

Regulatory Intermediaries: The Role of Interest Organizations in Supporting Web Accessibility Policy Implementation

G. Anthony GIANNOUMIS^{a,1}

^a*Department of Computer Science, Faculty of Technology, Art and Design, Oslo Metropolitan University*

Abstract. This article explores how interest organizations, including non-profit and commercial service providers, act as intermediaries to support the implementation of regulations for web accessibility. Web accessibility policies promote the usability of web content for persons with disabilities. Previous research on relational regulation has focused on the bidirectional relationship between regulators and private enterprises in managing compliance. However, this research has yet to examine the complex relationships that emerge when interest organizations act as intermediaries between private enterprises and regulators. Previous research demonstrates that intermediaries translate and adjust legal obligations in practice. This article demonstrates that interest organizations in the United Kingdom, United States and Norway translated and adjusted legislation and standards to demonstrate the commercial value of compliance. This article extends previous research by suggesting that interest organizations act as intermediaries to support policy implementation and manage compliance.

Keywords. Web accessibility, disability, compliance, regulation

1. Introduction

In the mid-1990's, an international regulatory regime for web accessibility emerged from national and international disability antidiscrimination laws [1, 2]. Web accessibility policies encourage service providers to create web content usable by persons with disabilities. The United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) obligates States Parties to ensure access to information and communication technologies (ICT), including the web, for persons with disabilities [3, 4]. The CRPD does not explicitly define disability. However, the International Classification of Functioning, Disability and Health conceptualizes disability as environmental features that interact with particular impairments to cause 'activity limitations or participation restrictions' [5][6]. Though previous research has analysed disability as a universal experience closely associated with ageing, this article recognizes the relationship between disability and aging while maintaining an analytical distinction between persons with disabilities and older persons [7].

¹ Corresponding Author, G. Anthony Giannoumis, Department of Computer Science, Faculty of Technology, Art and Design, Oslo Metropolitan University, E-mail: gagian@oslomet.no

Complex implementation challenges have limited compliance with web accessibility policies [8][9]. Performance standards have attempted to provide a basis for web accessibility compliance. However, due to the inherent complexity of web accessibility as a policy objective, interest organizations provide services to support policy implementation. Interest organizations attempt to persuade private enterprises to internalize web accessibility norms by promoting the commercial benefits of compliance. Thus, by combining social and commercial objectives interest organizations attempt to reconcile competing discourses for social justice and commercial opportunity.

Previous research on relational regulation has modelled the interdependencies of regulators and private enterprises in policy implementation and managing compliance [10][11][12]. Relational regulation refers to the interactions that occur between State and non-State actors that manage the incongruence between regulatory objectives and practice. Research on relational regulation recognizes the ‘impossibility of perfect conformity between abstract rules and situated action’.

However, research on relational regulation has yet to examine the complex role of interest organizations in supporting implementation. This article asks, ‘To what extent have interest organizations acted as intermediaries between the interests of regulators and private enterprises?’ By analysing the role of interest organizations as intermediaries, this article provides evidence on the commercial incentives that emerged from the relationship between private enterprises and interest organizations. This article examines the juxtaposition of policy objectives and commercial incentives. This article analyses relational regulation by examining the role of interest organizations as non-State actors involved in supporting policy implementation and managing compliance. This article demonstrates that commercial incentives structure the role of interest organizations as intermediaries and the relationship between interest organizations and enterprises.

