Shaping the Global Communications Milieu: The EU's Influence on Internet and Telecommunications Governance

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Abstract

This paper evaluates the EU's influence in shaping the global governance for telecommunications and the Internet. Through analyzing EU behavior within an actorness framework, we demonstrate how the external opportunity structure and the EU's internal environment has impacted on its ability to exert and maximize its presence in order to meet its goals and aims in these two very different sub-sectors of global communications in terms of evolution and development. Such a comparison of EU actorness, we argue, is revealing in terms of uncovering the underlying factors and conditions that allow the EU to influence two important and dynamic communications sub-sectors.

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INTRODUCTION

This paper focuses on the degree of influence which the EU has been able to exert in global electronic network communications. The sector itself is complex, growing, differentiated and, at the same time, convergent in character. However, for heuristic purposes, it can be usefully thought of as comprising the traditional sub-sectors of mass communications broadcasting, telecommunications and, more recently, the Internet. This paper places its focus on the Internet and telecommunications through an analysis of the recent features of the evolving international political economy of both sub-sectors, with which the EU is shown to have had a significant degree of engagement. There has been little work on the role of the EU in global electronic network communications (though see Singh 2008; Humphreys and Simpson 2005, chapter 7; Christou and Simpson 2007), less still on a direct cross-comparison of the EU's performance globally within the sector.

The paper illustrates how, in telecommunications, a long established sector with origins in the late 1800s, its well established national-centricity and history has, paradoxically, played a significant factor in the way in which the EU has been able to establish and exert a role for itself in the international telecommunications policy-making arena. This has two core elements. First, the establishment of a governance framework at the EU level in which the European Commission, in particular, has come to play a very significant role. Second, the ability of the EU to develop itself as a representative of its Member States in global telecommunications policy making. A core argument of the paper is that the EU's relatively high profile and success in respect of the first element has had a direct bearing on its ability to be influential in respect of the second.

That the above paradox exists hinges on the very strong pressures for internationalization which have developed within telecommunications over the last 25 years. The paper shows how these have been utilized by the EU to develop and cement its position as a key international actor in telecommunications. Here, the EU has served as an essential coordination point for Member States to develop concerted responses to the agenda of internationalization in telecommunications. From this, the EU, through the European Commission, has played a key role in 'uploading' successfully to the global institutional

level, European policy preferences. The example of this highlighted in the paper is negotiations that led to the establishment of the Agreement on Basic Telecommunications in the World Trade Organization in the late 1990s. Beyond this, the EU continues to play an important *strategic* role in representing its Member States in broader discussions on the evolution of global telecommunications.

By contrast, the Internet is one of the newest core element of international electronic network communications. Importantly, unlike telecommunications, it did not develop within any of the territories of the EU Member States. From the early 1990s onwards, it became popularised and internationalized 'outwards' from the USA. As a consequence, the Internet presented a series of challenges and opportunities to the EU which it has aimed to address. The paper illustrates how organizationally and, more significantly, in terms of its infant political economy, the Internet presented a policy landscape to the EU and its Member States with which they had initially little or no knowledge or familiarity. The paper shows how in these circumstances, the EU was, eventually, able to present itself as an institutional means of 'interpreting' and influencing the evolving Internet governance agenda in a number of global Internet fora and processes.

However, the paper argues that the EU has only been partially successful in assuming this role, in contrast to telecommunications. There are three core reasons for this: first, the newness of, and uncertainty around, the evolving Internet political economy, where there is evidence of an ongoing tension between well-established and newer forms of international communications policy engagement; second, the lack of any formal internal mandate for constructing positions on Internet governance; third, the broader external material and social context within which Internet governance has evolved. Unlike in telecommunications, this has presented challenges to the EU, and ultimately, constrained it at different times from achieving its aims in Internet governance through the projection of a clear and unitary position. Significantly, the contested nature of Internet governance more broadly, the strategic environment within which the EU has had to operate, and the problem of multi-representation of EU interests in global contexts, has meant that it has only been able to secure 'incremental' change in the direction of securing its aims in the global Internet governance regime.

The article is structured as follows. The next section outlines the constituents of the analytical framework to be employed in considering the EU's influence in global Internet and telecommunications policy contexts. The following two sections briefly outline the key features of the EU's role in global Internet and telecommunications policy making with reference to the criteria of the analytical framework. The analysis finds that the EU has been able to play a more traditional and thus 'straightforward' negotiating role in telecommunications with considerable success in terms of fulfilling its constructed aims. In global Internet policy-making by contrast, the EU has struggled to assert a coherent policy position, despite signs that its position is at this stage fairly well - though not entirely consistently - articulated. The final section of the paper compares the EU's performance in both cases and puts forward some conclusions regarding the conditions under which the EU is more likely, and less likely, to be influential as an international actor in global electronic communications policy.

ANALYTICAL FRAMEWORK

In order to explain the EU's 'actorness' and thus its influence in the global telecommunications and Internet sub-sectors of electronic network communication, this article employs principally an analytical framework that draws on the literature on EU 'actorness' (Bretherton and Vogler 2006; 2008) but also some specific work on the EU in international organizations (Jorgensen 2009) and the EU as a strategic actor (Smith and Xei 2009). The purpose of using such a framework is to unravel the context within which the EU is acting. Specifically, the aim is to investigate the opportunities that have enabled or constrained EU influence in the external environment of events, ideas and power; the capability of the EU to act (formulating and agreeing policy) in terms of the EU internal context and by virtue of its own identity, and, thirdly; related to opportunity and capability, the EU's ability to shape the behaviour of others and how it achieves this (or not) in the institutional and broader procedural contexts of the two cases under investigation. Beyond this, we aim to assess what type of influence the EU has been able to exert, and whether it has, in its interaction with the global telecommunications and Internet governance regimes, been effective in terms of achieving its stated goals and aims.

