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Publication date

2008

Document Version

Submitted manuscript

Published in

Third GigaNet Annual Symposium: Hyderabad (Andhra Pradesh), India, 2 December 2008: program agenda with links to full papers and presenters' photos

[Link to publication](#)

Citation for published version (APA):

Shahin, J., & Finger, M. (2008). ICANN's GAC and the global governance of the Internet: the role of the EU in bringing 'government' back to Internet governance. In *Third GigaNet Annual Symposium: Hyderabad (Andhra Pradesh), India, 2 December 2008: program agenda with links to full papers and presenters' photos* Global Internet Governance Academic Network (GigaNet). <http://giga-net.org/page/2008-annual-symposium>

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ICANN's GAC and the Global Governance of the Internet: The role of the EU in bringing 'government' back to Internet governance

DRAFT

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GIGANet Conference, Hyderabad (India)

To be presented: December 2nd, 2008

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The European Commission has played a multi-faceted role in the global governance of the Internet. In some cases it strengthened the role of the state or it encouraged the growth of global institutions; in others it promoted the role of the market to the detriment of traditional state controls, be they national or international. This had, to a large extent, a domestic and global impact: the Commission has supported the growth of a European Market for ICT and telecommunications, and thus increased the role of the Commission in governing the Internet. This paper focuses on the activities of the European Commission in its dialogue with international partners on the subject of Internet governance, and examines in particular the growth of ICANN's Governmental Advisory Committee.

This paper illustrates the governing role of the EU outside its borders, by showing that it has pushed for a novel, yet *international* solution to the problem of governing the global Internet. As a case study for new forms of governance, the Internet is a worthy subject, particularly at the global level (Shahin 1999). Given that the Information Society is a matter for 'high politics'¹ the role of the European Commission in the GIS provides an under-studied case of the changing governance environment within the EU itself and particularly in the way it acts 'on behalf' of member states in certain areas. This case study of the role of the European Commission's role in the global governance of the Internet shows where and how the Commission exercises its newly created mandate, and raises

1 This has been noted even before the popularisation of the Internet in other technology-related sectors: "The expansion and reduction of the cost of facilities for communication, transportation, financial transactions, and travel have broadened the character and pace of global interaction and thereby altered the environment of politics. In particular, these developments blur the distinction between 'high' and 'low' politics" (O'Brien and Helleiner 1980: 446).

points for discussion concerning different forms of global governance that have been tried and tested with the birth and evolution of ICANN, and particularly the Governmental Advisory Committee (GAC). In order to do so, however, it elaborates upon different mechanisms of management in the field of Internet governance, and takes a look at the role of two other standards organisations: the IETF and W3C.

Introduction: 1994 and all that

1994 proved to be a watershed year for the Internet. Political, commercial, and technical events converged to create a complex scene that has become the stage for the global governance of the Internet. The result of the conflicting regulatory models and visions of control of the Internet's global infrastructure that have been promoted by various organisations since 1994 have resulted in a rather slow, *ad hoc*, and piecemeal approach to governance of the Internet. This is more to do with the definition of Internet governance than anything else, as different organisations choose to raise different aspects of the Internet's impact to the global public policy agenda. For the purposes of this paper, global governance of the Internet and the Information Society will be defined as per European Commission activity in the area; this necessarily excludes certain national-level actions, such as attempts made by individual countries to control the Internet (see, for example, Dai 2000a). This activity, and the importance accorded to it, is described by one European Commission official in the following way:

The Internet is a very important element of the Information Society. It is probably the most important invention ... of the 20th Century. What we are doing is trying to make sure that the Internet remains a very important tool, which is not put under any serious threats, its main values are not jeopardised (interview with a European Commission official, 2003).

It was around 1994, when the lead up to this transformation in the crucial addressing system of the Internet – one of the most prominent actions marking the end of government subsidies for the Internet – took place. The company responsible for the DNS (Network Solutions, which had a subcontract with the NSF until 1995 to register and maintain a registry of domain names via InterNIC²) began to charge a US\$50 annual fee for the service.³ With the Internet's address naming facility now being able to charge, the decision that the US Government took led to the eventual privatisation of this facility.⁴

The first section of this paper will outline several key areas of activity for public bodies in dealing with the changes wrought by the growth of the Internet, and look at different models of governance that can be used. The European Commission's role in global promotion of the Internet and its associated services will subsequently be described. The focus in this part will be on the role that the EU has played in fostering dialogue between two of the world's most powerful economic actors: the EU and the US. Throughout the paper, major actors involved in the governance of the Internet will be introduced where

2 The NSF created InterNIC in 1993 "to provide Internet-related services such as name registration, directories and network information" (Thomas and Wyatt 1999: 686).

3 Email from Tom Newell, NIC Liason, to domain-policy@internic.net, dated 15/09/95. Excerpt: "It's time for the Internet to move from taxpayer subsidies to user fees. Until now, the National Science Foundation has subsidized the cost of domain name registrations through a cooperative agreement with Network Solutions, Inc. The Internet has had explosive growth -- there are now seven times more requests for domain names than a year ago." Archived at <ftp://internic.net/archives/domain-policy/> (last accessed 12 January 1999).

4 See (National Telecommunications and Information Administration 1998), and related documents. See also the response to the US Government action by the late Jon Postel (Kehoe 1998).

appropriate, and the role of the European Commission in each of these will be analysed. The paper will conclude with an analysis of the past and present role of the EU in the Internet's global governance.

1 The International Politics of the Internet: Who Governs?

The difficulty in determining the appropriate policy environment for control of the Internet is reflected in its institutional ownership. After the division of responsibilities for ARPANET between ARPA and MILNET, the growth of private and public communications networks that could connect to the ARPA Internet (and then the Internet), and the subsequent transfer of responsibility for the ARPA Internet to the NSF, as well as the increased connectivity to other countries, made it difficult to understand which organisation had general control of the Internet itself.

The Internet's early days were characterised by an organic growth pattern. This took place through funding from DARPA's IPTO and subsequently the NSF, with private networks also playing a crucial role. The openness of the TCP/IP standard and the willingness of ARPA and NSF project managers to allow external networks to connect to the backbone helped create an environment where it became highly beneficial for any type of institution to be connected to the Internet. Due to this untraditional development of the communication network, traditional understandings of governance have great difficulty in dealing with its emergence. Hart, Reed, and Bar have noted that "the policy mechanisms which have permitted the growth of the Internet, and which are now envisioned to guide its future, are actually quite foreign to the telecommunications debate" (1992: 667-8). Given the number of actors that were involved in just the first steps of the Internet's development, and particularly the mixture of private and public networks that were involved, it was difficult to establish a direct source of accountability. The Internet was largely confined to academic researchers and private corporate networks in its early stages. Advisory groups effectively carried out the management of the Internet and there was no apparent need for a traditional governance structure to be developed. The structure of any such organisation, in any case, would have been highly challenging to develop.

In order to fully understand the role of the European Union in developing the Internet's standards and markets and supporting institutional organisations, it is necessary to realise that the European Commission has played various roles from both technical and political stances. Given that the public bodies traditionally endowed with responsibility for communications networks have largely relinquished their roles in the new global information and communications sector, an analysis of new actors and, consequently, new forms of governance is necessary. Focus will be placed upon the so-called technical institutions that define and maintain Internet standards, and the interaction between them and the European Commission. The European Union (and the Commission in particular) will be shown to have acted in many of the different modes of governance used to deal with the Internet, and thus will be shown to have forged a role for itself in this complex picture.

