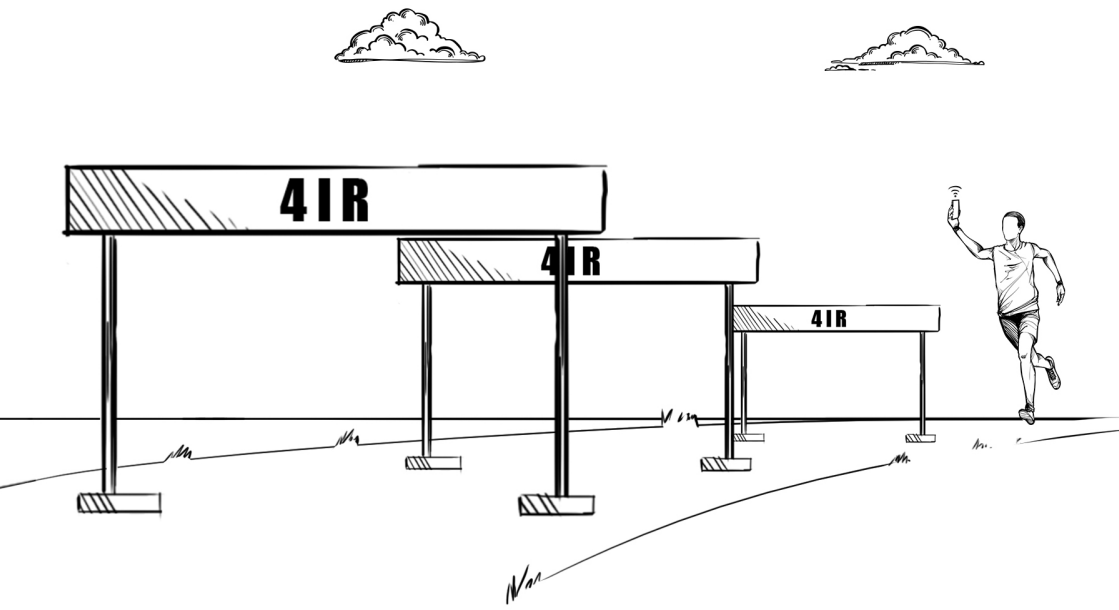

Communications – Tipping or Tripping Point?

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This chapter is written at a time of extraordinarily rapid technological advance. Consider how much has changed since 2004, the year when the International Institute of Communications (IIC) held its 35th Annual Conference in Montego Bay, Jamaica – the only time it has met in the Caribbean in its 50 years of existence.

At the time of the Montego Bay meeting there was great optimism about 'digital leapfrogging' in developing countries; a widely held idea that

light-touch regulation was the best available model; and consumers were seen as being in the driving seat of the future of the industry, empowered by the new possibilities for interactivity, interoperability, content selectivity, and the ability to bypass conventional networks, standard delivery systems and many regulatory controls. Spam was becoming an annoying problem, and there were emerging questions, such as whether the internet could compromise personal security and the security of the state; the implications of the war on terrorism; and who should make decisions pertaining to personal privacy and data protection. However, what has happened in the 15 years since that IIC Conference is astonishing.

The digital economy is dominated by the troika of the USA, the European Union (EU) and China,[1] or a quartet if you consider that Japan is the largest foreign direct investor in China. The integration of technologies such as 5G networks, smart devices, cloud services, artificial intelligence (AI), virtual and augmented reality, is disrupting the ways in which content is created, distributed, received and experienced. Social media has become the world's largest source of news, information and entertainment, and technology companies now control the places where over half of the world's population gather. These companies are tracking our activities online and have largely unfettered access our personal information. Many governments now feel that it is dangerous to allow a handful of global tech giants, the 'BAT-G-MAFIA' (Baidu, Alibaba, Tencent, Google, Microsoft, Apple, Facebook, IBM, and Amazon), to wield such immense power.