The three main aspects of this framework need to be unpacked further. First, 'opportunity' (Bretherton and Vogler 2008). EU external factors (Jorgensen 2009; 12), or as others have labelled it, the logic of the external opportunity structure (Smith and Xie 2009; 9), denote the pressures and opportunities (to act) that arise from broader international structures in terms of both social and material content. For Jorgensen (2009: 12) this entails examination of the: 1) international distribution of power 2) international interaction and social structures 3) the influence of other governments (and organizations) 4) the international cultural environment. When analysing telecommunications and Internet governance, these are important factors, not least because these two sub-sectors of communications, and the EU's role within them, have evolved under different actor constellations, but with the US as primary in both (and thus the interaction between the EU and US significant), though less important in the case of telecommunications. Different local, national and global conditions and pressures also exist within different, though in part overlapping, timeframes in both cases. Finally, there are contrasting global institutions often underpinned by contradictory and contested governance principles in each case. Within telecommunications, for example, the movement away from the embedded liberalism of the 1970s towards the promotion of neoliberal ideas in the global political economy in the 1980s, of which the EU (through the European Commission) was a key protagonist, meant that it was ideally placed to influence the institutions that would govern world trade (WTO) and indeed to take a prominent position (alongside the US), in constructing, promoting and successfully embedding its own governance goals for the telecommunications sector internally and outwards through the WTO.

Within Internet governance, it was less ideas than events that provided the EU with the opportunity to intervene in the evolution of the global institutions that would provide rules for governing the sector. The US was the hegemonic actor in the evolution of the Internet and, subsequently, the early structures and institutions that governed it. The Internet evolved within the US, but by the mid-1990s, the pressures of commercialization led to a call for reforms from key national and international stakeholders and, with this, the globalization of Internet governance in order to provide a legitimate and legal basis

for its increased use socially, financially and economically. Indeed, as Mueller (2002) demonstrates in his analysis of the creation of this body, the US government was instrumental in resolving tensions between rival coalitions in order to establish ICANN's identity for this purpose (albeit contested): as a private, not-for-profit, organization underpinned by the principle of self-regulation and governed by US (California) law. Thus, whilst the EU was not in a position in terms of knowledge or influence to intervene in the initial deliberations and decisions of the US government to resolve 'internal' contestation and tensions in relation to the Internet, its established identity as powerful and important economic actor in the global political economy enabled it to enter the fray with the *intention* of playing a prominent role with the US, in defining the principles that would underpin ICANN working practices. In summary then, it was the pressures of globalization and the ideology of neoliberalism emanating from the US domestically, that allowed the EU to intervene as a significant actor within telecommunications, whereas with Internet governance, it was not the pressures of globalization/neoliberalism that drove the process per se, but, rather, the need to create a global institutional context to ensure the interoperability of the Internet.

The second aspect of our framework refers to EU internal factors (Jorgensen 2009; 10); in other words, the EU's capability to respond to opportunities in any given sector in order to shape the evolving (institutional) order. There are several aspects of this that are of interest to us in this paper. First, is the question of how far EU logic (see Smith and Xei 2009) is pre-eminent in the projection of any given position within the sectors we are exploring. In other words, how does the EU's internal logic – its institutional structures, internal politics and identity shape the positions being taken in relation to telecommunications and Internet governance? Related to this are questions of not only internal coherence and consistency – that is vertical (between different levels of responsibility) and horizontal (between EU institutions) (see Nuttall 2005) - but also of which actors influence EU positions and projections (including private companies, transnational actors and interest groups) and indeed who represents the EU in the relevant international institutions within the sectors under investigation (Jorgensen 2009: 11). This is important, as internal executive division and more than one institutional voice can

often lead to a lack of coherence, coordination and clarity in the EU's position and thus external capacity to influence. However, and as others have argued, many EU actor voices in any given international institution need not necessarily lead to ineffectiveness – as long as there is consistency and clarity in the position projected this might well facilitate an image among third parties, especially in the developing world, of the EU as a non-hegemonic and equal partner rather than hierarchical actor, within negotiations and deliberations (Elgström 2007).

In terms of identity or political culture, this is also a significant factor in terms of both how the EU frames its own importance in a given issue area, but also the implications this has for the normative projections of the EU in any given sector. The EU's influence in any global sector is very much connected to its evolving identity as a contributor to global order (Smith 2007) and the need to assert itself within any given arena precisely because of its identity. How, then, does the EU's own cultural or normative framing of itself in a particular issue area impact on the projected solutions for policy and governance in any given sector? Of course, this is not separate to the questions above on the EU's internal politics – indeed there might well be contestation among the EU actors involved in constructing any given policy, with more than one narrative framing policy, which, again, has implications for how far the EU can influence any given sector through its actions in the relevant global fora. The contradictions in the EU's projections are thus also important in terms of the EU's ability to influence. Overall, what is salient in terms of analyzing internal factors is to illuminate the extent to which EU policy processes either constrain or facilitate action in response to 'opportunity' in the telecommunications and Internet governance sector.