Several categories of actors can be discerned through an analysis of the debates surrounding the main developments in the Internet's standards. These actor types have motivations and desires that are shown to be distinct. Whilst this categorisation is helpful, it is arbitrary and does not provide an absolute picture; it merely enables analytic clarity. These actors and their preferred models of governance are outlined below. A categorical breakdown enables analysis of the differing models of governance, which reveals how different actors contribute to the Internet's maturation into a General Purpose Technology. Actors sometimes act together to achieve agreement, but even if this is the

case, agreement on outcomes has been difficult to achieve in practical terms. Regarding the Domain Name System (DNS) debate, Paré has claimed that the actors involved have often been able to agree on mutually undesirable outcomes, but that “they have tended to disagree on their preferred outcomes” (Paré 2003: 58). As Paré commented, the majority of literature on Internet governance has failed to develop an understanding of the decision-making process and has mainly focused upon these outcomes.

Actor category	Models of governance	Example institution
Academic / Epistemic	Bottom-up (decentralised), lightly coordinated where necessary Pre-existing model – informal epistemic community, self-regulation	IANA, IETF
Commercial	Non-governmental, market-based, self-regulation Shares libertarian approach with academic model	ICANN, TRUSTe
Governmental and International Organisation	Hierarchical, top-down, co-regulation with different actors Regulation, based upon formal epistemic communities	IAHC
Users	Bottom-up, disperse	ALAC

Table 1. Main Actors in Internet Standards Setting and Internet Management and their Dominant Models of Governance

The lack of clarity over how to govern the Internet has created complexity and conflict in the determination of a set of stable standards and procedures for the management of the Internet. The novelty of the situation for international organisations has contributed to this situation. The Internet only became a global technology when it was recognised that harmonisation on a global scale had to take place in order to benefit completely from the digital and information ‘revolutions’. This need for harmonisation was reiterated at the international level throughout the mid-1990s by all actors (who often disagreed upon how that coordination and harmonisation should take place). Certainly, work to create connected digital infrastructures had been taking place since the late 1960s, but the increasing awareness that this now *global* (as opposed to *transnational*) infrastructure needed *different forms of governance* in order to be successful only became apparent in more recent years.

These new forms of governance should be related to the characteristics of the Internet in some way. Use of the Internet (and the digital networks of which it is comprised) in commercial and social settings raise all sorts of regulatory issues concerning such topics as intellectual property rights, privacy, and content control due to the fact that packet-switched networks have the ability to bypass contemporary mechanisms for controlling these statutes.⁵ State control, through legislation and regulation, is based on centuries-old analogue information and data transmission. Digital communication networks work differently; governance models based upon hierarchies are no longer as effective as before. In the words of one European Commission official: ‘there is a link, I believe, between these higher level, almost philosophical, ideas of how to deal with governance problems and the more practical technology developments’ (interview with a European Commission official, 2002). More questions are revealed in debates over regulation of the Internet’s content and infrastructure and over how it should be treated by governments and businesses. Some of the questions that are asked include: Who owns the Internet? Who controls it? Where do the boundaries of state control lie? Is the Internet a public

⁵ An interesting example is provided by Brady (2000: 14): “A customer could demand payment in gold through a Botswanan bank which in turn may have been paid in Russian roubles transmitted by signals bounced off a satellite. Moreover, of the three parties to any transaction, none needs to know the identity or location of more than two.”

good? All of these questions reveal a general malaise concerning the development of ICTs and the role of the state, at which answers are being searched for at the newly formed IGF. The governance questions that emerge from these debates have profound ramifications for our understanding of how states can and indeed do participate in the global governance of the Internet.

The international responses to manage technological developments have been discussed by Ruggie in an article which described the processes of international regime formation and international organisation as products resulting from the interactions between science and politics on the one hand, and collective response and national control on the other (1975: 558). The evolution of the ARPANET from a research network to the Internet as a general purpose technology made it a subject of international political debate. This political debate has been focused upon the role of the state in regulating the global markets that the Internet helped create. Given the high levels of cognitive interdependence,⁶ particularly between states with advanced national digital networks, and the perceived futility of national regulation, an international response was seen as a logical, indeed possibly the only, proposition.

This response, according to Ruggie, can be formulated in three different ways: through epistemic communities, international regimes and/or international organisations (1975: 569-74). Epistemic communities are created when “no state goes out of its way to construct international collective arrangements” (ibid: 570), such as during the period of the ARPANET’s development and the early phases of connection to international TCP/IP-based networks. Does ICANN, and its GAC, fit in with this definition?

According to Ruggie’s description of the international responses to technology, international organisations should thus become leading players in the development and implementation of policies where state power is seen as lacking, and the level of interaction require between states deems other responses inappropriate. In developments described below this is shown not to have been the case with the management of the Internet, although international organisations such as the ITU did try to become involved by working with the International Ad Hoc Committee (IAHC). However, this model serves as an interesting starting point to examine how the institutional issues relating to the development of the Internet have been discussed in policymaking circles. This would be the activity of a governmental actor-type. Technology, however, does not require a solution from governments in order to function. Self-regulation by commercial actor types is also an option that must be examined in the context of Internet governance given the history of the development of the Internet and the predominant political trends towards ‘less government’.

1.1 Self or Governmental Regulation?

In no other policy area is the international response seen more clearly than in regulation. Regulation and other forms of policymaking during the embryonic commercial phase of the Internet’s development was not easy: at the time it was claimed that “regulators and legislators in almost every country, developed and developing, are struggling to remake the laws and policies that apply to this sector” (Mueller 1995: unnumbered). Policy in the sector was also converging alongside technology, as international dialogue displaced national regulation. As Mueller noted: “the gee-whiz technological slant of the exposure was quickly supplanted, however, by a fascinating debate over how laws, regulations,

⁶ Cognitive interdependence is defined as: “the recognition that a collective situation exists and that continued national isolation would be mutually inefficient, whereas collective awareness and attention may be mutually beneficial” (Ruggie 1975: 562).

property structures, and ethics should be applied to this new cyberspace” (1995: unnumbered).

The reshaping of the telecommunication sector led to regulatory and legislative reforms. This was particularly noticeable in Europe where the European Union has responsibility, in part, for telecommunications (Natalicchi 2001). This is also where the change in EU governance was most dramatic, as telecommunications had been administered by national public authorities for a long time in most European countries. It has been asserted that the European Commission was a crucial actor in this reform, encouraging moves towards market-based liberalisation (Sandholtz 1993). Market-based self-regulation, of course, is still a policy decision which is made by traditional forms of government, but this was not the option taken by the European Commission or any of the national policymaking bodies: liberalisation does not necessarily mean deregulation. Reliance upon markets was also the predominant political philosophy at this time (see, for example, Hertz 2001), but there was establishment of a broad framework for regulation that also touched upon international issues. Global and international policy solutions centred on the liberalisation of telecommunications markets so as to enable innovation in products and services. These were partially driven by the experience of the early Internet developments, whilst also being representative of a general shift towards reliance of markets witnessed in other sectors.

The infrastructure of the Internet – that is, the cables, routers, transmitters and receivers, protocols, and eventually the control of the assignation of names and numbers – was opened up to competition when the liberalisation and deregulation of the telecommunications enabled operators to develop their own IP-based networks, which were more effective than standards they had been supporting when they were monopolies. Liberalisation meant that the dominant position of the PTTs was no longer guaranteed, and they had to become more competitive. Use of the proven technology behind the Internet was seen as more productive than continuing support for the OSI protocols which were not implemented. Incumbent telecommunications operators were subjected to independent regulatory authorities that ensured telecommunications services were provided according to certain regulations. This was seen as the means to achieve efficient and effective public service.

This was compatible with the Internet’s development pattern. Computing technology and telecommunications technology had been treated separately in commercial terms, but the convergence of these two sectors into the information processing industry had produced a “dramatic industrial restructuring” (Forrester 1987: 81), recognised – but not acted upon – by governments and corporations alike since the late 1960s. Forrester uses the example of AT&T to justify his claim that “it was increasingly apparent to everyone that the old PTT-style monopolies were no longer appropriate to the modern world (ibid: 87). The liberalisation agenda that responded to and encouraged this restructuring was quickly taken up by many other countries across the world. This is in stark contrast to the history of the early development of the Internet, and, significantly, other communications technologies, which have shown that support from government funding on both sides of the Atlantic Ocean was forthcoming. The new deregulationist agenda adopted by governments during this period actively discouraged participation by public administrations in the future development of the Internet. This included international organisations that felt (as their members did) that national governmental action was not capable of governing the developing Information Society. However, one source familiar with the ITU has claimed: “regulation is almost always best carried out at the national level. But there are a small number of issues where international cooperation between regulators is essential” (interview with an ITU official, 2003). Attempts at traditional national regulation were seen to have failed, particularly in the area of content regulation

where, for example, US Government attempts to introduce the Communications Decency Act eventually collapsed.

