

Angela Daly, **Private Power, Online Information Flows and EU Law: Mind the Gap** (Hart Studies in Competition Law), Portland, OR, Hart Publishing, 2016, 178 pp., \$56.76 (hardcover), \$40.79 (Kindle).

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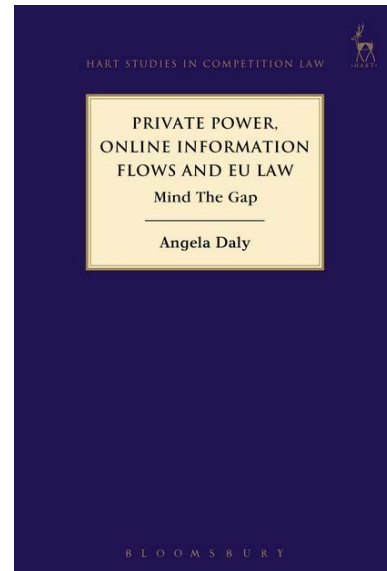
In this book, legal scholar Angela Daly has not only closely analyzed how European Union regulation is frustrated by cross-national technological and economic power, but has also provided more general food for thought about how regulation does and could work to support public values, including equal access and inclusion, in communication innovation. ***Private Power, Online Information Flows and EU Law: Mind the Gap*** is one more reminder that communication scholars cannot afford to ignore deep infrastructure business models or regulatory processes.

Daly, a European scholar working in Australia, has a background in EU telecommunications regulation herself. This background may have helped in what is a precise and grounded analysis, executed in the first instance as her PhD work. She brings a good understanding of infrastructure technology, economic understanding in the competition area, and legal grounding to a task that requires all three.

Daly uses a “law in context” approach, meaning that she does not limit herself to an administrative or legalistic perspective but rather analyzes how corporate, social and governmental structures interact. Without much theoretical lifting, she brings cultural studies into contact with regulatory concepts. While Daly does not reference much communication literature in her analysis focusing on the EU, her work fits well within a long tradition of policy scholarship that combines technical, economic, legal and cultural-studies knowledge. Scholars as wide ranging as Eszter Hargittai, Laura DeNardis, Thomas Streeter, Brett Frischmann, Robert Horwitz, Milton Mueller, Christian Sandvig, Tarleton Gillespie and Tim Wu have similarly juggled highly specific and technical knowledge with deeper public-values concerns. The limits of competition policy (in the U.S., primarily antitrust policy) have often, and increasingly with neoliberal policy approaches, featured in discussion.

Daly writes not only as a scholar about communications regulation at a deep infrastructure level, but as a global citizen concerned with the ways communication and power are intertwined. She explicitly sees her scholarship as participating in a process that denaturalizes the regulatory present and that commits to the notion that “another world is possible.”

Her analysis consistently places user autonomy, both before corporations and the state, as the core value at the center of analysis. The concept of user thus moves past the typical use of “consumer” as the entity to be protected. She sees state or interstate action as a force that could and should support



user autonomy. This normative approach to regulatory analysis is refreshing, since all regulatory structures imbed values but discussion sometimes fails to identify them. Worse, those who do articulate which values are implied in such structures can be labelled advocates, partisans or ideologues.

The Internet has long since moved from being an open space of individual freedom, and has become, as she noted, "a heavily commodified space which has seen the emergence of for-profit actors performing a 'gatekeeping' function over data flows, both for their own economic benefit as well as for the state's surveillance and law enforcement capabilities" (p. 21). How to ensure that the services of large companies like Google, telcos, and Amazon Web Services provide for user autonomy? Four arenas provide four case studies: Net neutrality, Internet search, mobile devices, and the cloud. In each case, Daly looks at three areas affecting user autonomy: competition/dominance; privacy and data protection, and free expression and control.