Finally, the third dimension of the framework is that of the EU's 'presence' as an actor within any given issue area – that is, the ability of the EU, given the opportunity structure and its capability, to exert influence beyond its borders (within global governance fora, in this case). From our perspective then, this is very much related to the EU's identity (as above), but it does also denote purposive action (in contrast to Bretherton and Vogler's definition). In this sense, the most important issue in this dimension is how the EU can influence the behavior of others in international fora, in this case the WTO, ICANN and

the IGF, given the way in which it has constructed and framed its policy projections on telecommunications and Internet governance. How, and through what processes and instruments, for example, will the EU engage in order to project its own position for the purpose of influencing the behavior of other actors towards its own goals, objectives (image)? The nature of the EU's engagement, of course, very much depends on the regime context itself, as well as the EU's own evolving identity and how this impacts on its engagement. Interesting in this context, is the contrast between telecommunications and Internet governance, and indeed, whether this leads to different EU strategies, and differentiated rates of effectiveness within and across the regime contexts. On this, it is important to note that telecoms and Internet governance are most different cases that throw up different questions at an overarching level in terms of EU influence. In telecommunications, for instance, the analysis is less about influencing the institutional form within which telecoms negotiations play out (that is, the WTO), but rather the governance and policy framework for global telecommunications, underpinned by the EU's own projection of how this should function. In terms of Internet governance, the still contested and aspirational nature and identity of its global institutions, in particular the IGF, a body currently under review, shifts the primary focus to the EU's strategy and normative preferences for how such institutions should evolve and function. For telecommunications, the focus is on the EU construction of policy and subsequent activities within the WTO in influencing (primarily) the Basic Telecommunications Framework and in Internet governance, it is on how the EU has sought to shape the institutional design and reform of ICANN and the IGF in terms of its governance and policy-making processes. The comparison of these cases will shed light on the dynamics and conditions within which the EU can influence policy and governance in two contrasting cases within the communications milieu.

In summary then, the broad framework outlined above leads us to ask the three following core or overarching questions:

1. What is the opportunity context which has led the EU to act in telecommunications and Internet governance?

2. How has the EU capitalized on this opportunity in telecommunications and Internet governance in terms of its internal logic – that is the politics and construction of policy and positions?

3. Given the opportunity structure and the EU's constructed position in telecoms and Internet governance, how has the EU engaged in the telecommunications and Internet governance regimes, and has this led to change a) in terms of the behavior or collective understanding of key actors towards EU norms and preferences in policy and governance (i.e. achieving EU aims) b) the EU's own identity and action in telecoms and Internet governance?

TELECOMMUNICATIONS

Opportunity/External logics

Telecommunications, the oldest part of electronic network communications, has been viewed as a sector of strategic international importance since the late 19th century. Since then, successive efforts were made to coordinate international telegraphy, and thereafter telephony, at the international institutional level, a key landmark in which was the establishment of the International Telecommunication Union (ITU) as an agency of the United Nations in 1946. As telecommunications systems developed physically at the national level across the globe with the incremental roll out of infrastructure and delivery of service, so too developed a socio-economic normative framework for how telecommunications should be structured and delivered. This was predicated on the efficacy of the intertwined assumptions of natural monopoly and the social policy aspiration of universal service. Thus, telecommunications functioning and development became a key constituent of national policies irrespective of the political character of the systems in which they developed. This notwithstanding, the need to realize the international, if not global, potential of telecommunications was recognized, though its pursuit was expressly underpinned by inter-national coordination in the development of technical and economic standards, rather than integration. The classic example here was the international accounting rate system, developed within the ITU, between the monopoly (usually state owned) telecommunications administrations, essentially a series

of bilateral economic interface agreements to interconnect telecommunications traffic and share the associated call revenues.

However, by the mid-1970s, this stable system of international telecommunications came under challenge from broader changes which were building in the international political economy. Here, upswings in the level of international production, driven by the efforts of increasingly powerful multinational companies, were underpinned by strongly articulated arguments in favour of increasing levels of international economic integration in pursuit of globalization. Electronic network communications came to be viewed by those at the forefront of economic internationalization as key tools to enable coordination and expansion of business activities. Technological changes which were occurring in telecommunications at the time promised faster and more sophisticated services with potentially global reach and were eagerly anticipated by corporate business users. At the same time, however, there was concern about the ability of the then existing structure of domestic and international telecommunications to deliver what was demanded on time and to the required standard.

As has been well established, the movement for economic globalization developed both as a normative and practical strategy for change (see Cerny 2008). Here, free, competitive markets were extolled as a superior form of economic organization to nationalized, uncompetitive ones. Economic liberalism was reincarnated as free market neo-liberalism, very importantly with an international context and logic, packaged in the modernizing rhetoric of globalization. For neo-liberals, the telecommunications sector presented itself as a clear case for reform and development at the international level. This model was first articulated in the US, whose commercial and governmental interests became key advocates for change in telecommunications to be undertaken along neo-liberal lines. Pressure was exerted for the required political-institutional changes to be effected at the national and global levels. Implied in this was fundamental reorganization in the institutional governance of telecommunications. Here, a model of replacing state ownership and provision with independent regulation of competitively ordered, internationally open, markets began to gain influence, initially, beyond the US, in the UK. This presented a clear challenge to the architects of the traditional

telecommunications systems nationally and internationally. For others, not least the European Union, it presented clear opportunities.

