

MANIPULATING THE GOVERNANCE CHARACTERISTICS OF CODE

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Abstract:

Regulation through “code” i.e. the hardware and software of communication technologies, is growing in importance. Policy makers are addressing societal concerns such as privacy, freedom of speech, and intellectual property protection with code- based solutions. While scholars have noted the role of code, there is little analysis of the various features or characteristics of code that have significance in regulating behavior. This paper examines three universal governance characteristics that policy makers may use to ensure code comports with societal concerns. The characteristics are transparency, defaults, and standards. For each characteristic, the paper discusses the salient regulatory issues for manipulating code. Additionally, the paper provides normative proposals for modifying some characteristics, such as defaults. In sum, our analysis should aid policy makers seeking to manipulate code to ensure that code comports with our societal values and addresses our societal concerns.