The debate surrounding the best institutional fit for regulation – or control – of the Internet tends to revolve around two poles; that of self-regulation or governmental regulation (Magaziner 1998a; Price and Verhulst 2000). These two different types of regulation have been discussed at the global level in order to try to make an appropriate regime for controlling the GIS (Telecommunication Development Bureau Study Group 1 2001). The ever increasing pace of technological development has multiplied confusion. As Baer mentions, “governmental organisations find it increasingly difficult to keep up with technical and market changes in the information and communications sectors” (Baer 1996). Due to the fast moving nature of developments in the Internet, the corporate institution is far more capable of dealing with changes than the state. Legislation is often outdated and incapable of addressing issues of regulation and the Internet. Therefore, as we have seen, the state has found itself having to hand over issues to corporations, utilising the concept of self-regulation. Self-regulation appears both the pragmatic and logical response, which has even been supported by governments. It attempts to deal with four main issues that governments, through legislation and regulation, are not able to deal with as effectively:

1. ensuring access to the information infrastructure;
2. building user and consumer trust;
3. minimising regulatory uncertainty, and;
4. easing logistical problems (for example, in the area of electronic commerce).

In the market, self regulation was favoured “as a matter of practicality” as “using the interactive and decentralised nature of the medium [the Internet], effective industry self-regulation for buyers’ protection could be established” (Magaziner 1998a: 529). It has also been claimed that the Internet is creating new assets, which are recognised in commerce but not in law (paraphrasing Wilkinson 1999). Despite compromises that attempted to bridge the middle ground, such as the French Government’s proposal for co-regulation (Chiot 1999; Falque-Pierrotin 1999), the tension between states and global markets was highly apparent as control appeared to have become as decentralised as the networks over which content is being distributed.

The market-centric view of self-regulation as the one means of governing the communications revolution is tempered by the requirement that the invisible hand guiding the market be aware of public obligations: “all licensed public operators should assume their share of public service responsibilities (e.g. universal service obligation and the provision of equal access to networks and services)” (Bangemann *et al.* 1994). At the time, this approach shared much in common with other national initiatives, such as the US National Information Infrastructure (NII),⁷ which expressed the desire to liberalise the infrastructure behind the Information Society, but maintain regulatory control over certain aspects. The central question was who should govern in this new regulatory environment. The Commission was keen to play a role in this. It played a crucial role in introducing the involvement of government in the global governance of the Internet. It did this both in the global and European settings. A source familiar with the workings of the ITU claimed that:

The European Commission has been heavily involved in discussions related to Internet governance at least in part because, some years ago, there was little interest in the topic by EU member states.

7 <http://ibiblio.org/pub/academic/political-science/internet-related/NII-white-paper/> accessed 20 August 2004. (See also Catinat 1998a; Catinat 1998b)

So the EC saw an opportunity to fill the vacuum in national interest and thus an opportunity to expand its mandate and influence (anonymous interview 2003).

The approach of the European Commission to the questions of governmental involvement, and the role they played in the global governance of the Internet are described in detail in the following sections.

Self-regulation has also been brought into question: TRUSTe – an organisation with the slogan ‘We’re Building a Web You Can Believe In!’ – has been derided by one of the people most supportive of its creation, Esther Dyson, who had previously claimed that TRUSTe was about helping individuals govern the Internet themselves: “instead of just telling the government to keep out, we’re fostering initiatives that will let individuals perform some of the tasks of Net governance – most notably TRUSTe as a means for people to protect their own privacy” (Dyson 1997: 28). The organisation did this by awarding a trustmark to websites that strictly adhered to their own privacy policies. However, following issues with both eBay and Yahoo, as one commentator has noted: “A trustmark does more harm than good by creating an illusion of privacy where none exists...A meaningless logo may induce people to make information disclosures that they would otherwise avoid” (Seth Ross, cited in Boutin 2002).

Self-Regulation is also tempered by the recognition that the new global information and communications sector is comprised of traditional and new sectors that have different histories. Karel van Miert stated: “Despite this technical convergence and commonality of interest [...], the market structures of the two sectors [telecommunications and broadcasting] remain very different. And each sector presents distinct problems for policymakers and regulators” (Van Miert 1997). This leads to further complication when determining a coherent and comprehensive role for government.

These new visions of governance models are not inherently promoted by the technological environment, but mainly by the actors who seek to benefit from these changes. Implicit in these new forms of governance are also ideas about future structures of political institutions.

1.2 Governance by Consensus or Corporation?

A decade ago, various policy documents were emerging at national, European, and international levels that recognised the global potential of new ICTs to generate “a new industrial revolution already as significant and far-reaching as those of the past” (Bangemann *et al.* 1994). As the main carrier of the information revolution, the smooth and effective running of the Internet was considered to be the challenge for policymakers; without the Internet, the GIS would not exist, at least in its current configuration. In the words of Christopher Wilkinson: “the Internet is the crucial access point to the Information Society” (Wilkinson 1999).

Al Gore was not the first to recognise the global potential of Internet protocols, but given the fact that he was the Vice President of the US, his statements on the matter carried a certain weight. Speaking at the World Telecommunication Development Conference in 1994, he presented a highly optimistic vision of the potential for “networks of distributed intelligence [to] derive robust and sustainable economic progress, strong democracies, better solutions to global and local environmental challenges, improved health care, and - ultimately - a greater sense of shared stewardship of our small planet” (Gore 1994).

The ITU held a plenipotentiary meeting in Kyoto in 1994. At this meeting, membership of the ITU for non-governmental organisations and private corporations was assessed.⁸ The subject of sector membership in the ITU, the topic of repeated discussions (anonymous interview, 2003) was again raised as the balance between governments and other actors in the international governance of the telecommunications sector shifted with technological developments such as the Internet. This membership structure has implications for governance of the telecommunications regime and, to a limited degree, for the Internet. Later on, the ITU was to propose the concept of 'voluntary multilateralism' (Tarjanne 1997b). Voluntary multilateralism specifically described the manner in which 57 various organisations signed a Memorandum of Understanding on the development of the Internet's infrastructure without entering into international agreements which would require the agreement of states (Loundy 1997). The new form of governance that emerged around the controversial emergence of ICANN will be detailed below.

Since the Bangemann Report, a myriad of organisations with corporate or governmental interests have been created to deal with the Internet's effects on governance. Corporate commercial actors have been driven by the desire to have unfettered access to an infrastructure promising to create a single global market for goods and services. Organisations representing the 'academic' actor type, such as the IANA have also tried to control the Internet, and some international organisations have also tried to become involved in the governance of the GIS and the Internet.⁹

Many have thought that the Internet should not be 'governed' at all: within the academic 'camp' of actors, the mode of governance was based upon consensus and not conflict. "Rough consensus and running code" were the primary objectives of such a model of governance. The libertarian approach to Internet standards has been exemplified by the Electronic Frontier Foundation, which wrote a document affirming the desire to keep the Internet out of governmental control. This new 'constitution' for cyberspace was based upon the idea that cyberspace can govern itself, an approach highlighted by Paré as the decentralised approach to Internet governance. This model describes what Paré has termed a "type of decentralised self-governance that had emerged as a result of the interplay between technological design factors, and certain commonly shared cultural values within the Internet community" (Paré 2003: 47).