EU internal

As the 1980s evolved, the EU began to increase its focus on telecommunications as a policy area of strategic priority. In its policy statements on telecommunications, the European Commission took significant pains to point out to Member States the challenges presented by the EU's main external economic competitors, the US and Japan, in a changing, increasingly globally competitive, sector to which Member States needed to respond (European Commission 1984). By contrast, the Commission showed political astuteness in highlighting to Member States opportunities to be gained through utilizing the EU institutional context to effect necessary change in telecommunications. The EU was at the time pursuing the wider project of the Single European Market whose broad objectives, the Commission argued, were co-terminus with changes necessary in telecommunications. Key policy proposals were thus presented in a landmark Green Paper (European Commission 1987), effectively beginning a process of significant transfer of sovereignty from the national to the EU level in telecommunications. As a consequence, the character of telecommunications governance in Europe has been very significantly 'EU-ised'. Whilst the Southern states of the EU (France, Spain and Italy principally) as well as some of its smaller states, were initially reticent about adopting the reform of telecommunications along the lines proposed by the Commission, by the early 1990s all EU Member States had accepted neo-liberal arguments, propounded forcefully by increasingly commercially oriented telecommunications service providers, multinational business users and key powerful EU States such as the UK, Germany, and eventually, France (see Humphreys and Simpson 2005). The Commission's policy persuasiveness in its 'domestic' context was soon to be replicated in its efforts to secure a united EU negotiating front in telecommunications at the global institutional level.

Internally therefore, since the late 1980s, a battery of legislation has developed at EU level prescribing the shape of liberalized and harmonized telecommunications across the EU (Thatcher 2001, Goodman 2006, Thatcher and Coen 2008). Successive regulatory

packages have been devised and refined through time. A clear pattern of vertically ordered institutional resources for the delivery of the EU telecommunications framework is discernible. At the supranational level, the European Commission has played a key role in proposing legislation upon which Member states vote, but also in monitoring the implementation of agreed measures. This it does in conjunction with a series of independent national regulatory authorities. Whilst this process has been far from smooth, there is no doubt that the EU has become a key actor in the functioning and evolution of a competitively ordered, increasingly internationally oriented telecommunications sector in the EU. There has also been some important regulatory institution building at the European level in the shape of the European Regulators Group and the newly created Body of European Regulators in Electronic Communications (BEREC) (Simpson 2009).

Presence

Whilst the EU has grown in institutional importance in telecommunications internally, it has also developed a key position as an international political actor on behalf of its Member States in telecommunications. A sign of this was European Commission's efforts as far back as the late 1980s to challenge the ITU's well established system of international telecommunications bilateral accounting rates. The Commission argued correctly that these rates were a gross over-estimation of the economic cost of providing international voice telephonic services. It is interesting to note that both large corporate business telecommunications users, represented in peak level bodies such as the International Telecommunications Users Group and, very importantly, the US government, were key powerful advocates of the position taken by the European Commission (Humphreys and Simpson 2005). This period also witnessed a broader institutional challenge to the ITU's dominance in telecommunications which was reflective of the paradigmatic changes occurring across the sector and in the broader global political economy. Specifically, as economic globalization rose up the political agenda, issues of international trade and associated marketisation measures became paramount, leading to the creation of the World Trade Organization (WTO) in 1995.

The WTO immediately became *the* institutional focus for advocates of the global neo-liberal model of telecommunications and in the process represented a powerful challenge to the ITU. Unlike in the latter, the EU was able to position itself prominently within the new WTO and proved effective in securing and putting forward a united position from its Member States in key negotiations that led to the WTO Agreement on Basic Telecommunications in 1997. Whilst far from centre stage in the Uruguay Round of trade negotiations which culminated in 1994 and led to the inception of the WTO, telecommunications was nonetheless a prominent sector tabled by states in which the neo-liberal model had been adopted. The key players interested in developing a global trade agreement were the US, but also Japan and the EU.

In 1994, a landmark, though far from universally adopted, trade liberalization agreement in advanced telecommunications services was secured as part of the General Agreement on Trade in Services. However, a larger goal was the creation of a global trade agreement on so-called basic telecommunications services, intensively pursued in the WTO in the immediate years after its inception and leading to the creation of the ABT in 1997. Throughout the negotiations leading to the latter, the European Commission was a key player. Between 1988 and 1994, EU Member States had made agreements at EU level to liberalise all telecommunications services and infrastructures by 1998. However, there was reticence among some EU states, notably France, at pursuing market liberalization in the global institutional context. The European Commission was assisted by the fact that, according to Singh (2008), negotiations that occurred were of a technocratic, problem-solving nature. Here, the EU's 'Article 113 Committee', named after the legal measure which permits the European Commission to represent its Member States in international negotiations, was important in developing common negotiating values in the face of skepticism from a number of its own states, such as France. In fact, through ensuring that its Member States made a commitment to allowing 100% foreign ownership market access, the EU even went beyond the parameters of its internal telecommunications liberalization programme (Singh 2008).