2. Analytical Framework

Relational regulation attempts to manage compliance by adapting and internalizing legal obligations. Huising and Silbey [12] substantively advanced research on compliance by modelling the interdependencies between regulators and private enterprises. The author refers to the roles and settings that enhance compliance as relational regulation. While the values of enterprises may differ from policy norms or regulatory requirements, the interdependencies between regulators and private enterprises provide an opportunity to resolve compliance conflicts. However, Heimer [13] recognizes that focusing on compliance from a regulatory perspective ignores other institutionalized values. Approaches to relational regulation attempt to manage the incongruence of regulatory objectives and practice by adapting organizational values to internalize legal obligations [13]. Related research by Edelman and Talesh [14] similarly examines compliance as an organizational process. Private enterprises respond to legal ambiguities by constructing the meaning of compliance [14]. Heimer [13] and Huising and Silbey [12] demonstrate that compliance constitutes both a pragmatic and a symbolic commitment to regulatory objectives. The authors also recognize that compliance exists as an iterative, ongoing process. Thus, Heimer [13] demonstrates that relational regulation provides a useful mechanism for achieving compliance.

However, modelling compliance as a simple interaction between regulators and enterprises ignores the network of actors involved in policy implementation. As regulators typically do not provide compliance solutions, interest organizations act as

intermediaries to support implementation. Policy network theorists have recognized the interdependencies among a variety of State and non-State actors [15-19]. Policy networks distort the distinctions between State and non-State actors. Previous research has provided a framework for examining the relationship of policy networks within multiple levels of governance [20]. This multi-level governance framework situates decision-making in a variety of State and non-State settings. The contextual setting structures policy implementation by influencing the options available to non-State actors.

Non-State actors provide semi-professional services to support the implementation of social regulations. Research by Svensson and Åström [21] explores the professionalization of non-State actors as a response to social regulation. The authors argue that policy actors act as semi-professional representatives of the State to implement regulatory objectives. The professionalization of policy actors relates to previous research by [22]. The author demonstrates that legal ambiguities result from the 'abdication' of the State's regulatory role. In response to legal ambiguity, non-State actors support implementation and promote compliance. As regulatory intermediaries, non-State actors use expertise and discretion to translate legal obligations in practice. However, Svensson and Åström [21] distinguish the role of regulatory intermediaries from legal professionals. While legal professionals provide knowledge of legislation, intermediaries provide knowledge on the application of legislation. Mena and Waeger [23] demonstrate further that 'activist groups' aim to use 'workable solutions' to achieve regulatory objectives. Activist groups act as intermediaries by collaborating with private enterprises to ensure compliance. Thus, regulatory intermediaries typically act on legal ambiguity and attempt to reconcile competing discourses for social justice and commercial opportunity.

Previous research on relational regulation has focused on the interdependencies between regulators and private enterprises [13]. However, research on relational regulation has yet to examine the complex relationships inherent in policy networks. This article contributes to research on relational regulation by examining the interdependencies between regulators, private enterprises and intermediaries. The results extend models of relational regulation and demonstrate that interest organizations act as intermediaries to support policy implementation and manage the incongruence between regulatory objectives and practice.

3. Research Design, Methods and Data

Interest organizations in the UK, US and Norway supported the implementation of national and international antidiscrimination legislation and web accessibility standards. In each case, a large interest organization typically influences and provides political and social inspiration for groups of smaller interest organizations.

The UK, US and Norway provide a useful basis for examining the role of interest organizations as intermediaries in policy implementation because the three cases share the same basic political institutions including doctrines related to the rule of law, separation of powers, democratic elections, and protection of human rights. However, the choice of cases demonstrate differing legal cultures, regulatory environments and policy instrumentation. I based the selection on the expectation that the US, UK and Norway would differ, and I used the three cases to replicate and confirm the results by identifying consistencies between the cases.

Web accessibility also provides a useful case for examining relational regulation as complex implementation challenges have limited compliance. Web accessibility policies aim to promote the social inclusion of persons with disabilities on the web. The implementation of web accessibility policies in practice has not reflected the intent of those policies. Performance standards provide a basis for web accessibility compliance. However, standards do not typically provide private enterprises with commercial justifications that encourage compliance. In addition, performance standards have not yet provided a definitive technical or legal solution to compliance [24]. Due to the inherent complexity of web accessibility as a policy objective, interest organizations provide services to support policy implementation.

