

**Rethinking Rights and Regulations --
Institutional Responses to New Communications Technologies**

Like it or not, as users of new technologies we are playing the telecommunication game by an increasingly complicated set of rules.

Reviewed by Carl Bedingfield

Rethinking Rights and Regulations -- Institutional Responses to New Communications Technologies, Edited by Laurie Faith Cranor and Steven S. Wildman, Publisher: MIT Press, Cambridge, Mass., 2003

If you've ever bought a house, you probably are vaguely aware that the corners of your property are marked by some sort of tangible object. The object is typically a large metal pin, a piece of rebar, or a piece of iron pipe driven deep into the ground. Before you can close the sale, most municipalities require that a surveyor visit your property and verify the location of the corners of the lot. The surveyor usually marks the corner objects by tying a brightly-colored length of plastic tape to each marker. Eventually the tape deteriorates or is removed, and you no longer think about these corner markers.

These simple corner markers, however, represent centuries of accumulated wisdom, processes and agreements concerning property rights. Small, almost purely symbolic, yet almost universal in their use, nearly invisible and rarely used, they maintain civility between property owners and they provide a fair means of settling disputes. Their importance far outweighs their visibility.

The value of these markers, and the systems they represent, is based on their stability. However, new situations often challenge conventional wisdom. There is no equivalent tangible marker, for example, to indicate boundaries in the ocean. Over the past few years, expanding technological innovation has quietly but persistently threatened to raise the tide above some of our more familiar corner markers.

New communication technologies have been developed that enable, among other things, expanded methods of wireless connectivity, the "population" of "cyberspace," and the sharing of content between informal groups of participants. These new

technologies have produced perplexing challenges to conventional assumptions about property, ownership and place. This book provides a profound look at new areas of technology and their potential impacts on our lives.

The papers in the book were originally presented at the 30th Research Conference on Communication, Information, and Internet Policy (TPRC 2002). (TPRC stands for Telecommunications Policy Research Conference.) Since policy and regulation tend to evolve at a glacial rate, the papers collected here are still extremely relevant.

The editors managed to group a wide array of topics into three coherent sections. In some cases, two adjacent papers argue different perspectives of a single issue. On other subjects, several papers are presented that paint complementary pictures of the topic. Still other contributions stand as a single analysis of a complex issue. Together, the papers provide a coherent presentation of the various ways processes are already being formed to govern these new technologies.

New Communication Arenas

The first section, Evolving Conceptualization of New Communication Arenas, includes discussions of : the meaning of cyberspace as a "place,"; the formal/legal definition of "the internet,"; the structural and legal implications of the management of namespaces; and an analysis of the levels of adoption of Internet technology across regions, locations, and industries.

Many recent court decisions have been based on the esteemed body of property law as represented by real estate titles, legal descriptions and geographic surveying methods. But the "ownership," "boundaries," and "rights" of Internet "property" may differ in key aspects from the same concepts in real estate.

Evolution of Legal Rights

The second section is entitled Evolution of Legal Rights. This section boldly and vigorously critiques the areas of wireless spectrum management, patent and copyright law, the growing use of "terms of service" to enforce behavior, and the perplexing tangle of "anti-circumvention" laws, which purport to criminalize the

development of devices that provide potentially legal functions under the currently accepted "doctrine of fair use."

Yochai Benkler's article on the economics of wireless communication provides a meaty explanation of the new technologies in the wireless arena. These technologies enable new methods of spectrum management that propose a "commons" approach, and which threaten many existing commissions and license holders. Benkler's discussion is followed by an equally enthusiastic proposal by Faulhaber and Farber for a so-called "big-bang" auction as a transition to a market-based management method. Taken together, the two articles provide a glimpse into the challenge of managing the invisible but increasingly important radio spectrum. Once again, the applicability of tried and true real estate property ownership rules is called into question.

Regulatory Innovation

The last section is simply titled Regulatory Innovation. The issues here are certainly as critical as those in the preceding sections. Who will be responsible, and liable, for network reliability as telecommunication technologies continue to evolve beyond government-managed monopoly service providers? What are the obligations of new networks and service providers in the provision of emergency services such as Enhanced 9-1-1? Is state support of a telecom monopoly good for innovation or bad? (Warning: the mathematics will challenge you, and the answer may surprise you.) And finally, what can the US learn from the European Union's new regulatory framework?

Complicated Game

The editors did a good job of assembling, grouping and, introducing the contributions, and, other than the usual number of typographical errors that seems typical of modern publications, it reads smoothly. Of particular note are the extensive references for each chapter.

In some ways, the current regulatory climate created by these new technologies reminds me of a card game my children play, called "Mao." The rules of Mao are

complex, and this complexity is amplified by two particular rules. 1) New players are not told the rules; they must discover them by observation, trial, error and sometimes even punishment. 2) At certain times in the game, the winner of a round is allowed to make up a new rule, which must subsequently be obeyed just as faithfully as all pre-existing rules.

Whether we like it or not, as users of new technologies, we are playing the telecommunication game by an increasingly complicated set of rules. Whether our historical approaches to property rights will serve as a solid foundation to build on, or a poor starting point that sends us off in the wrong direction, remains to be seen. Either way, the articles in this book will serve as key corner markers as we attempt to lay out the boundaries of the future.

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