If you want to know the state of EU regulation in any of the areas the case studies cover, this book precisely details them. And that should be of importance to the rest of us, both because the EU is the largest trading bloc in the world and therefore a major voice in how information is managed, and also because the EU has been the pioneer in attempting to exercise any real regulatory control over Internet-era multinational communications powerhouses.

As well, the challenges faced are familiar. Competition law/antitrust law typically requires proof of anti-competitive behavior or control of the market that is not suited to the economics of digital platforms. Is Bing really an alternative to Google for search? Well, it *is* an option for users. And if search functions are "free" then some regulators (such as in the U.S. and the EU) may not see consumer harm, even though search is better seen as a two-sided market, in which advertisers not users form the other side. Free expression regulation is usually designed to stop state actors from silencing their citizens. But what if the bad actor is Comcast, defying net neutrality? What if users can't port their data from one closed service to another? And on privacy, even if you could define it helpfully: Privacy regulations haven't begun to address at an infrastructure level entire business models based on surveillance, and state actors that love the "invisible handshake" between intelligence services and corporations have no motivation to do so. Europe's data protection laws, for instance, don't fundamentally block Google's data collection.

This is exactly what you can expect, Daly argues, when the job of regulation is seen narrowly within a competition-policy frame as protecting consumers (see, Bing's an option!) rather than citizens/users, who are often, effectively, subject to monopolies or duopolies in service, newly naked before their surveilling entities, and newly vulnerable to free-speech attacks both from corporations and governments. A neo-liberal approach that privileges corporate power only exacerbates the problem, and diminishes the state's interest in protecting even consumers' welfare, much less users.' As well, technological illiteracy may factor in, and contribute to limited regulatory reach and corporate control of the discourse. Somehow, content delivery networks have been left out of network neutrality discussions, as if the issue stopped at the doorway of the ISP.

This book offers an invitation, effectively, to a deeper conversation about how to make communications infrastructure user-centric. The focus on user autonomy invites the far more difficult task

of operationalizing a definition for it. To make the concept functional, some sociological notion of what constitutes a public of users is needed. The long conversation in communications about what publicness constitutes could be useful in such a discussion; given the context that Daly has put law and regulation in here, a Deweyan approach would be valuable.

Daly's optimism about potential user-led action is evident in her recommendation for individual use of encryption, for user cooperatives, mesh networks and other off-the-grid, cooperative proposals. These proposals are made, however, without much reference to real-world efforts to do them. Users have been notoriously slow to undertake any data protection on their own, and often do not understand why they should. In the U.S., efforts to create municipal and cooperative broadband services have been stymied by corporations intent on blocking them. Mesh network technology is well-known but not widely used. It is used primarily by the military and in a few spots in developing countries.

The same close analysis Daly applies to the working of technological regulation needs to be done for citizen alternatives and what can make them more viable. Daly notes in closing that the least EU law should do is not stand in their way, which is indeed the very least it can do. Voluntary actions of small groups of aware users have brought some changes in practice in the Internet era, but they have also shown the limits of such behaviors. The relatively small space claimed by efforts such as Creative Commons, which depends upon voluntary donations to a more openly accessible environment within copyright, is chastening for those who imagine new norms through voluntary user action, especially conducted against corporate and/or state pressure. Indeed, many of the existing pressures on user-built alternatives were not even devised to thwart users of the Internet era; they have been in place since telecoms started shoring up their power.

Her deservedly harsh critique of dilatory and partial European efforts at reining in corporate power in a few targeted areas raises many questions of how national state powers might better function to play a balancing role to multinational corporate power. User action to provide alternative services surely is only one way that users can be construed, or better construe themselves, as citizens of the societies that enable these networks of power. Ultimately, political action is at least as important for the project of putting user autonomy in the center of communications infrastructure regulation as any economic self-help action. As Daly acknowledges, this is a much bigger conversation than this book entertains, or even stimulates, but it is worth having. The carefully considered critiques that this book offers should be useful within such conversations.