A key aspect of the ABT, aside from liberalization commitments made by signatories, was the adoption of the so-called Reference Paper (adopted by 63 of the original 69

signatories of the ABT) which amounts to a series of disciplines aimed at delivering the promised market access and opening and free competition of the ABT. Whilst the US was the initial driver of the Reference Paper, the negotiations leading to its adoption, in which the European Commission played a key role, saw the paper develop very much along the lines of the liberalization and harmonization package agreed among EU Member States, even to the extent of including a commitment on universal service provision in an overwhelmingly liberal market package (Humphreys and Simpson 2005). More recently, the EU has continued to press for a widening and deepening of the ABT. In 2000, for example, it put forward a proposal that all WTO Members 'commit for Modes 1,2, and 3 all sub-sectors and all modes [of telecommunications services] without restrictions…and include as additional commitments the whole Reference Paper on BT' (WTO 2000: 4). In 2005, it joined a key list of allies, including the US, Canada, Japan and Hong Kong China to urge all WTO Members to do similarly (WTO 2005). Beyond international trade liberalization in the WTO, the EU has more recently aimed to consolidate its position as a key actor in developing and representing its Member States' interests in telecommunications on the global stage. In 2007, it launched a wide-ranging consultation as part of its i2010 initiative aimed at producing a new EU strategy, one aim of which was to promote 'the competitiveness of Europe's ICT industry in global markets and promote EU interests worldwide' (European Commission 2007: 1) though a planned 2008 Commission Communication based on the results of the consultation never materialized.

INTERNET GOVERNANCE

Opportunity/External logics

As has already been noted above, the EU's involvement in and influence on the evolution of a global Internet governance system effectively came about after the rapid evolution of the Internet in the US through first military and then academic and civilian networks. In contrast to other electronic communications sub-sectors such as telecommunications, the EU had not articulated its position on the Internet until the late 1990s, with the Bangemann report, *Europe and the Global Information Society* (1994), only briefly touching on issues relating to the Internet. The opportunity for increased involvement in

shaping the evolution of global institutions for Internet governance, and more specifically, the management of Internet address domain names, emerged in a context where the US government was the leading strategic actor by virtue of the fact that it effectively 'owned' the 'A' root server at the core of the system's functioning. Despite this, and the fact that the Internet had grown domestically, the global interoperability of the Internet meant that important global actors, the EU among them, had to be included in any process of the internationalization of domain names. In this context, the EU was able exert its own normative preferences (through value creating tactics – see Singh 2008: 241) for the global institutionalization of the domain name system, even though the US was, in essence, the primary negotiating actor among the other interests and coalitions involved.

Thus, the normative parameters for the governance of domain names was decided by the intervention of the US government in the domestic debate and international deliberation that emerged on globalizing domain names; of which, the outcome in terms of governance principles was a self-regulatory, not-for-profit, private organization underpinned by US law, which was effectively a compromise between those (technical community) with a post-industrial vision of the Internet and those with commercial/business and economic interests that wanted a clear legal basis for the expansion of domain names. Whilst the EU had produced guidelines for the governance of Electronic Commerce through its Bonn Ministerial Declaration (1997) essentially reflective of those in the Framework for Global Electronic Commerce produced by the US, it was in the subsequent debates and negotiations over the US Department of Commerce Green papers (1998a) and statement of policy in the form of a White paper (1998b) that the EU, and more specifically, the European Commission, really woke up to and reacted on the US position, securing several concessions in the process. The main criticisms levied were based on US unilateral control of the emerging domain name system and the lack of multilateral governmental influence in the proposals to establish ICANN. More recently, the global financial crisis, and the expiration of the Joint Project Agreement (2006) between the US Department of Commerce and ICANN (essentially relinquishing US unilateral control over ICANN) provided the space and opportunity for

the EU to take stock of its achievements in Internet governance and to reassert, within its own image and identity, the way forward, focusing in particular on how external and multilateral accountability can be incorporated into ICANN processes (how the AoC will work), and on the future of the IGF.

EU-internal

The above dynamic opportunity structure within the global Internet governance space, provided the European Commission with a relative advantage compared to the EU Member States (and the EU Telecommunications Committee in which national Member States were represented) early on. Certain individuals in Directorate General Information Society (DG IS) had developed a strong and leading knowledge and understanding of the Internet and Internet policy. Thus, at the outset, the European Commission was able to assert itself as somewhat of a policy entrepreneur in Internet governance. An ad hoc group – the Internet Informal Group (IIG) - was established within the Council of Ministers under the initiative of Christopher Wilkinson, from DG IS; and he was also instrumental in proposing the launch and construction of the dot eu top level domain name. However, as knowledge in relation to Internet governance evolved, the influence of the Commission was constrained by the governmental representatives within the High Level Group on Internet Governance (HLIIG) which was established internally and separate to the IIG to provide strategic direction on a broad range of issues (beyond ICANN and GAC) relating to Internet governance. The IIG still exists as an informal body which is chaired by the Commission and which consists of Member State GAC representatives. Its purpose, however, is to simply discuss issues relating to ICANN and the GAC – in the words of one IIG member, 'it doesn't seek to establish a position on anything…it is just a way of like-minded – and most of us are like-minded - European GAC reps doing a bit of thought-sharing – anticipating how the ICANN meeting is going to go and what this year's problems are and what is coming up next…a bit of reporting because some European GAC members are more active on specific topics that than others so they can share their knowledge' (Author's interview April 2010).