This article uses qualitative data and analyses to examine the role of interest organizations as intermediaries. This article combines qualitative data from primary source policy documents, including statutory and non-statutory policies, and semi-structured interviews with 25 participants from interest organizations in the UK, US and Norway.

4. Regulating Web Accessibility

US antidiscrimination legislation provided a basis for interest organizations to act as intermediaries. In the US, a legal obligation for web accessibility emerged from the application of the Americans with Disabilities Act 1990 (ADA) to the web. Title III of the ADA prohibits discrimination in places of public accommodation. Under title III, discrimination constitutes a failure to remove barriers when readily achievable. The law contains no further definition of 'readily achievable' and a prescriptive definition of compliance has yet to emerge. Regulatory agencies in the US have supported the implementation of title III by advising public agencies on 'policies, programs, procedures, and practices that enhance equal opportunity' [25]. US regulators have also collaborated with a variety of non-State actors in 'enforcement, certification, regulatory, coordination, and technical assistance activities' [26]. Case law ultimately confirmed the application of the ADA to the web and established an obligation for private enterprises to remove barriers to the web when readily achievable [27]. Nonetheless, case law and regulations for web accessibility have yet to provide a pragmatic threshold for compliance. Thus, legal ambiguities provided a market opportunity for interest organizations to support the implementation of the ADA. In the absence of public sector clarification of regulatory requirements, interest organizations offered commercial services to assess compliance with international standards for web accessibility and implement procedures to enhance ongoing compliance.

UK antidiscrimination legislation also provided a basis for interest organizations to act as intermediaries. The introduction of the ADA in the US influenced the Disability Discrimination Act 1995 (DDA) and subsequently the Equality Act 2010 in the UK [28]. The Equality Act 2010 requires reasonable adjustment of services. The Equality Act 2010 obligates service providers to 'take positive steps to ensure that disabled people can access services' [29]. Regulatory agencies in the UK supported the implementation of the DDA and the Equality Act 2010 by providing a variety of services including 'information and advice' to 'protect, enforce and promote equality' [30, 31]. Subsequent regulations clarified the application of reasonable adjustment to the web [29, 32]. However, the UK government has yet to legislate a prescriptive definition of reasonable accommodation when applied to the web. UK regulators attempted to promote voluntary

compliance through the development of procedural standards [33]. These voluntary standards established processes for applying international performance standards. Thus, the approach to web accessibility in the UK, through regulation and standardisation, differs from the approach in the US, through case law. However, despite efforts to clarify the law, legal ambiguities provided a market opportunity for interest organizations to support the application of web accessibility policies. Similar to the US, in the absence of regulatory clarification, interest organizations offered services to assess and enhance compliance.

Norwegian antidiscrimination legislation also provided a basis for interest organizations to act as intermediaries. The legislative basis of web accessibility in Norway originates with the Antidiscrimination Accessibility Act (2008), which requires universal design of ICT [34]. However, despite a universal design approach to antidiscrimination legislation, subsequent regulations require publicly available websites to adhere to international web accessibility standards [35]. The Norwegian government established a legal obligation for web accessibility through legislation and regulation and defined compliance using mandatory standards. By mandating standards for web accessibility, the Norwegian government attempted to minimize legal ambiguity. Thus, the efforts to define regulatory requirements differentiate the approach in Norway from the UK and US. In addition, regulatory agencies in Norway have provided guidance, counselling and other services aimed at supporting the implementation of web accessibility policies [36, 37]. However, as in the UK and US, interest organizations emerged as commercial service providers to assess and enhance compliance.