Due to the fact that the Internet was in effect brought onto the world's stage by the commercial sector, companies have often seen themselves as being capable of managing the infrastructure themselves.

The differing opinions of the academic and commercial camps have led to a conflict concerning different visions of how global governance of the Internet should take place. The ITU, a central player in the old telecommunications sector appeared to be well placed to take over the governance of the Internet, as it became a global general purpose technology. A source familiar with the ITU described its structure as the following:

ITU is a unique partnership of governments and industry. Much of the work is technical. While the bulk of the technical work is done by Sector Members, the work is done within the framework set by member states and is formally approved by member states. In addition, there is some policy work, but this relates only to matters that are not national matters, that is, to matters that all governments agree should be coordinated at the international level (for example, the assignment of

⁸ It was highlighted to the author that such an assessment has taken place at most recent plenipotentiary meetings (Source E, interview 2003).

⁹ Despite the often-cited decline of the state, Hulsink and Davies (1997) state that countries are still seeking to create strong national telecommunications operators. (Besançon and Kelly 1996) make a similar point.

unique identifiers such as country codes for telephone numbers). The policy work is done by member states in cooperation with Sector Members (anonymous interview, 2003).

Despite this rather optimistic picture of the ITU's work, this area appears to be rich in conflict. There are several different conflicts taking place. Firstly, there is the conflict between different types of organisations (commercial, governmental, and international organisation) over jurisdiction. Given the role of the ITU in supporting the OSI protocols and their late acceptance of TCP/IP as a global standard this is understandable.¹⁰ Secondly, institutional competition amongst various international bodies also exists.¹¹ This institutional competition, however, is ameliorated by the existence of coordination bodies. Then, the internal conflict between sector members and the member states was also noted by one interviewee familiar with the ITU. A Commission official has claimed that the European Commission as a sector member contributes around €3.2 million to the organisation's annual budget, which is more than most member states (interview with a European Commission official, 2003). Despite this extra funding, the Commission, or any other sector member, does not have the voting rights of the member states. Furthermore, between the European Commission and the ITU there exist differing opinions as to the effectiveness of the Commission's participation.

2 Internet Standards

Standards are crucial to the Internet's infrastructure. If it were not for a standard DNS, the Internet would not necessarily be the same all over the world as it is today. Standards also require a certain amount of management. Standards development and resource allocation were two areas which required some kind of authority, and the IETF eventually took over this role (Abbate 1999: 207). 1992 saw the establishment of the Internet Society (ISOC), which took the responsibility of coordinating the work of bodies such as the IETF and the Internet Assigned Numbers Authority (IANA), responsible for allocation of numbering and addresses on the Internet (Mowery and Simcoe 2002: 1374). However, coordination was quite loose in the traditional sense, as these were essentially volunteer-based organisations. Prior to this, although networks were inter-connected it was very difficult to communicate across different networks. This section of the paper will briefly outline these different mechanisms of Internet governance, to highlight their characteristics, which may be useful when considering the role that the GAC can take.

Internet standards are seen as important to the future of the Internet as a global marketplace. Therefore commercial organisations have taken great interest in the development of these standards. Organisations such as the IETF have had a massive impact upon global and national policies concerning standards on the Internet. The relationship that has been forged between these new actors in the global governance of the Internet contributes towards the debate concerning the different roles of the state and the market. The role that the European Commission has played has been sometimes of great importance for these companies.

10 It was noted only at the ITU's 1998 plenipotentiary meeting that TCP/IP was officially recognised as a standard. See: <http://www.itu.int/ITU-T/studygroups/com13/ip/documents/ip.pdf> accessed 20 August 2004.

11 In a conference on Electronic Commerce and Intellectual Property Rights hosted by WIPO in Geneva (14-16 September 1999), a member of one international organisation jokingly claimed that 'a little institutional competition did not do anyone any harm' (paraphrased). Tim Kelly of the ITU reinforced this point, claiming that although competition between international organisations is inefficient, monopoly is even more inefficient (interview 2003).

Area	Main Actor	Main Mechanism	Commission's Role
Standards	IETF	Market	Following
Networks/ Infrastructure	EU RTD FP	Market/ Govt	Setting
Address Management etc	ICANN	Govt/ Market	Participating

The Different Roles of the European Commission in the Global Governance of the Internet

Lessig (1999) states that the 'code' of Internet standards is of crucial importance to the future structure of the Information Society, and the mechanisms by which it are governed are thus central to the direction in which the Global Information Society is to be driven. A mere handful of governments, including European ones spurred on by the European Commission and the ITU, were keen to ensure that on the one hand, liberalisation of markets would ensure free trade on the Internet, but that the Internet's infrastructure (which was for the general public predominantly that of the old telecommunications networks) would be regulated to ensure that this free trade could take place equitably. Despite the fact that standards and infrastructures are interdependent, there is a need to analytically separate the two to understand how they are treated in global public policy. This is made clear by a distinction between activities in the area of standards and in the area of promotion, which covers both application of the infrastructure and content on the infrastructure. This provides an aid to conceptual clarity, but should simply be used as a tool; the breakdown presented in the previous section of this paper enables separation of technical policy and 'political' policy issues to a large extent, but if taken *prima facie* it can be misleading and present an oversimplification of the process.

The governance processes that exist in organisations such as the IETF provide an insight into broader questions of how institutions work in an era of digital networks. Although these organisations are clearly involved in technical issues, it is important to emphasise that their role is more than technical; they help shape, and in turn are shaped by the technology which they are closely involved in developing and maintaining.

2.1 Promoting Standards

In Geneva, Tim Berners-Lee and his team elaborated upon the notion of hypertext to create the Worldwide Web, or the "distributed heterogeneous collaborative multimedia information" application for the Internet (Berners-Lee 1991). The results of this work emerged as one of the most important developments in the Internet's history. The W3C, now based in the US, France and Japan is an organisation developing 'official' standards for the Web. Since the closure of the IETF HTML Working Group, it has been responsible for the Hypertext Markup Language, the code in which most webpages are written. W3C activities are not limited to the Internet alone as some of the standards it is responsible for are unrelated to TCP/IP. These include for example, other document markup languages. In this sense, the Worldwide Web is not to be seen as a part of the Internet's crucial infrastructure, but as part of the application layer that sits above the Internet's protocols.

Interestingly enough, the W3C does not consider itself a standards organisation. It classifies itself as an organisation that promotes standards and standardisation rather than an organisation that defines standards for compulsory implementation.¹² The organisation cannot force the use of a standard upon developers of products, as the debate over Web browser technology shows (Windrum 2000). The W3C might be responsible for the development of the 'official' standards, but these are, in the case of HTML, compromised by content producers and software companies alike. Both Microsoft and Netscape Web browsers have contained their own specifications, albeit based upon the

¹² This point was made by Steven Pemberton, a member of the W3C, in a presentation given on 3 July 2003 at Maastricht University.

W3C standard. This means that some websites are not compatible with all web browsers, for instance, as website developers make use of specific (non-standard) HTML code for their web pages. Hence the role of the W3C in Internet standards is, although important, not one that sparks controversy when standards are misused. Its role, however, in enabling the globalisation of collaborative, or interactive information dissemination cannot be understated.

Back in 1994, the European Commission partially funded the W3C's first conference at CERN in Geneva, and later on that year the European Commission aided in the establishment of the W3C's base at INRIA in France by means of a project called WEBCORE. WEBCORE's goal "was firstly to establish the European branch of the World-Wide Web consortium" (European Commission 1998c: 9). It was part of the ESPRIT programme and was successfully completed in 1996, when the European component of the W3C had been established, and several technical specifications had been jointly developed with partners across the Atlantic Ocean (European Commission 1998c: 9). Through such projects as WEBCORE, the European Commission supported the development of Web standards, and brought them out from their academic home into the open. The Commission also supported such initiatives as WISE (Worldwide Information Support for R&D Efforts), which attempted to increase the infrastructural support for web servers across the EU and Central and Eastern Europe.¹³ This was one of the first projects to "get the web out of CERN" (interview with a European Commission official, 2002).¹⁴ These projects, and the attention the Worldwide Web consequently gained, contributed to the success of the W3C in attracting new members to its ranks. As the Web grew, the W3C was seen as an organisation which had successfully designed and implemented key technological standards. Furthermore, the European Commission funded other projects carried out in partnership with the W3C, such as W3C-LA (Leveraging Action), which was implemented to show how European companies could take advantage of the technical standards provided over the Web, such as Synchronised Multimedia Information Language (SMIL) and eXtensible Markup Language (XML), standards for which the W3C had assumed responsibility.