In this context it is important to note that there is no formal mandate or process for the construction of positions and policy on Internet governance. Thus, although the HLGIG is the lead actor in coordinating MS positions, there is no formal requirement to do so. It has 'developed a mechanism for drafting and consulting on what [EU] letters or positions would say whether they be from the Commission or the Presidency' (Author's interview, 2010) but it only does this on the basis of issues that it deems important that the EU speaks with a single voice (such as the expiration of the JPA and the ongoing review of the IGF)[i]. The lack of a formal legal competence, of course, has several implications for internal (in) coherence and indeed the way in which messages are projected outwards on Internet governance. Internally, it has provided the opportunity for the Commission (especially under former Commissioner Vivienne Reding[ii]), without reference to or consultation with the HLGIG, to assert and project its own vision and agenda. The end result has been that of many messages from the EU on critical Internet governance issues which has led to suspicion and tension between certain members of the HLGIG and various Commission personalities (and indeed between other key GAC players and the Commission). It has also meant that there is no formal 'EU' representative that sits within the GAC - the Commission has a seat because of dot eu, but does not represent the EU as a whole – and there are also individual EU MS representatives which although do meet before any GAC meeting (and thus have some form of coordinative mechanism) through the IIG, do not speak with an EU voice but as representatives of their respective countries.

Furthermore, and within the broader Internet governance processes and fora, the EU has been represented by both the country holding the EU Presidency and the European Commission – but not always in a consistent or indeed coordinated way. This situation of multi-representation is also evident within the IGF – and this, alongside the lack of any formal process and thus 'EU' representation has quite often been a source of confusion for other actors and stakeholders and has only served to exacerbate that age old problem of who exactly speaks for the EU. Indeed it has often led to projections of divergent positions – with the HLGIG (as principle) often having to reign in an often ambitious Commission (as agent) with its own political agenda on Internet governance. As one

official has noted on certain Commission interjections on Internet Governance 'we have always been wary of the Commission driving the Internet agenda' (authors' interview, 2010). Indeed, where the Commission has sought to project uncoordinated messages it has been forced, by the HLGIG, to retract them publically or at least acknowledge that they were personal views or statements rather than an EU position. Nevertheless, this has often resulted in a confusing message for those stakeholders trying to decipher the 'official' EU position (which is derived through the informal HLGIG mechanism) and those positions often released without consultation with the HLGIG by the Commission. It seems in the case of Internet governance the informality of the internal EU process can work well for producing single positions (this is the case for IGF and the AoC, for instance), but that it can also be quite detrimental to projecting an effective voice given the ability of key EU actors to project different (personal) messages.

In identity terms, it is clear that the EU's projections for Internet governance were imbued with its internal multilateral and its legal and regulatory state logic that has evolved within communications and more broadly, in relation to the Single Market. Its interaction with such global institutions, however, and indeed the Internet community more broadly, has also meant that the EU has absorbed certain norms, albeit with an EU-twist, in the development of its own policy on the Internet and indeed its policy positions in relation to global Internet governance. The global financial crisis has only led to reassertion of the EU's belief that private sector leadership in Internet governance must be underpinned by clear public policy rules to ensure external and multilateral accountability (European Commission 2009). It is also clear that its interjections in Internet governance have been underpinned by its often projected self-image as an important global player and even leader on the issue of the nature and form of the global institutions and processes that should regulate the Internet (Ibid).

Presence

Given the informal nature of the construction of positions on Internet governance it is not surprising that the EU (even by its own admission, see European Commission 2009) has had mixed results in achieving its policy objectives on Internet governance, that is:

- Balanced and equal oversight of some of ICANN's activities by public authorities
- Rules to govern generic domains, notably database ownership and separation of registries' and registrar's activities
- The transfer of the management of the root server system from the US Department of Commerce to ICANN, under appropriate international supervision by public authorities

Why has this been the case? The explanation, we argue, can be found in the external context and in particular the strategic (structural power) role of the US in negotiations and deliberations, the undecided and contested nature of Internet governance among the actors involved given their differing interpretations of the core principles that should underpin the system, and the multiple EU voices (some reflecting the 'official' EU position and others not) projected on Internet governance.

In terms of ICANN, the EU, led by the European Commission, was effective in obtaining important concessions in the initial negotiations for its construction. Given the concentration of power within the US and its leadership role, however, it was only able to do this through value based tactics and arguments that alluded to the credibility of the US in the context of its pre-agreed principles with the EU on Internet Governance. The EU was able to play on the fact that the US proposals were not reflective of a truly global system of domain name management given the unilateral control the US would retain within ICANN, and the lack of equality between governments and the private sector in constructing policy and making decisions. Such a position was clearly derived from the EU's own preferred normative governance framework, where co-regulatory arrangements involved a primary role for governments in decision making alongside and equal to private interests. Such reasoning, and the need for the US to achieve consensus, ensured the creation of the Governmental Advisory Committee (GAC) within ICANN, which although allaying European concerns to a degree, was not seen as completely satisfactory given that it was only to have an advisory capacity (Christou and Simpson 2006, 2007) and that the only real mechanism for accountability and oversight was provided by the US. The European Commission with the support of other international actors (such as the IP Community) also employed tactics of a normative nature in securing the creation

of a Uniform Domain-Name Dispute-Resolution Policy through World Intellectual Property Organization (WIPO). The argument here was about the legitimacy of resolving disputes within a domestic context (i.e. courts where the registry, registry database or 'A' root server is located – see Singh 2008)) - thus the only way the US could actually reach consensus and satisfy the EU and the IP community was to ensure that a reputable and credible international organization was responsible for resolving disputes (although this was later criticized as biased towards the IP community). Having secured its concessions, the European Commission was then able to gain the support of the European domestic sector (MS representatives, private sector and regional organizations) and to endorse the establishment of ICANN within communications to the European Parliament (see Singh 2008: 244-5).