There is also concern about the close acquaintance of human beings with super-intelligent machines, and fear that the influence of AI in human affairs will metastasise to challenge the very concept of being human, and the rights which flow from that status. Although he had genetics in mind, John Harris' statement is as true of AI in that:

1 S. Aaronson & P. Leblond, 2018, 'Another digital divide: the rise of data realms and its implications for the WTO', *J Int Economic Law*, 21(2), p. 245

> [it] is…beginning to create a new generation of acute and subtle dilemmas that will in the new millennium transform the ways in which we think of ourselves and of society… bringing both a new understanding of what we are and almost daily developing new ways of enabling us to influence what we are, that is creating a revolution in thought, and not least in ethics.[2]

Social media is the benefactor of a modern age of the masses, as demonstrated by the #Metoo #BlackLivesMatter #Occupy movements. These 'Internet Davids' who have toppled Goliaths – also known as the 'digital swarm', 'homo digitalis' and 'the new power'[3] – could represent a possible counterforce to an AI-driven world. However, this idea must be tempered by the fact that the global experience has been very uneven: Africa is still largely offline, and many of the people who are online do not understand the power of the voice that social media has given to them. Policy makers and regulators, particularly in developing countries, must become aware of the factors inhibiting a digital transition, which include a lack of technical skills, insufficient capital investment in digitalisation, and low levels of digital literacy among the population. In order to spread to the less-advanced nations, the Fourth Industrial Revolution (4IR) first requires a digital literacy revolution.

There is no question that the future will be different, but it has not yet been written. What is certain is that the operating system of society has changed and we have been propelled to an existential crossroads. We will have to choose, as Carlos Moreira and David Ferguson observe in their book, *The transHuman Code*,[4] between building a better future with the help of technology, or building a future with better technology – at the expense of much of humanity. We will have to choose whether to live in free countries empowered by technology, or in authoritarian

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2 J. Harris, 2001, 'Introduction: the scope and importance of bioethics' in J. Harris (ed), *Bioethics,* Oxford University Press; referenced in R. Brownsword, 2004, 'Regulating human genetics: new dilemmas for a new millennium', *Med Law Rev* 12(1): 14

3 A. Carson, posted 26 April 2018, 'How "new power" is driving journalism in the digital age', http://theconversation.com/how-new-power-is-driving-journalism-in-the-digital-age-95380; see also S. Consonni, posted 2 September 2018, 'Could homo digitalis make a political action?', https://stefanoconsonni.com/2018/09/02/the-crises-of-the-we/; B. Han, 2017, I*n the Swarm: Digital Prospects,* MIT Press; and H. Timms & J. Heimans, 2018, *New Power: How Power Works in Our Hyperconnected World*, Doubleday

4 2019, Greenleaf Book Group Press

regimes that use technology to control their people. We will have to choose between living in internet free states (a global internet) or corralled into pens demarcated by internet 'great walls'. We face these profound choices and difficult decisions with the humbling knowledge that this is not the first time in human history when technological innovation has driven societal transformation on a grand scale, and with a 'bias to bigness'. In the decades between 1850 and 1870, for example, the invention of dynamite, the railway, sewing machines, the laying of the transatlantic cable, improvements in agriculture, and advances in surgery and anaesthesia changed lives and destinies. During the same period, we developed advanced guns, shells, long-range artillery and modern warfare. We should also recall that in 18th Century Europe, the term 'robot' conjured a dystopian experience for human beings. Robot was the name of an exploitative and oppressive feudal labour service. It fomented revolution until the masses were freed from it in 1848.[5] Humanity has always faced choices: we can only hope that we will choose our path wisely.