Like the IETF described above, the W3C has evolved through the period which has seen the Internet and the Worldwide Web emerge as GPTs. Membership of the W3C is open to all who sign a membership agreement and pay a fee. The process through which decisions are made in the W3C are particularly interesting as, in a similar fashion to the IETF, they adhere to a consensus model of governance. The major difference to the IETF, however, is that "the bulk of its work is conducted in working groups and activities that are open only to members" (Gould 2000: 208), which is restricted by payment of the membership fee. W3C also has a 'team' of approximately 60 staff, who work alongside visiting fellows. The W3C is structured as an industry consortium with the ambition (and the slogan) to 'lead the Web to its full potential'. With over 450 member organisations, including software and hardware manufacturers, governments, media companies, and research institutes, it is one of the largest consortia concerned with specific aspects of the Internet. In 1996, the W3C succeeded in enlarging its member base to include this broad set of members when IBM, Microsoft, and Netscape amongst others agreed to collaborate on the development of common standards. In this respect it is also very different to the IETF, whose members are individuals and do not represent commercial or governmental interests when participating in WG discussions. The difference in membership structure to the IETF is

¹³ http://www.igd.fhg.de/archive/1995_www95/proceedings/posters/45/ accessed 29 June 2003

¹⁴ The WISE project, which ran in 1994 and 1995 and was a preparatory action under FP4 (Loseries, personal communication 2002).

reflected in the ambitions of the organisation, which has a much wider remit than the IETF and includes public policy issues.

Responding to the need for clarity in public policy with respect to use of Web standards, the W3C established the Technology and Society Domain around 1998 (Reagle, personal communication 2002). Since it was established, the W3C's mandate - to ensure interoperability and harmonisation - has enlarged to also cover users and public policy issues. This was considered necessary due to the fact that the W3C's ambition is to lead the web to its full potential, which, since 1994 had become a global public policy issue. The W3C then became more involved in issues such as security and privacy on the Web. The development of tools to enable an accessible and secure Web thus became the main activity of the Technology and Society Domain. This included the creation of a Resource Description Framework (RDF), the Platform for Privacy Preferences (P3P) and secure XML standards. All three areas are of importance for commercial interests particularly with respect to electronic commerce, hence the increased interest in the W3C from commercial concerns which is reflected in membership of the organisation. This is echoed by one interviewee, who reflects upon the nature of standardisation in the context of the Internet in a way that highlights the tenuous position for regulators such as the Commission: "Nobody does standardisation for the public interest. The motivation is to gain a partial monopoly, by getting one's technology embedded into a standard" (anonymous interview, 2003).

Governmental organisations, however, are also playing their role in promoting standards for the Internet and its associated services and technologies. International organisations such as UNCTAD are attempting to agree on procedures to allow electronic commerce to be free of anything but the most minimal amount of governmental restriction, and thus ensure that the freedom of markets (and equality of market access) ensues. The European Commission's RTD Programmes have proved crucial in this regard. In its programmes, the Commission has been able to mix policy and investment without becoming too controversial, or contravening the role of the market.

3 The Commission's Participation in the Global Governance of the Internet

Both the IETF and the W3C provide two good but slightly different examples of how management of technical standards for the Internet has been established. Although the European Union has only been cursorily involved in the institutional structuring of these organisations, they have participated in the development of their work through funding projects carried out by these technical bodies. The development of the W3C into the area of policy is reflected through its growing membership base as well as recognition by W3C members that standards-setting on the Internet is related to regulatory activity traditionally carried out by governments. Private institutions have emerged with a dominant role in the area of Internet standards. Their input into the development of the technical standards and infrastructure of the Information Society is increasingly important, as they are the end-users of these applications.

Perhaps for this reason, the European Commission has generally taken a reactive, rather than a proactive, role in the establishment of such projects. However, major research programmes such as ACTS, RACE, ESPRIT, and TELEMATICS have often sought to set an agenda where the European Union leads the way in technical developments concerning the Internet and the Worldwide Web. The growth of social and political concerns, particularly in the W3C, has revealed that these technical bodies no longer have a complete monopoly over decisions they take regarding standards development. Nowhere is this seen more clearly than in the debate over the Domain Name System and the

creation of ICANN, which is described below. The sudden growth in use of the Internet has created a vacuum in policy discussions, which many different organisations have tried to fill.¹⁵

How were the European Commission, national, and international public bodies expected to carry out the task of promoting the growth of a global network? Public investment was to be limited and therefore not a desired or feasible option: creation and the development of a framework for international cooperation provides another opportunity; promoting dialogue between the market and the public sector provides another. This section of the paper will discuss the latter in detail. It will build upon the approach mentioned in the following quotation, where the role of consensus-builder for the European Commission is clearly established:

We are not looking at how the Internet can improve or affect governance, but we are trying to successfully deal with the large variety of desires of various people who want to govern the Internet. [...] The only role I see for the Commission is the one it plays [...]: that we try to stay informed and participate in some of these organisations. We think these are the main players in the Internet domain name system in Europe. We see what is happening there, we inform our member states, and we talk with people of course. Sometimes there are questions which we can ask from a public policy perspective and it is important to have an ongoing dialogue with them... But we are not trying to regulate them or propose strange things to them (interview with a European Commission official 2003).

3.1 *Creating an International Dialogue*

Promotion and coordination of the global markets necessary for implementation of the GIS have been a central area of concern for the European Commission since 1998. This is clearly revealed by the Commission: “the Information Society can only be a global one, with the wide participation of the international community” (European Commission 1998b: 1). Again in 1998, the need for international cooperation was emphasised by the Commission in a Communication concerning the need for strengthened international cooperation in the global Information Society:

Many of the Union’s partners are actively involved in building a framework for the electronic marketplace. Worldwide there are now numerous initiatives and regulatory actions at national and regional levels. These activities are not always coordinated and sometimes reveal divergent approaches. Ill-adapted or fragmented regulation, however, will hinder the development of the “on-line” economy from which business and citizens have much to gain... In addition there is a growing constellation of actors and bodies involved. What is not required is to establish an international supervisory authority or a set of binding rules. They should, however, reach a forward-looking understanding on how best to develop common approaches to problems and their solutions, i.e. to develop a sustained method of coordination in which public and private sector interests are adequately represented (European Commission 1998d: 11).

One area where the European Commission has worked relatively autonomously of the member states has been in dialogue with the US Government.¹⁶ In the latter part of 1994, the European Commission set up a dialogue between Commission officials and their counterparts in the US administration. This was established to achieve three main

15 This natural development can also be seen in the IETF, which has in recent years started analysing its own processes of self-governance, and also looking at ways in which the IETF can provide guidance to the Internet community on intellectual property rights.

16 This paragraph, and most information regarding the EU-US Information Society Dialogue results from an interview carried out in 2003 with an official in the European Commission and from an email dialogue with an official from the State Department in the US in 2004. Supplemental information is drawn from contemporary press releases from the US delegation to Brussels.

purposes: to improve information exchange, to facilitate early warning for potential conflicting issues, and to gain a greater understanding of the differences and similarities of American and European regulatory frameworks. It was called, by the European Commission, the EU-US Information Society Dialogue. Its American partners preferred to refer to these meetings simply as 'Bilaterals with the Commission' on the specific topic under discussion (although the Commission-given name was recognised by the US participants to the meetings). Representatives from different services were in attendance on both sides; the personnel involved were normally dependent upon the topic under discussion. Representatives from DGs Internal Market, External Relations, and Trade have accompanied DG Information Society to the meetings in the past. On the US government side, discussions took place with the NTIA, DoJ, FCC, and FTC. These gatherings tended to be quite informal with no official secretariat; the European Commission would coordinate meetings in Brussels and its counterpart would do the same for the Washington discussions. Throughout the last few years, the Dialogue has continued, with meetings at least once a year.

