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Code is Law

The advent of computers has changed how products are designed and built. In the “old world,” the days before computers, everything was physically built. In the “new world,” many goods are just lines of code. This shift has dramatically impacted people’s attitude to government regulations on goods and services. While government regulations on Old World products (buildings, cars, etc.) abound, there are much fewer government regulations on New World products (software, web services, etc.). This leaves the decision of what people can and cannot do up to the coders creating the systems. The way code and laws work in tandem to determine what people are allowed to do is the reason why Harvard Professor Lawrence Lessig famously decreed that “code is law.” Together, code and laws dramatically impact society. Thus, determining when to create laws and when to just let coders make the decisions is of vital importance.

There are several reasons why attitudes toward government regulations on New World products differ from Old World products. First and foremost is the difference in time scale under which Old World and New World products are created. Old World products take a lot longer to design and build, as a manufacturing and distribution process has to be established. This time frame pairs well with government regulations, which can also be slow. New World products, on the other hand, are often designed and built much more rapidly. Since there is nothing to manufacture, the time it takes to bring a product to market after it has been designed is much shorter. This makes New World products less suitable to government regulations. Government regulations could severely hamper innovation to New World products. Another reason why many are more apposed to government regulations on New World products is due the argument that code is speech. Since code is composed of words, many see regulations on it as impinging freedom of speech and expression.

While government regulation on software, web services and other New World products can come at a steep cost to innovation and freedoms, there are some instances when it is absolutely necessary. In these instances, it cannot be left to the coders to make decisions, especially when the coder’s incentives do not align with the public’s best interest. One example is with how government agencies store data. There have been several instances where members of government agencies have been caught snooping on people for romantic reasons and other reasons unrelated to their job. Edward Snowden even claimed that nude photos found while working would be commonly distributed among NSA analysts. These kinds of invasions of privacy could easily be prevented through regulations. If regulations were enacted that forced government agencies to delete irrelevant data picked up by their mass data collection, instances of abuse of power would be far less common.

When Lawrence Lessig stated that “code is law,” he was referring to how computer architecture and law work in tandem to determine what people can and cannot do. This dichotomy raises the question of when society should let coders make decisions versus when laws should be created to protect the public. This is of vital importance as it has great impact on society. Government regulations should be considered in cases when the incentives and interests of the coders are not aligned with the interest of the public.

Sources:

<http://harvardmagazine.com/2000/01/code-is-law-html>

<https://collab.itc.virginia.edu/access/content/group/5f0b5944-f52a-4381-af7e-c2992f282b81/Upturn%2C%20Civil%20Rights%2C%20BD%2C%20Algorithmic%20Future.pdf>