So there are precedents, but the 4IR will not merely repeat past experience. The speed with which the integration of technologies will affect all facets of the society – social, cultural, economic and political – has not been experienced before. As the former Ofcom Deputy Chairman, Richard Hooper, observed, the internet is one huge emporium and digital container. It is the repository and conduit for content which flows across social media, over terrestrial broadcast transmitters, over satellite, over cable TV, over fixed broadband, over mobile broadband, over fixed wireless – to an ever-widening range of reception devices: TV sets, radio sets, games consoles, mobile phones, tablets, Kindles, and PCs.[6] Irrespective of the point of origin, everything is morphing into the single internet platform. It is not hyperbole, therefore, to describe the internet as "a fourth domain, just like land, sea and air."[7]

5 D. Thompson, 1990, *Europe Since Napoleon,* Penguin Books Ltd

6 R. Hooper, 'Oslo speech', http://ikt-norge.no/wp-content/uploads/2014/05/Richard-Hooper-Oslo-Speech-29-April.pdf

7 A. Kaspersen, 'Cyberspace: the new frontier in warfare', https://www.weforum.org/agenda/2015/09/cyberspace-the-new-frontier-in-warfare/; and A. Unver, 'Russian digital media and information ecosystem in Turkey', http://edam.org.tr/en/russian-digital-media-and-information-ecosystem-in-turkey/

The impact will be quadrupled by the integration of augmented reality, virtual reality, AI and robotics, as well as the 'internet of things' (IoT).

What does this portend for regulation? If truth be told, even when the most modern regulators such as Ofcom were being established, it was not foreseen that they would also have to have oversight of the internet, or social media, or the IoT, let alone the sociocultural implications of the 4IR. And if this were to be attempted by a single regulator, it could not withstand the strains and burdens of that vast responsibility.

It is also now clear that it is not realistic to rely on self-regulation by technology companies to address the current array of problems, as they have hitherto failed to achieve this. As a result, major stakeholders such as broadcasters and internet service providers in the UK are now urging government to create a new, dedicated, independent regulator to help tackle fake news, child exploitation, harassment and other growing issues online. It is not a stretch to interpret this call as an indication that converged regulation will become too great a burden and there will again be regulatory specialisation. The many serious problems with content – including unfiltered access to pornography and ultra-violent content, hate speech, and unethical advertising; exposure to cyberbullying, grooming and revenge porn (some young people have been induced to commit suicide as a result of cyberbullying and grooming by online predators); as well as the question of fake news – make a strong case for some level of specialised content regulation to give focused attention to those harms. There should be a fresh look at the philosophy which led to establishment of converged regulators.[8]

However, the increasingly seamless and fluid flow of content across the audiovisual continuum, similarity of the content being made available on platforms, and consumption of content whenever and wherever it is available – without device or distribution discrimination – justifies elimination of siloed regulatory treatment such as between broadcasting, cinema, video games, social media, virtual- and

8 C. Clayton & C. Green, 2019, 'Content regulation in the Fourth Industrial Revolution', policy paper pending publication

augmented reality etc. It is clear, therefore, that the entire regulatory architecture needs to be re-examined.

The digital age requires a much more sophisticated approach to regulation than the traditional directives and sanctions employed by regulators in the past. Today, content regulation has to include digital literacy, because citizens must be able to recognise when there has been an infringement, or misuse, of their personal information; they must be able to detect media manipulation via disinformation and botnet operations; able to detect penetration of social media by terrorist or criminal networks; able to guard themselves against malicious, harmful and inappropriate content; and ready to use the empowering and liberating potential of technological innovation to create and share information for knowledge building, learning, development and economic activity. A digitally literate citizen is the first line of defence, and is a key stakeholder in the digital economy and society.

The 4IR, underpinned by 5G and encompassing the IoT and network convergence across industries and sectors – including telecommunications; broadcasting; smart cities; smart road networks & autonomous transport systems; smart grids; and smart industrial systems – requires an all-encompassing review, reform and modernisation of the rules and institutional framework which govern infrastructures and services. The objectives must include effective spectrum policy and regulation; promotion of infrastructure sharing and competition, as required; ensuring wider coverage, higher quality of service, and adequate provisioning for national security and disaster communications; and facilitating next-generation networks and higher system capacity. The scope of this mission justifies a specialised, expansive, integrated approach to infrastructure regulation.