The Dialogue has contributed to increase the quality of discussion at the international level between two important governmental bodies. In the words of one of the participants:

The ability to exchange the information has been extremely helpful to us, as the issues get more and more complex and as globalisation of the industry becomes more and more apparent. We're all dealing with the very same problems in our respective jurisdictions and this exchange of information has been helpful to us (Ness cited in 1998a).

This has undoubtedly affected the global governance of the Internet:

the true significance of the Dialogue lies in the fact that the technologies and policy questions arising from those new technologies are being confronted by both sides in the discussion. Rather than being a confrontational trade area, the Dialogue is an informal opportunity to develop professional relationships and to consider how both the EC and the US Government are confronting common issues (interview with U.S. government official, 2004).

Here we can see that the role of the Commission is one of coordination: it promotes dialogue between itself and the US Government, and tries to keep its member states involved. This extra layer of dialogue is useful for building consensus and common understanding outside the framework of international organisations, where dialogue can be much more difficult due to the transparency required, and the number of participants in such meetings.

Although much of the work of the Dialogue is done behind closed doors (to enable governments to be "frank and honest" (interview with U.S. government official, 2004)), there is a semi-public aspect to the Dialogue. As well as officials from both the EU and the US, commercial participants have occasionally sponsored parallel meetings. Often held to coincide with the EU-US Information Society Dialogue, meetings took place between business and public officials from the US and the EU, in which opinions and plans were discussed, at some of these events the Information Technology Association of America (ITAA) turned to the Global Internet Project (GIP) for its support in the meetings. Others involved the European American Business Council (EABC), which organised Digital Economy Workshops which were organised at the same time "to take advantage of the presence of both delegations" (interview with a U.S. Government official, 2004).

Dialogue also took place between industry leaders and the European Commission. The GBDe was created with the support of Martin Bangemann and initially involved many discussions between the European Commission and industrial leaders. The GIP, which was essentially a collection of 'technology leaders' welcomed the opportunity to voice their opinions on the public policy requirements for an effective GIS, and participated in discussions as and when possible (interview with GIP participant, 2003). However, it did

not picture itself as a lobbying organisation, but as a body that was to “promote industry actions that will minimise the need for [...] regulation”.¹⁷

The activity carried out at the global level by the European Union, and particularly the European Commission has been shown, in this paper, to favour global commercial control and varying degrees of governmental intervention. In these instances, the EU has generally acted with or on behalf of its member states in forging global agreement on the issues raised. The following subsection deals with ICANN, a new governance institution that emerged to deal with specific technical aspects of the Internet’s management.

3.2 *A New Form of Governance? ICANN’s GAC*

1994, a recurrent year in this paper, saw the first of a controversial series of lawsuits in American courts regarding domain names (Gould 2000: 194). These were to have ramifications that continue to the present day; they were the final nail in the coffin of the ‘rule of the Elders’ in the area of Internet governance by technical experts alone.

In recognition of the fact that domain names were becoming an important and globally significant aspect of the Internet, and in order to remove the responsibility from one individual government, liberalisation of the authority dealing with allocation of domain names on the Internet was also set to occur, with the first set of major activities and discussions taking place around 1998. The debate over domain names was highly charged between those who had developed the system (IANA) and those who felt they had a greater say in the future of the Internet; the global nature of the Internet had been seized by global corporations keen to use the Internet to present themselves to the world. However, the discussion had been started years previously in technical forums, specifically through an IETF RFC entitled: Domain Names – Concepts and Facilities.¹⁸

Particular emphasis has been placed upon this topic, which has been the controversial subject of many academic studies (Mathiason and Kuhlman 1998; Mueller 1998, 2000, 2001, 2002; Paré 2003), as well as of much discussion in both policymaking and industry circles. This has been such that the term ‘Internet Governance’ has been used to encapsulate this debate, whilst often ignoring larger questions surrounding the governance of Internet standards (cf. Paré 2003: 44). The purpose of this work is not to regurgitate these analyses, but to describe how competing interests concerning the governance of the DNS were crucial in the development of the new ICANN structure and the impact of the EU on this process.

The internationalisation of digital research networks using TCP/IP required some coordination: IP addresses needed to be allocated to new networks joining the Internet, and generic Top Level Domains (gTLDs)¹⁹ needed to be registered. Coordination for the former was provided by IANA, Réseaux IP Européens (RIPE), and the Asia-Pacific Network Information Centre (APNIC); a company contracted by the US Government took care of the latter. When the commercialisation of the Internet moved the issue from one of low politics to high politics it also broadened the debate from the technical management of the Internet’s infrastructure to the regulatory control of the markets that used this infrastructure. Epistemic communities were insufficiently endowed with authority to

17 <http://www.gip.org/about/> accessed on 16 June 2001

18 RFC882. Available from: <http://www.ietf.org/rfc/rfc882.txt> accessed 14 June 2004.

19 gTLDs at the time (1994) consisted of .com, .org, .edu, .net, .int, and .mil. The debate only concerned .com, .org, and .net, as the others are more closed, only allowing restricted organisational types to register Domain Names in these areas.

regulate these global markets, as they are derived from a “bureaucratic position, technocratic training, similarities in scientific outlook and shared disciplinary paradigms” (Ruggie 1975: 570). When the DNS became politicised, the search for a new model of governance for the Internet was launched.

The number of institutional and individual actors that became involved in the DNS debate was immense; between the original request for comments from the Department of Commerce and the release of a Green Paper entitled *A Proposal to Improve the Technical Management of Internet Names and Addresses* (National Telecommunications and Information Administration 1998) 430 comments were received. Before the publication of the Green Paper, governmental bodies had not really been involved in the process, and after this time only a few governments became interested. This included France, Australia, and the European Commission (Mueller 2002: 167). International organisations such as the ITU were also interested in playing a role in this aspect of the future architecture of the Internet, but, according to the dominant ideology at the time, this was not to be supported by the US Government, particularly regarding something as potentially financially lucrative as the domain name system.²⁰ Another UN organ, WIPO, was however requested to investigate several aspects of the implications of Domain Naming policy (United States Department of Commerce 1998; World Intellectual Property Organisation 1999). Four months and 650 further comments after the publishing of the Green Paper, the Department of Commerce released a White Paper: *Management of Internet Names and Addresses* (United States Department of Commerce 1998).²¹

As a result of this controversial process, ICANN “was incorporated as a ‘Not-for-Profit Private Corporation’ under Californian law in October 1998”, with responsibility for “Internet domain names, the address space and the Internet protocols as well as the root server system” (Kleinwächter 2000: 553). Kleinwächter describes the structure of ICANN as determined by the mandate set by the US Government in October 1998. ICANN eventually oversaw the transformation of the DNS system to an essentially non-governmental one (two examples of contemporary press articles include: Kaplan 1998; McKay 1998), although the US Government originally had a large degree of control in the activities of the new organisation.

The structure of ICANN was born from a belief (in almost all sectors and from almost all actors) that:

None of us believe that the Internet can or should be ‘governed’ or ‘regulated’. It is still a medium in its infancy and regulation would be stifling. There are aspects of ‘governance’ that are important and ICANN was formed for a certain narrow aspect of that which was required (interview with a GIP participant, 2003).