5. Supporting Policy Implementation

Interest organizations in the UK, US and Norway supported the implementation of disability antidiscrimination laws and web accessibility standards by acting as an intermediary between regulators and enterprises. Interest organizations involve persons with disabilities in interactions with enterprises to communicate personal experiences, provide expertise and enhance credibility. Interview participants in all three cases confirmed the role of interest organizations as intermediaries. Several participants described the interactions between interest organizations and private enterprises. A US participant summarizes these interactions stating, interest organizations ‘guide’ companies and ‘address accessibility in the context of a [company]’. By informing enterprises on the implementation of web accessibility policies, interest organizations assume strategic positions within an enterprise. A UK participant discusses the position of interest organizations within an enterprise stating, ‘We do development and innovation work with companies to try and make their products better and more accessible or invent new ones’. By supporting policy implementation, interest organizations can contribute to the design of accessible products and services. A UK participant also discussed the variety of functions interest organizations adopt stating, ‘[interest organizations] train their [enterprise] staff ... inspire their staff, and ... actually help them do the hard coding’. By providing a variety of services, interest organizations simultaneously facilitate and encourage compliance. Services vary based on the competencies in the enterprise and the enterprise’s receptivity to web accessibility. Thus, acting as an intermediary involves professional competences that extend beyond interest advocacy.

Cooperation with enterprises requires interest organizations to juxtapose regulatory and commercial objectives. Several participants discussed the duality of simultaneously providing technological expertise and promoting accessibility. A US participant describes the role of interest organizations as ‘straddling the line all the time of playing many different roles’. As the participant describes, ‘straddling the line’ refers to acting as an ‘advocate’ and an ‘empowered technologist’. Thus, the role requires the ability to communicate complex regulations and technical standards to private enterprises. A Norwegian participant discusses the roles of interest organizations further, stating, ‘You have many different ways of working as a representative for a disability organization. But if you’re going to get producers to make ... accessible [technology] or work with standards ... it’s a very different way of working’. The participant characterizes the ‘different way of working’ by stating, ‘you have to speak the same language as them and that’s money ... social responsibility is not that big [of an] issue’. Thus, interest organizations act as intermediaries by connecting legal obligations with incentives for compliance.

Commercial incentives structure the relations of enterprises and interest organizations. Several participants discussed the commercial opportunities that incentivize interest organizations to engage with intermediaries. A Norwegian participant presented the commercial opportunity for web accessibility stating, ‘some [private enterprises] would hire some consultancy firm to tell them ... how they can implement [standards] on their particular products or services ... it’s mainly a matter of how to understand them [standards] and implement them’. A UK participant further demonstrates the commercial opportunities that supported the role of interest organizations as intermediaries.

companies obviously knew they could read all these guidelines, could get them for free but if you really want to do it, your team needs to implement it and they were prepared to pay for someone to tell them how to make their particular website accessible.

Thus, a legal obligation for web accessibility provided a commercial incentive for interest organizations to act as intermediaries and cooperate with enterprises.

Commercial incentives structure the relations of interest organizations and private enterprises by promoting cooperation and avoiding enforcement. However, interest organizations, acting as intermediaries, must resolve the inherent tensions between the interests of regulators and enterprises. Interest organizations support policy implementation by providing semi-professional services as subject matter experts and inform the application of the law by responding to commercial opportunities and engaging with enterprises. Interest organizations support voluntary compliance as an alternative to enforcement. A UK participant describes the approach to compliance stating, interest organizations attempt to ‘solve the problems before it ever gets to court’. Thus, interest organizations operate interdependently with private enterprises in the juxtaposition between regulatory and commercial interests. This section has demonstrated that interest organizations in the UK, US and Norway act as intermediaries by providing commercial services as web accessibility professionals.

6. Conclusion

This article has demonstrated that interest organizations act as regulatory intermediaries to support implementation and manage compliance. This article provides empirical evidence on the role of interest organizations as intermediaries in relational regulation. This article contributes to research on relational regulation by extending models of compliance beyond the bidirectional association between regulators and private enterprises. This article provides a model for compliance based on the role of interest organizations acting as intermediaries to support policy implementation. In addition, interest organizations responded to commercial opportunities to cooperate with enterprises and used commercial incentives to promote compliance. Thus, this article demonstrated that commercial incentives pervade the implementation of web accessibility policies and provide a useful opportunity to expand models of relational regulation.

