

My Favourite Things: The Promise of Regulation by Design

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Lachlan Urquhart & Tom Rodden, *A Legal Turn in Human Computer Interaction? Towards 'Regulation by Design' for the Internet of Things* (2016), available at [SSRN](#).

Ten years have passed since the second edition of Lawrence Lessig's **Code**; John Perry Barlow's *A Declaration of the Independence of Cyberspace*, in turn, came ten years before that. In their working paper *A Legal Turn in Human Computer Interaction?*, doctoral researcher Lachlan Urquhart (with a background in law) and computing professor Tom Rodden, both based at the University of Nottingham in England, make an avowedly post-Lessig case for greater engagement between the cyberlaw concept of regulation and the field of human-computer interaction (HCI).

Their work is prompted by the growing interest in “privacy by design” (PbD). First the subject of discussion and recommendation, it has taken on a more solid form in recent years, through legislative changes such as the EU's new General Data Protection Regulation. An area where PbD seems particularly promising is the second prompt for this working paper, namely the so-called “Internet of Things” and the emergence of various technologies, often for use in a domestic setting, which prompt a reconsideration of the relationship between privacy and technological developments.

Although the authors demonstrate a keen understanding of the “post-regulatory state,” of Zittrain's approach to generativity, and of Andrew Murray's important and powerful response to Lessig (that Lessig understates the agency and dynamism of the target of regulation), they clearly wish to push things a little further. This comes in part through an application of Suzanne Bødker's argument (also of a decade ago!), within HCI, that the incorporation of technologies into everyday, domestic life raises particular challenges – a “[third wave](#)” as she put it. For this study, this means that the systems-theory-led scholarship in cyberlaw may have its limitations, as the authors criticize. Emergent approaches in HCI, including Bødker's third wave, may address these barriers to understanding.

In particular, Urquhart and Rodden contend that two intellectual traditions within HCI are important to turning PbD away from the fate of being limited to law as a resource, and into something that might actually make an appreciable difference to the realisation of privacy rights. These approaches are participatory design and value-led or value-sensitive design. The latter encompasses an interesting argument that specifically legal values could be the subject of greater attention. The former approach is provocative, as the authors draw on the history of participatory design in Scandinavian labour contexts; with the industrial and economic models of first Web 2.0 and now the sharing economy continuing to provoke debate, this might prove a turn too far for some. However, the fact that they situate their argument, and a case study of each HCI approach, within the context of the stronger legal mandates for PbD makes their contentions relevant and capable of application even in the short term.

This is a working paper, and some of the ideas are clearly still being developed. The authors draw upon a wide range of literature about both regulation and HCI, and some of the key contributions come from juxtaposition (e.g. Hildebrandt's [ambient law work](#) set alongside separate and perhaps longer-established scholarship in HCI, which is not particularly well-known even in cyberlaw circles). This may indeed be another and quite different take on Murray's [important question of 2013](#), on where cyberlaw goes from here. One thing is certain: “code is law” still shapes much of how we write and teach, but the most interesting work seems to go deeper into the code box and the law box – with, as in the case of this fascinating study, surprising and stimulating results.

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