However, the early establishment of the Protocol Supporting Organisation (PSO)²² along with two other Supporting Organisations for Domain Names (DNSO) and Addresses (ASO)

20 Regarding the ITU’s role in the domain name issue, Mueller cites one unnamed official from the US Government as saying “There are some concerns about addressing an Internet-related issue in a forum that has traditionally done telecommunications regulation, like the ITU” (Mueller 2002: 157). This argument is further developed by David Loundy, who refers to a leaked State Department memorandum where the Secretary of State Madeline Albright “expressed concern” of the activity of the ITU in the area (1997b; 1997).

21 See particularly (Magaziner 1998b). For an overview of the process, see Paré (2003: 31-33).

22 The PSO is comprised of the IETF, W3C, the European Telecommunications Standards Institute and the Standardisation Division of the International Telecommunication Union.

reveals the all-encompassing role ascribed to ICANN.²³ The emergence of the Governmental Advisory Committee, described later on in this paper, further removes ICANN from simply being a technical body. ICANN deals with politically sensitive issues, as can be seen in the amount of discussion this organisation has provoked in recent years. Kleinwächter describes the structure and rationale of ICANN in the following way:

ICANN is a 'new type' of global organisation without any precedent, representing different types of stakeholders from all over the world, and is organised in a somewhat confusing and mixed way with both elected bodies and nominated representatives, with numerous committees, councils, constituencies and supporting organisations. ICANN creates an unusual triangle where the 'Business World' and the 'Internet Community' are equally represented in the highest decision-making body on the top while governments as the third global player have only an 'advisory' function (Kleinwächter 2000: 554).

The conclusion that a new form of organisation should take responsibility in this area was made by the US Government, with Ira Magaziner leading the public debate on the issue. In the White Paper, six reasons were given for the need for change in the current arrangement of the DNS:

1. There is widespread dissatisfaction about the absence of competition in domain name registration.
2. Conflicts between trademark holders and domain name holders are becoming more common. Mechanisms for resolving these conflicts are expensive and cumbersome.
3. Many commercial interests, staking their future on the successful growth of the Internet, are calling for a more formal and robust management structure.
4. An increasing percentage of Internet users reside outside of the U.S., and those stakeholders want to participate in Internet coordination.
5. As Internet names increasingly have commercial value, the decision to add new top-level domains cannot be made on an ad hoc basis by entities or individuals that are not formally accountable to the Internet community.
6. As the Internet becomes commercial, it becomes less appropriate for U.S. research agencies to direct and fund these functions (United States Department of Commerce 1998).

In a letter addressed to Tom Bliley, Chairman of the Committee on Commerce in the US House of Representatives, Magaziner reiterated the desires of the US Government for the structure of the new organisation. In keeping with the government's objectives for electronic commerce and responding to the criticisms of the existing arrangement, the new organisation should be "a private, non-profit, globally and functionally representative organisation, operated on the basis of sound and transparent processes that protect against capture by self-interested factions" (Magaziner 1998b). However, the final outcome was not widely acclaimed; Mueller notes that despite Magaziner's wishes, only 28 of the 70 comments received in the final stages of the decision-making process supported the creation of the proposed solution. Agreement on the essential nature of ICANN was forthcoming from the Internet Society, the European Commission and others (Mueller 2002: 183), and attempts were made to encourage dialogue between ICANN and parties that had submitted alternate proposals to the Department of Commerce (ibid: 184). In this way, attempts to achieve consensus amongst all parties was tried, albeit unsuccessfully.

23 There is confusion between the developing role of ICANN and the role of the IANA, which has been referred to as the 'new IANA' (Halpin and Simpson 2002). Until the creation of ICANN, IANA was the body which had the authority to distribute IP numbers, and acted as a registry for the ccTLDs and gTLDs. ICANN carries out most of this activity now, and IANA mainly provides an oversight role and a repository of other protocols as used over the Internet. See <http://www.iana.org/faqs/abuse-faq.htm> accessed 8 June 2004 for more information.

Many analyses have sought to show that the allocation of Domain Names is an “irretrievably international” policy issue (Mueller 2002: 170). This can be said of many of the crucial elements of the Internet’s operation. However, rather than claim that this is a neutral technology, or it is inherently boundary-destroying, it is important to show how the Internet and its developers claim a share in the responsibility for making this a global issue. In the case of the Domain Name controversy, one could argue that one aspect – the development of gTLDs – was an unnecessary consequence of the dominance of American scientists in the development of the Internet; the domain name space could have been limited to country level domains alone and thus trademark and intellectual property issues could have been limited to the national domain. Thus the role that the Internet has played in formulating opportunities for international governance of the Internet can be attributed to the way in which it was developed; it is not that the global nature of the Internet has caused these problems itself, but highlights the role of the developers of the technology in creating an environment conducive to international regulation, or at the least, international stewardship.

Regarding the role of governmental agencies in regulating the Internet, the debate has been far more polarised. On the one hand, there are organisations that wish to keep governments entirely out of what they consider to be a technical activity. On the other hand, there are governmental agencies that consider the future of the Internet’s infrastructure so important that governmental intervention was a requirement. Prior to the development of ICANN, an alternative had been proposed by a consortium led by the ITU; it was called the International Ad Hoc Committee and had generated a report in February 1997 which suggested that all countries sign a Memorandum of Understanding to create a set of committees and bodies that would take over the management of the gTLD-DNS system and “pursue enhancements in the administration and use of the ‘international’ Top Level Domain name space” (International Ad Hoc Committee 1997). The Policy Oversight Committee (POC) was to be comprised of technical organisations that had been responsible, until that point, for the Internet’s management (IAB, IANA, and ISOC) alongside other international organisations such as the ITU and WIPO. The Policy Advisory Body (PAB) was to be constructed of “relevant governmental organisations, non-governmental Organisations, industry, and Internet operations organisations” (ibid).

The Governmental Advisory Committee (GAC) finally established as part of ICANN, due to the insistence of the European Commission (and others) (Halpin and Simpson 2002; Leib 2002), did not resemble the PAB in any meaningful way. Due to its position in the ICANN structure, its participation as a subordinate advisory body to the not-for-profit corporation established under Californian law is questioned by some, particularly in the European Commission:

We do not have a regulatory role. To me there has not been proof that we need any change in role. Although there may be a case for establishing independence from ICANN, because governments will remain interested in Internet matters, and will need to continue speaking to the main actors regardless of whether in the future ICANN exists or not, or there is something else. So GAC should not necessarily be a sub-group of ICANN. There maybe a need to create a separate entity. This is being discussed, but we are at the very beginning. I don’t know if there will be broad agreement. But again, we have to find the appropriate model: it has to be something lightweight. A normal intergovernmental organisation, a treaty organisation will require an enormous amount of preparation – it would take years (interview with a European Commission official, 2003).

This critique of the GAC was emphasised by an official in the ITU: “[The GAC] is just an advisory body with no real power, and no obvious role” (interview with an ITU official, 2003). The European Commission, which played a decisive role in developing the GAC, continues to play a central role in this body (Halpin and Simpson 2002: 290), but its role (and the role of the GAC) is apparently more informal than formal. In the early stages of ICANN’s growth, the European Commission reiterated its concern with the dominance of the US Government’s role in the management of the Internet, claiming that the

Department of Commerce has “reasserted its rights of supervision over [certain] ICANN policies” (European Commission 2000f: 14). The Commission was of the opinion that the “necessary governmental oversight of ICANN should be exercised on a multilateral basis, in the first instance through the Governmental Advisory Committee” (European Commission 2000f: 14).

In the GAC, the Commission plays a coordinating role between EU member states in yet another activity where it attempts to bring together EU members on the global stage:

The Commission meets with the member states regularly - roughly once a month. We try to get ideas, we try to decide on various things, for example when we need to propose somebody to do something we agree amongst ourselves that we will propose. If there is an election for a vice-chair, and there is a European vice-chair to be chosen we discuss it and agree that somebody does it. There is coordination going on, but this does not mean that the only Commission speaks on behalf of the Union. In the GAC meetings member [states] are free to speak, and sometimes they do speak. Occasionally they may even disagree with other member states. I would say the Commission has an equal standing to the member states (interview with a European Commission official, 2003).