The results of this article provide a useful basis for regulators to use commercial incentives to promote compliance. Interest organizations emerged in all three cases, the UK, US and Norway. The results suggest that social regulations provide commercial opportunities for interest organizations to act as intermediaries. However, regulators and interest organizations may have an interest in developing and managing commercial incentives. Thus, this article recommends that regulators anticipate potential commercial incentives that emerge from regulatory obligations and actively utilize those incentives in policy design and implementation. Further, the results suggest that commercial incentives influence the role of interest organizations as intermediaries. This article recommends that interest organizations cooperate nationally and internationally to establish a professional association that can promote rules and guidelines for supporting the implementation of web accessibility policies.

Finally, this article provides a useful basis for future research on relational regulation. Research on relational regulation has emphasized the situated demands of compliance and attempted to reshape scientific inquiry by focusing on the incongruence between regulatory objectives and practice. The role of regulatory intermediaries relates to the regulatory regime and the compliance setting. This article demonstrates that the regulatory regime and the compliance setting both involved commercial incentives. Thus, this article suggests that future research investigate different regulatory regimes and examine how changes in commercial incentives affect levels of compliance.

References

- [1] Giannoumis, G.A., Transnational convergence of public procurement policy: a 'bottom-up' analysis of policy networks and the international harmonisation of accessibility standards for information and communication technology. *International Review of Law, Computers & Technology*, 2015(ahead-of-print): p. 1-24.
- [2] Giannoumis, G.A., Transatlantic Learning: From Washington to London and Beyond. *Inclusion*, 2015. 3(2): p. 92-107.
- [3] United Nations, Convention on the Rights of Persons with Disabilities and Optional protocol. 2006, United Nations: New York.
- [4] Easton, C., Revisiting the law on website accessibility in the light of the UK's equality act 2010 and the United Nations convention on the rights of persons with disabilities. *International Journal of Law and Information Technology*, 2012. 20(1): p. 19-47.
- [5] World Health Organization, International classification of functioning, disability and health : ICF. 2001, Geneva: World Health Organization.