At the global level, the contours of a modern framework for regulation is taking shape. It encompasses two domains. The first domain is about controlling the most extreme excesses on the internet, particularly in relation to the very powerful social-media platforms. The other domain is focused on preserving the enjoyment of freedom of expression that

the internet provides, while protecting against harm – particularly the violation of the right to privacy and exploitation of personal data.

In Europe and within the Commonwealth, the legislature is asserting its power to make laws for the good order of society. The EU, most notably, promulgated extra-territorial rules on data protection, and other governments around the world now understand the importance of developing the new regulatory frameworks required for the digital age. At the World Economic Forum in 2019, world leaders called for global rules on data governance. Prime Minister Shinzō Abe of Japan vowed to use his chairmanship of the G20 to push for this to be within the aegis of the World Trade Organization (WTO).[9] The technology companies are also modifying their initial intransigence, and some have called for oversight. Facebook has joined the call for regulation of the internet – which is an overdue acknowledgment that it is incapable of managing the torrent of information flowing across its platform, but also a deft manoeuvre to try to head off an avalanche of criticism, and pre-empt discussions of the application of antitrust law.

The Broadcasting Commission of Jamaica has articulated a policy vision based on the understanding that small nations lack the influence and capacity of large advanced jurisdictions to enforce extra-territorial application of domestic law, but which rejects the idea that they should therefore be 'rule takers'. The latter position is untenable, because small developing nations, in particular, tend to have a higher proportion of vulnerable persons with low levels of digital literacy, many of whom are also in jobs that are likely to be more susceptible to automation.

The Broadcasting Commission has concluded that future efforts at regulatory reform cannot focus solely on traditional rules that can be enforced within the regulator's jurisdiction. This means that they must move beyond last-generation command and control approaches, and utilise algorithms to monitor and detect particular abuses. In times

9 K. Bradsher & K. Bennhold, posted 23 January 2019, 'World leaders at Davos call for global rules on tech', https://www.nytimes.com/2019/01/23/technology/world-economic-forum-data-controls.html

of rapid technological change, policy has to become more contextual, forward-looking and less deferential to traditional doctrine.[10]

There is now wide political sensitisation to the need for decisive action to guard the online world from extreme abuses, while at the same time giving stronger protection to the rights of privacy and freedom of expression. Achieving this internationally will be challenging. The WTO's record, for example, does not inspire confidence in their ability to serve as arbiter, mediate the balance of power, and settle the question of ownership, control and value of personal data at the level of the individual – between users and technology companies, and between states that have been the traditional and de facto rule-makers and rule-takers.

The nature of future regulation remains unclear, and is likely to remain unresolved for some time yet because of the inherent complexity of the issues. But some basic principles can be discerned. We must have no tolerance for unethically designed technology; intentionally addictive devices and applications; child pornography; cyber-bullying; encouragement of suicide; terrorism; hate speech; the dissemination of malicious information about – for example – the construction of improvised explosive devices (IEDs); or the live-streaming of murder, torture or other gratuitous human suffering.

Regulators must also act to prevent the increasing monopolistic domination and concentration of control over the internet, probably starting with measures to prevent the technology giants from buying up their rivals and competing technologies; as well as making positive steps to promote diversity, inclusion and increased competition.

If we can achieve the right balance between principles-based regulation and effective controls, where needed, we would have established a foundation for an age of human progress in which the 'rising tide' of the 4IR lifts all people; liberates us from the economics of scarcity; and

10 A. Cockfield & J.A. Pridmore, 2007, 'Synthetic theory of law and technology', *8 Minn. J.L. Sci. & Tech.*, pp. 475–513

delivers social and economic revitalisation; coupled with wondrous diversity.

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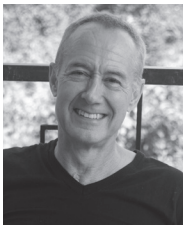

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