Since its inception, both within (in the GAC) and outside ICANN, the EU has sought to consistently secure movement on the two issues that it initially thought problematic when ICANN was established; that is, unilateral oversight by the US government, and the role of governments within the organization. Whilst through socialization and reform, the governments within the GAC have acquired a de facto political veto right for decisions with a public policy implication (Kleinwachter 2008: 17) the EU has not achieved its aim of complete equality between actors. Moreover, the global financial crisis and the subsequent backlash against self-regulation provided a subtext for the EU to reinforce its concern about the 'due consideration given by the ICANN Board to GAC advice' (European Commission, Interview, 2009), and to push its case for further reform that provides equality for governments in ICANN procedures.

However, whilst Commission projections have often suggested more than an advisory role for governments, a representative of the HLGIG has suggested that 'if you were going to characterize a [EU] European position to the GAC it is not to be more than advisory…it is to ensure that what it says is respected by the Board…and the Board justifies any decision not to follow GAC advice' (authors' interview, 2010). Indeed, in the context of the new Affirmation of Commitments (which replaced the Joint Project Agreement between the US Department of Commerce and ICANN on 1 October 2009), which is providing more of role for the GAC in reviewing ICANN procedures and

ensuring it is accountable internationally, and the internal joint GAC-ICANN working group which is reviewing how the GAC operates, the kind of mechanisms it has, how it makes representations to the Board, and how the Board reacts to those representations, the EU position is that '…we are not trying to gain more power within the ICANN family…we are not saying that…they [members of the Commission] might have said that in the past but it is not what we [the HLGIG] are saying now…we are supporting the model…governments have a role to play and governments have a greater role under the AoC…but as do the other constituencies as well…so we are not arguing that there should be more government intervention in the management of ICANN…we are not arguing for that…I don't think that there is anybody in the high level group that is pushing for that' (authors' interview, 2010). Indeed, this is a view that sees to be supported by current Commission officials involved in Internet governance, and reflected in a Presidency statement in support of the AoC and its new review procedures - even though certain projections under the leadership of Viviane Reding, in the context of the global financial crisis, suggested a much stronger role for governments within ICANN and Internet governance more generally. Such projections, one of which called for a 'G12' for Internet Governance (2009), was not only uncoordinated internally, but left stakeholders 'surprised' in the multistakeholderism context (Internet Governance Hearing, May 2009), and the European Union embarrassed in its official representations and projections for Internet governance. The official EU view then seems to resonate with that of other salient Internet governance stakeholders - that what is needed is a fine-tuning of the current multi-layered, multi-stakeholder system, with a clear definition of roles and functions for the actors involved (especially governments) rather than 'more' intervention and regulation by the state (Internet Governance Hearing, May 2009). This is particularly important in the context of countries that do not participate in GAC or are sceptical of the GAC, and have pushed for a greater role for the ITU in domain name management as well as an IGF with decision-making powers in Internet governance (e.g. China).

The EU then has supported the principle of multi-stakeholderism within Internet governance, both in ICANN and the IGF, the latter created as a compromise within the

WSIS process after the EU (represented by the UK Presidency at the time), supported by the developing world (against US unilateralism), put forth an alternative proposition for an intergovernmental structure, but failed to achieve its aims because of the US refusal to move on the underlying principles of private sector leadership and management and its belief that US control was essential for the security and stability of the Internet. For the EU, the IGF was seen as an alternative forum for discussion and did not in any way replace existing institutional arrangements. Indeed, there is a high level of coherence internally within the EU (including strong support from the European Parliament) on the continuation of the IGF which has allowed the EU to speak with a single voice within the ongoing IGF review process (which commenced in 2010). In their recent assessment of the IGF the EU's High Level Group on Internet Governance (HLGIG) concluded that it was a valuable 'platform for non-binding multistakeholder dialogue on Internet governance', and that its impact was displayed 'in the light of what has followed outside the IGF in that the IGF has triggered follow-up discussions in the context of dynamic coalitions and inspired debates at all levels' (Internet Governance Hearing, May 2009). On the basis of the HLGIG's evaluation the formal EU position to presented by the Czech Presidency within the UN discussions on the IGF, has been that it should 'continue as a non-decision making body for a further five years and at the end of that second period it should again be reviewed in terms of its desirability within a broader review of WSIS outcomes' (Ibid 2009).

However, despite a certain internal coherence and clarity in the official EU position on the IGF as a valuable forum for discussion, its influence in determining the outcome of the IGF evaluation process and the further evolution of Internet governance in order to meet its aims will ultimately also rest on it delivering a single and clear message – and in particular, demonstrating more obviously in practice its rhetorical commitment to multi-stakeholderism in order to provide the EU with greater credibility internationally as an actor in Internet governance. Whilst this is clearly demonstrable at the national level within certain EU member states that have established national IGFs (e.g. the UK), and indeed with European Parliamentary statements supporting the establishment of a European IGF, there is less evidence to suggest that internally, the European Commission

and indeed the HLGIG has fully embraced the concept (beyond simple adaptation). Certain academic commentators have suggested that the HLGIG 'should be more transparent and open in the context of multi-stakeholder governance, at least through publishing agendas and inviting non-members to meetings so that it can perhaps find its role in the broader European Internet community' (Internet Governance Hearing, May 2009). Others have argued that in the spirit of multi-stakeholderism the European Commission should take more of a lead in establishing a European IGF and organizing more local IGFs in order to coordinate European voices on Internet governance and indeed, present a stronger, single voice and message to international fora on Internet governance (Ibid). Indeed, even EU level officials have admitted that the Commission might not 'walk the talk' as much as it could on multi-stakeholderism (authors' interview, 2010).