- [6] Bickenbach, J., et al., Models of disablement, universalism and the international classification of impairments, disabilities and handicaps. *Social science & medicine* (1982), 1999. 48(9): p. 1173-87.
- [7] Bickenbach, J. and A. Cieza, The Prospects for Universal Disability Law and Social Policy. *Journal of Accessibility and Design for All*, 2011. 1(1): p. 23-37.
- [8] Giannoumis, G.A., Self-Regulation and the legitimacy of voluntary procedural standards *Administration & Society*, 2014. 49(7): p. 1-23.
- [9] Giannoumis, G.A., Regulating Web Content: the nexus of legislation and performance standards in the United Kingdom and Norway. *Behavioral Sciences & the Law*, 2014. 32(1): p. 52-75.
- [10] Coslovsky, S.V., Relational regulation in the Brazilian Ministério Público: The organizational basis of regulatory responsiveness. *Regulation & Governance*, 2011. 5(1): p. 70-89.
- [11] Silbey, S.S., The sociological citizen: Pragmatic and relational regulation in law and organizations. *Regulation and Governance*, 2011. 5(1): p. 1-13.
- [12] Huising, R. and S.S. Silbey, Governing the gap: Forging safe science through relational regulation. *Regulation & Governance*, 2011. 5(1): p. 14-42.
- [13] Heimer, C.A., Disarticulated Responsiveness: The Theory and Practice of Responsive Regulation in Multi-Layered Systems. *University of British Columbia law review.*, 2011. 44(3): p. 663-694.
- [14] Edelman, L.B. and S.A. Talesh, To comply or not to comply - that isn't the question: how organizations construct the meaning of compliance, in *Explaining compliance : business responses to regulation*, C. Parker and V.L. Nielsen, Editors. 2011, Edward Elgar: Cheltenham; Northampton, MA.
- [15] Larsson, O.L., Sovereign power beyond the state: a critical reappraisal of governance by networks. *Critical Policy Studies*, 2013. 7(2): p. 99-114.
- [16] Smith, M.J., *Pressure, power, and policy : state autonomy and policy networks in Britain and the United States*. 1993, Pittsburgh: University of Pittsburgh Press.
- [17] Rhodes, R.A.W., *Policy Network Analysis*, in *The Oxford handbook of public policy*, M. Moran, M. Rein, and R.E. Goodin, Editors. 2006, Oxford University Press: Oxford; New York. p. 425-447.
- [18] Ansell, C., *Network Institutionalism*, in *The Oxford handbook of political institutions*, R.A.W. Rhodes, S.A. Binder, and B.A. Rockman, Editors. 2006, Oxford University Press: Oxford; New York.
- [19] Adam, S. and H. Kriesi, *The network approach*, in *Theories of the policy process*, P.A. Sabatier, Editor. 2007, Westview Press: Boulder, Colo. p. 129-154.
- [20] Hill, M. and P. Hupe, *Implementing public policy : an introduction to the study of operational governance*. 2008, London: Sage.
- [21] Svensson, K. and K. Åström, *The Field of Social Regulation: How the State Creates a Profession. Professions and Professionalism*, 2013. 3(2).
- [22] Grabosky, P.N., Using Non-Governmental Resources to Foster Regulatory Compliance. *Governance*, 1995. 8(4): p. 527-550.
- [23] Mena, S. and D. Waeger, *Activism for Corporate Responsibility: Conceptualizing Private Regulation Opportunity Structures*. *Journal of Management Studies*, 2014: p. n/a.
- [24] Power, C., et al., Guidelines are only half of the story: Accessibility problems encountered by blind users on the Web. *Conference on Human Factors in Computing Systems - Proceedings*, 2012: p. 433-442.
- [25] National Council on Disability. *About Us*. 2014 [cited 2014 20 May]; Available from: <http://perma.cc/SV34-S6ZB>.
- [26] US Department of Justice. *About the Disability Rights Section*. 2014 [cited 2014 20 May]; Available from: <http://perma.cc/B37R-ARGY>.
- [27] Blanck, P., *eQuality: The struggle for web accessibility by persons with cognitive disabilities*. 2014, New York: Cambridge University Press.
- [28] Lawson, A., *Disability and equality law in Britain : the role of reasonable adjustment*. 2008, Oxford; Portland, Or.: Hart Pub.
- [29] EHRC, *Services, public functions and associations : statutory code of practice*. 2011, [London]: TSO.
- [30] EHRC. *About us*. 2014 [cited 2014 20 May]; Available from: <http://perma.cc/DU2W-7M69>.
- [31] DRC. *The Disability Rights Commission*. 2007 [cited 2014 20 May]; Available from: <http://perma.cc/F37U-RXGF>.
- [32] DRC, *Disability Discrimination Act 1995 : code of practice : rights of access : goods, facilities, services and premises*. 2002, Stationery Office: London.
- [33] BSI, *BS 8878:2010 Web accessibility – Code of practice*. 2010: BSI.
- [34] BLID, *Act June 20 2008 No 42 relating to a prohibition against discrimination on the basis of disability (the Anti-Discrimination and Accessibility Act) Unofficial translation*. 2008.
- [35] FAKD, *Regulations for universal design of information and communication technology (ICT) solutions [Forskrift om universell utforming av informasjons- og kommunikasjonsteknologiske (IKT)-løsninger]*. 2013, Ministry of Government Administration, Reform and Church Affairs [Fornyings-, administrasjons- og kirkedepartementet]: Oslo, Norway.

- [36] Delta Centre. The National Resource Centre for Participation and Accessibility. 2014 [cited 2014 20 May]; Available from: <http://perma.cc/MC52-BBDU>.
- [37] Difi. About Difi. 2014 [cited 2014 20 May]; Available from: <http://perma.cc/A998-GLEX>.