

## THE PRINCIPLES FOR USER GENERATED CONTENT SERVICES: A MIDDLE-GROUND APPROACH TO CYBER-GOVERNANCE

The debate over how, whether, and by whom the Internet should be regulated has occurred mostly at the extremes: some have argued that formal regulation of the Internet is impossible and undesirable, advocating for self-governance and heavy reliance on private arrangements,<sup>1</sup> while others have argued that formal, traditional regulation is possible, inevitable, and ideal.<sup>2</sup> The recently announced Principles for User Generated Content Services<sup>3</sup> (Principles), a set of guidelines negotiated among various industry stakeholders that takes existing formal copyright law as its starting point and background assumption, illustrate that self-governance and traditional regulation can complement one another. The Principles therefore suggest the possibility and promise of a middle-ground approach to online governance. Their strengths and weaknesses shed light on what an ideal middle-ground approach might look like. In this approach, self-governance and private arrangements would operate *within* a generalized legal framework instead of replacing official regulation altogether. In addition to providing clear background rules, that legal framework would ensure that private arrangements adequately take into account the interests of all constituencies.

In October 2007, leading commercial copyright owners, including CBS and Disney, and YouTube-like user-generated content (UGC) services that display and distribute user-uploaded and user-generated audio and video content<sup>4</sup> announced that they had agreed on the Principles.<sup>5</sup> So long as UGC services followed the Principles — by, for example, using state-of-the-art filtering software and displaying information about the importance of intellectual property rights — copyright owners would not sue them for copyright violations committed

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<sup>1</sup> See, e.g., John Perry Barlow, A Declaration of the Independence of Cyberspace (Feb. 8, 1996), <http://homes.eff.org/~barlow/Declaration-Final.html>.

<sup>2</sup> See, e.g., Jack L. Goldsmith, *The Internet and the Abiding Significance of Territorial Sovereignty*, 5 IND. J. GLOBAL LEGAL STUD. 475 (1998).

<sup>3</sup> Principles for User Generated Content Services, <http://www.ugcprinciples.com> (last visited Feb. 9, 2008).

<sup>4</sup> A UGC service's website allows visitors to upload their own material onto the site. Subsequent visitors to the website can then access the video, audio, and written material so uploaded. Some criticize the term UGC as too sterile to encompass the creativity involved in producing art that is uploaded onto sites like YouTube. See, e.g., Just a Thought, <http://www.powazek.com/2006/04/000576.html> (Apr. 4, 2006).

<sup>5</sup> Press Release, Internet and Media Industry Leaders Unveil Principles To Foster Online Innovation While Protecting Copyrights (Oct. 18, 2007), available at [http://www.ugcprinciples.com/press\\_release.html](http://www.ugcprinciples.com/press_release.html). Interestingly, YouTube itself is not a signatory.