The need for governmental intervention in the ICANN process was, as mentioned above highlighted by France, Australia, and the European Commission. One ‘policy entrepreneur’ in particular - Christopher Wilkinson from the European Commission - is attributed with highlighting the participation of the international community in this important development (anonymous interview, 2003). The establishment of the GAC can be seen as a result of increased pressure from this individual to highlight the importance of the Internet’s naming and addressing conventions to the GIS. However, the future of the GAC and the role it will play in the global governance of the Internet is not certain. Originally, ICANN was supposed to transfer the management of Internet Domain Names and Addresses outside of the sphere of governmental control, but the reaction of certain countries, and subsequent creation of the GAC revealed that governments were interested in maintaining some sort of role which did not leave the Department of Commerce in the U.S. as the sole governmental body that had oversight of the Internet’s critical infrastructure. The discussion currently underway was foreseen by one of the authors of the IAHC’s gTLD-MoU, who noted that governments will increasingly feel driven to participate in ICANN’s activities (anonymous interview, 1999). A more recent understanding of the developments in the GAC has been provided by a European Commission official:

There is a big debate going on as to what is, and what should be, the role of the GAC. There are various views, including within the Union, but also most non-European countries. My own view is that the GAC could improve, first of all, by its members showing more commitment and dedicating more resources to the work that they have decided to assume. I mean the work which is directly related to the work of ICANN. But there is a broader debate, which starts with a variety of views as to what we mean when we say ‘internet governance’ and what we include. Some people think we include internet naming and addressing, which is - a bit - what the ICANN scope is. Others want to include many more things, anything that the Internet raises as a policy issue: from digital divide to spam, to protection of minors to copyright protection, data protection. You name it, it is internet governance. Then, the question arises: how are these broader issues dealt with: do they need to be dealt with by a ‘body’? Are they already dealt with? By certain bodies? And for how many of them is there a need for some international initiative, possibly some international regulation? In another way, whatever the definition you use, there is also a variety of views on what is the role of the GAC. Should the GAC remain an advisory body to ICANN? Should it become more independent, and establish its own legal identity? Should it advise ICANN, or should it have a decision role in some issues? (interview with a European Commission official, 2003).

Since its creation, the GAC has held 32 official meetings, each one having around 30-40 participants from different countries, other international organisations, and recognised economic groupings. Issues under discussion have always related to its mandate within ICANN, which is to provide support and advice on ICANN activities related to public policy

issues, but these have often been very broad. The GAC has been intimately involved in the reform and evolution of ICANN, providing detailed commentaries on revisions of the ICANN byelaws. The GAC has also clearly tried to increase its role in the ICANN structure, making it a sort of quasi-intergovernmental organisation (Kleinwächter, 2004). However, there has been an emergence of an agreement, contested by some (notably the ITU), that the GAC model is sufficient for governmental participation in the activities falling under the narrow mandate of ICANN. This has emerged particularly since the ICANN reforms, which gave the GAC a stronger position, even though it still retains its position as an advisory body.

If we are to evaluate the position of the GAC, one could look towards the European Commission's own definition of governance, which lists transparency, accountability, openness, and legitimacy as four key factors in a system of democratic governance. Whether we think that the GAC should adhere to principles of democratic governance or not is a point for further discussion, but shall be taken as a given for the purposes of this evaluation.

Regarding openness, the GAC is open to all states and internationally recognised economic groupings and international organisations. Essentially, this is akin to the membership for any UN organisation. However, not all member states do participate in the organisation (Goth, 2005), which causes issues for representativeness and, in turn, legitimacy. In terms of transparency, all executive minutes of the meetings are available from the GAC website (although one has to search for them, due to some technical problems with the site).²⁴ In terms of accountability, the GAC is an advisory body, and not a decision-making body. Therefore, it cannot be held accountable for the activity of ICANN.

The GAC is most likely going to continue in its current form, as most participants in the process appear to accept their role, despite the fact that some countries do not wish to undermine the possibility of more governmental control emerging in the future. However, this is possibly due more to external factors such as the new security threats seen since the 9/11 attacks, and the fact that ICANN and its GAC simply 'work', and therefore the fears of many countries have simply been allayed, leading to a calming of the controversy; in the end, the desire for stability that emerges from an organisation which tries to encompass all stakeholders in its decision-making process in a novel global construct, and which has proven that it can indeed manage the Internet's critical infrastructure has won.

4 The European Commission as rejuvenator of government in Internet governance

Convergence between digital media leading to the creation of a new media industry, and the continued commercialisation of the Internet resulted in the shift in the role of the state from ownership of vital infrastructure, to (de)regulation of the infrastructure. Governments were keen promoters of these developments. This (de)regulation has been largely market-based. Global partnerships between states and commercial interests were to supposedly fill the vacuum, in the vein of 'voluntary multilateralism' and other new forms of relationships between the research, business, and governmental interests.

Whilst the 'academic' model of governance might have served a purpose within the framework of the early Internet, it was embodied by a closed circle of representatives of technical bodies that failed to understand how the Internet was being developed in areas

²⁴ When accessed during November 2008.

outside of academia and the public arena. Despite claims to being open, the Internet community remains an inward-looking and conservative establishment.

The EU has managed to bridge the gap between this closed Internet community, national interests, and global stability. It has taken a driving position in almost all forms of governance with respect to the Internet's infrastructure. Because of its role in determining the European RTD agenda, it has been involved in the technological development of new standards, and used this 'prior experience' to ensure its participation in the development of ICANN and GAC. Due to the fact that pan-European commercial interests have often been taken into consideration at the European Commission, it has been able to support European businesses in the global arena, as well as look after its member states' interests: the role of the European Union as a representative of member states in various international fora has enabled the Commission to act on behalf of them when necessary.

This paper has shown that standards setting for the Internet is not merely a technical exercise, but involves many different actors, increasingly including those at the level of global public policy, in whatever shape or form that takes. It has also developed the notion that new governance institutions and thus new forms of governance have emerged at the global level to deal with the Internet. Organisations such as the W3C have started to play important roles in tasks traditionally ascribed to governments. Whilst the response of the US Government was to further liberalisation and privatisation of the Internet's crucial infrastructure, the European Union can be seen to have taken a more complex, multi-faceted role which has helped bring back 'governments' to the discussion table. The nation state has been challenged in its supremacy in both the national regulation of the Internet's infrastructure and its participation at the international level has been limited by policy decisions taken in the US. New participants have become increasingly involved in both international and global organisations. The European Commission has tried to work towards enhancing its own status in discussions, as well as that of its member states; as this new global information and communication sector emerged, the Commission was keen to play an active role.

In examining the global context of European activity in the global governance of the Internet, this paper has shown that there was a clear policy vacuum both within the EU as well as at the global level: the Commission acted rapidly and successfully filled that hole, particularly in the area of the DNS debate. Commission activity has been highly effective. The appointment of Paul Verhoef, a Commission official who was responsible for International Aspects at DG Information Society, to the position of public policy adviser to ICANN at the end of 2003 shows, in no uncertain way, the efficacy of Commission intervention (at least on a personal level) with the new entity. THE EU-US Information Society Dialogue provided an important means of discussing issues between the Commission and their US counterparts prior to setting them out in the more broad global discussion fora.

The Commission's work, due to its role in the international system, has been of a fairly informal nature. The EU itself does not have a legal personality, and is only allowed to sign international treaties in areas limited to those where the European Community has jurisdiction.²⁵ However, in this domain, the Commission has been able to facilitate and organise many successes, which increase and promote its legitimacy and *de facto* participation in the global governance of the Internet.

25 The result of the recent European Convention, the draft constitution, ascribes a legal personality to the EU. If approved by the member states and the people of Europe, this may well change the Commission's legal status on the international scene.