for failing to take a normative position regarding technology and society, governmentality scholars have been similarly accused of being apolitical in their approach to the study of governance. In both cases, the concern for how things are achieved (e.g., how technical artefacts are made or how subjects are governed) and the outward rejection of grand narratives that attempt to provide global explanations for why this takes place have led some detractors to call into question the critical potential of these analytical frameworks.

This type of criticism seems premised upon a particular notion of what constitutes a “critical” theory. Here, in order to be critical, a theory of technology or society must identify a set of forces (e.g., capitalism, globalization, colonialism, etc.) that explains, in very simple terms, the phenomenon under investigation. More importantly, the theory must recognize the primary cause(s) of various social injustices (e.g., classism, racism, sexism, etc.) and respond accordingly by positing a program for positive change. In other words, being critical requires some kind of social critique.

But, while neither of the two theoretical frameworks used in this dissertation engages in the same kinds of revolutionary projects as traditional Marxists or Critical Anti-Racist scholars, it would be unfair to blanket these approaches as “uncritical.” Indeed, those who have labelled ANT and other social constructivist accounts of technology as uncritical or apolitical seem to ignore the fact that this body of work comes as a direct response to a naïve determinism, which for a long time, has framed our understanding of technological change. And, although ANT refrains from offering normative prescriptions for how technologies should be developed or for
what purposes they should be used, it does provide us with the important insight that the shape a
technology ends up taking could have been entirely different.

By describing in detail how certain technical artefacts are made, ANT theorists and other
social constructivists have clearly demonstrated that the course of technological development is
not automatic or predetermined, but the end result of a complex network of social interactions.
More broadly, however, by taking a rather agnostic view of technological change and looking at
how (as opposed to why) technologies are constructed, the analyses offered by those using ANT
is not constrained by a conceptual framework that already determines beforehand what it is the
researcher should be studying. As a result, the various actors that contribute to the making of a
technology, which may not have otherwise been considered, are now revealed. Thus, rather than
being seen as a threat to the validity and reliability of a research project, the analytical freedom
offered by ANT should be celebrated for its ability to open up the possibilities for what can be
examined and studied.

In a very similar vein, the decision to turn away from grand theories and to focus instead
on the ways in which people, places and things are governed should be viewed as a major
strength of governmentality and not a weakness. As a framework for understanding the “art of
government,” governmentality provides an “ethos of investigation” and a set of analytical tools
that allow us to examine how certain things have happened and to identify the various
differences to what had come before, without having to fit the analysis inside a pre-defined
template of power and social structure (Rose et al. 2006: 101).

And, although neither ANT nor governmentality offers a ready-made one-size-fits-all
critique of society or technology, this type of genealogical detective work makes criticism
possible (bid.). Indeed, by opening up these black boxes of technology and regulation and uncovering the various complexities involved in the making of technical objects and the governing of subjects, we widen the space for critical engagement and render visible a whole host of sites where projects for transformative change may be most effective. Viewed in this light, ANT and governmentality studies do not pre-empt the possibility for political action, but help to establish important starting points for more activist work to take place.

**Future Research Directions**

By combining ANT with governmentality, this project has helped to advance the current body of knowledge in the fields of criminology and S&TS. On the one hand, while governmentality encourages a spirit of inquiry that pushes criminologists and socio-legal scholars to examining how things are governed or made governable, ANT provides us with a conceptual language that can help us to describe and better make sense of what it is we are studying. As I have demonstrated in the three case studies that make up this dissertation, much can be revealed about the regulation of new technologies by looking at the topic in terms of actors and networks. In particular, by engaging in this form of genealogical research, we are forced to recognize that, far from being inevitable or predetermined, how we govern the Internet is the end result of complex techno-social interactions and political struggles that cannot easily be reduced as functions of Society or Technology.

At the same time, this dissertation has expanded the empirical terrain for S&TS scholars by demonstrating the need to examine and take seriously how technologies are made governable. Looking at the different ways in which the Internet is constructed within the context of its
regulation, one could easily argue that courtrooms and public hearings are equally valid sites for investigating the making (and remaking) of this technology as laboratories and design studios.

Opening up these black boxes of technology within these regulatory spaces also allows us to address Winner’s (1993: 368) complaint that social constructivists have failed to take into account the social consequences of technical choices. As all three case studies clearly show, the manner in which the Internet is conceptualized and understood have direct implications for how it is governed. Thus, whether we want think about what these decisions regarding technology mean for regulation or other areas of interest, this type of research that gets us beyond simply opening up the black-box of technology is needed if social constructivism is to shake off the general criticism that it is nothing more than “blasé, depoliticized scholasticism” (ibid.: 376).

Finally, looking at the three separate case studies, it is quite clear that, in order for us to fully appreciate why it is that new technologies like the Internet are governed in a certain way, we must also explore how these devices are conceptualized and understood in relation to those that have come before it. In all three cases, the Internet was in some way compared to other forms of media like radio or TV to help identify the features and characteristics that were “new” about this technology. However, for the CRTC, MNet and the Canadian courts, these comparisons were not only used to build a particular understanding of the Internet, but also helped to shape the way in which the technology was eventually governed.

Although we cannot make general conclusions that allow us to predict how certain devices will be received, what we can take from these case studies is the need to empirically document how new technologies are constructed as “new.” Whether we are interested in exploring the regulation of these technologies or more concerned with understanding
technological developments, it is important for both S&TS and governmentality scholars to begin asking how it is that these devices are constructed as different from those that preceded it.

In conclusion, while I have embarked on new empirical ground for criminologists and socio-legal scholars interested in examining the topic of Internet regulation, this project is by no means complete. Future research in this area must continue to explore other regulatory sites where the Internet is made governable in order for us to fully comprehend the origins of our ideas about this technology and how it is regulated, and to think critically about the various social, political, economic, legal and technological consequences that emerge as a result of these choices.
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