CONCLUSIONS

This paper has shown the EU to have developed into an important actor in global electronic network communications policy-making through its activities in telecommunications and the Internet. The paper's use of an 'actorness' analytical framework has pointed up a number of similarities, but also distinct differences, in EU behaviour in these related, though at the same time rather different, sub-sectors. The framework's use also, more generally, points to conditions under which the EU is more likely, and less likely to be able to exert itself successfully in global sectoral contexts. The analytical parameters of opportunities/external logics, internal environment and external presence are useful in illustrating the contexts, opportunities and constraints faced by the EU.

It is important to note that though telecommunications is much longer established than the Internet, in both cases the EU's involvement as a global policy actor has been relatively recent. In both cases, the EU has faced an international environment in which US ideas and practices have dominated. In telecommunications, this provided more opportunities than constraints compared with the Internet. An explanation for this lies in the fairly obvious fact that EU Member States had developed over a much longer period

knowledge of, and competence in, telecommunications compared to the Internet. It is also the case too that both parties (the EU and the US) arguably stood to gain most from pursuing a similar agenda of international trade liberalization in institutional contexts such as the WTO, in particular. Though a relatively new actor in telecommunications, the EU was able to become a representative of its Member States in the WTO despite some reservations from Member States. Given the relative and perhaps unusual coherence of EU positions, due in considerable part to internally based policy agreement made that had been ongoing before and simultaneous to global negotiations, the European Commission was viewed as the best means of securing EU interests in the WTO on telecommunications.

The Internet presents a rather different situation. The EU was not able to develop any kind of coherent position on the Internet before it became a high profile global communications policy matter. However, like in telecommunications, the EU, through the European Commission in particular in the early period of intervention, proved enthusiastic and relatively adept at exploiting policy opportunities which arose. However, unlike in telecommunications, uncertainty married to the perceived need to react to policy developments which were viewed with some degree of concern, left the EU and its Member States 'on the back foot'. Since the late 1990s, the EU has aimed to articulate and establish its interests in relevant global institutional contexts from a position of relative weakness, certainly compared to that experienced in the telecommunications case. The result has inevitably been one of partial success. A major constraint has been the relative power differential and key policy differences experienced viz-a-viz the US. There are, however, signs that the two parties, in particular with the new Obama administration, are much more aligned in their preferences for future Internet governance than they were in the late 1990s. The EU has gained policy ground, assisted by significant uncertainty and some turbulence in the development of global Internet policy agendas, which has involved contestation of ICANN, in particular and, lately, the IGF. The EU has, however, struggled in the past to project a clear, cogent message on Internet governance given the informal nature of its internal policy process for constructing positions on Internet governance, and the opportunities this afforded those in the

Commission with their own political agenda to influence global proceedings. The result was often multiple messages, multiple EU representatives in different global fora and confusion over what the 'real' EU position was. This did not imbue the EU with the visibility or credibility required to be as influential as it could in many instances. More recently, with a change of Commissioner that seems to have taken a less assertive role (indeed she has been more interested in telecommunications but this is perhaps natural given her previous competition policy background), and agreement on the Lisbon Treaty, there has evolved an internal mechanism that is resulting in more consensual policy-making and the projection of coherent EU positions in matters of crucial importance for the future of Internet governance (the IGF and the AoC). However, given the lack of legal mandate underpinning the policy process, this does not preclude individuals and institutions from projecting their own autonomous positions in the future without reference to the established, albeit informal mechanism established through the HLGIG. Moreover, the lack of formal EU representation will also be problematic if the EU has the ambition to be taken seriously as a 'leader' in Internet governance, beyond its own self-projections. Addressing these two issues would certainly alleviate the problem of identifying first, the 'official' EU position, and second, who speaks and negotiates for the EU on Internet governance.

In the future, the EU faces a major global policy challenge in each of the case studies under investigation in this paper. In telecommunications, it will need to re-invigorate its profile in bodies such as the WTO and the ITU. Recent efforts to do so appear to have run into the sand, not least because, since 2006, the EU has faced a major, and at times controversial, review of its internal telecommunications policy framework: this paper shows that relatively coherent internal policy positions assist external negotiation activity. Agreement on this having been attained at the end of 2009, the EU may now aim to exert its preferences for extensive global trade liberalization more forcefully, beyond the few policy statements and a consultation made to this effect in recent years. In Internet policy, the challenge for the EU is to refine, settle on and begin to extol in a unitary way, a clearer policy perspective within which different strategies can be created and deployed in respect of key policy areas and their respective institutional contexts.

Progress on these fronts is likely to ensure that the EU continues to be a significant actor in shaping the global communications policy milieu.

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[i] This is done through consultation with the Commission before passing though the usual working groups and COREPER channels for agreement.

[ii] The current Commissioner for Information Society and Media, Neelie Kroes, has been less assertive in relation to Internet governance and it is noticeable that the Commission seems to have moved towards a more consensual approach internally on Internet governance given her appointment (author's interview, 2010).