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## **INTRODUCTION**

This article aims to advance understanding of the degree of influence which the EU has been able to exert in global institutional contexts through a focus on electronic network communications. The article is intra-sectorally comparative in nature, since its focus is on the Internet and telecommunications through an exploration of the evolving international political economy of both sub-sectors of communications, 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, less still on a direct cross-comparison of its performance globally within this sector.

The article shows how, in telecommunications, a long-established sector with historically very strong national embeddedness and operational centrality, the EU was able to establish and exert a role for itself, and fulfill its constructed aims, in the international telecommunications policy-making arena. The article argues that this occurred because of two primary factors: the establishment of a governance framework at the EU level in which the European Commission, in particular, came to play a very significant role; and recognition that the EU could prove a useful way of promulgating and securing the interests of its Member States in global telecommunications policy making. Importantly, the EU's relatively high profile and achievement in respect of the first element had a direct bearing on its ability to be influential in respect of the second. The example of this highlighted in the article is negotiations that led to the establishment of the Agreement on Basic Telecommunications (ABT) in the World Trade Organization in the late 1990s. However, 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 the newest core element of international electronic network communications. 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 an unfamiliar series of challenges for EU Member States and, simultaneously, opportunities to the EU which the latter has aimed to address. The article shows how in these circumstances, the EU has been able to present itself as an institutional means of ‘interpreting’ and influencing the evolving global Internet governance agenda. However, the EU has only been partially successful in assuming this role, in contrast to telecommunications, for four reasons: the more contested nature of global Internet governance; the more challenging strategic environment within which the EU has had to operate; the lack of a formal legal mandate for constructing policy on Internet governance; and the problem of multiple EU voices. Unlike telecommunications, the EU has only been able to make ‘incremental’ progress in meeting its aims in shaping the global Internet governance regime. Though there is evidence to suggest that EU institutional mechanisms for constructing positions on Internet governance are now more consensual on key issues problems do remain in identifying exactly who speaks for the EU in international Internet governance fora.

The empirical work underpinning this article comprises: documentary analysis of key primary source materials on EU policies for the Internet and telecommunications; policy

documentation produced by the main international organisations with which the EU has engaged in respect of the communications policy issues covered in this article; and a range of face to face, telephone and email interviews conducted over a seven year period with policy officials from the EU engaged with the international organisations for electronic communications covered in this article, and key national stakeholders. The article is structured as follows. The next section outlines the constituents of the comparative analytical framework to be employed in considering the EU's influence in global Internet and telecommunications policy contexts. The subsequent two sections analyse the key features of the EU's role in global telecommunications and Internet policy making respectively. The final section of the article 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.

## **THE EU AS AN ACTOR IN GLOBAL ELECTRONIC COMMUNICATIONS: FRAMEWORK FOR COMPARISON AND ANALYSIS**

Telecommunications and the Internet provide useful case contexts for exploring the significance of the EU as an international institutional actor since they possess essential similarities but also important differences (see Table 1). Both sub-sectors are characterized as being at the leading edge of technological change where a wealth of new services and market opportunities have consequently arisen. Related to this, both sub-sectors have gone through in the last 20 or so years a remarkable phase of internationalization and are often seen as standard bearers of economic globalization and

expansion. This is the case both in the characteristics of their markets and, associated with this, the further expansionary international potential in each. More broadly, both the Internet and telecommunications are sectors in which the propensity for change across the board in technologies, products and services, markets, and governance institutional contexts is relatively high. Finally, in both cases, though for very different reasons, the historical presence of the EU as an actor has been low (in the case of telecommunications) and minimal (in the case of the Internet).

However, the sectors also display some interesting and potentially significant differences. This is pertinent, in particular, to the regulatory governance and related institutional contexts within which they have evolved. As noted above, telecommunications, unlike the Internet, has historically had a strong national centric developmental history in Europe and beyond. The Internet's pre-popularisation development occurred in the US though its communicative potential led, by the mid-1990s, to the realization that its future course would be global. Importantly, through the last 20 years, each of these contexts has been the subject of significant upheaval. Telecommunications and the Internet are also notably different in respect of the prevalence of international institutional contexts for their treatment, which is historically well established in the former in the shape of the International Telecommunication Union and embryonic, at best, in the case of the latter. However, once again, it is important to note that in telecommunication the traditional governance institutional context altered significantly around the same time as that for the Internet was forming, often in turbulent circumstances. Finally, and related to the previous point, the historic shape and practices of governance in the cases of the Internet and telecommunications were markedly different. In the former, a liberal self-regulatory

model was in operation, whilst the latter displayed strong state led governance. Notably, however, as in the case of the previous two contexts of difference, governance forms and practices have been the subject of change entailing significant moments of contestation in recent years. Thus, difference provides as important a comparative context for exploring the significance of the EU as an international actor in communications, as the similarities outlined above.

**Table 1 HERE**

In order to illuminate the significance of the above comparative criteria in understanding the EU's influence in the global telecommunications and Internet sectors, the article employs a three dimensional analytical framework that draws on the literature on EU actorness (Bretherton and Vogler 2006; 2008), the EU in international organizations (Jørgensen 2009) and the EU as a strategic actor (Smith and Xei 2009) which comprises: opportunities that have enabled or constrained EU influence in the external environment of events, ideas and power; the EU's capacity to act by virtue of its own identity and the EU internal context it faces; and, from the first two criteria, the EU's performance in shaping the governance contexts of the two cases under investigation, in respect of its own stated goals, the degree to which the institutional contexts in which it operates are open to change, and the relative strength of the most prominent institutional actors which the EU faces.

Opportunity (Bretherton and Vogler 2006; 2008) related to the external politico-institutional environment (Jørgensen 2009; 12), also termed the logic of the external opportunity structure (Smith and Xie 2009; 9), refers to the pressures and opportunities

(to act) that arise from broader international structures in terms of both social and material content. For Jørgensen (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) and 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, with the interaction between the EU and US important in both. Local, national and global conditions and pressures also exist within different, though in part overlapping, timeframes in both cases. There are contrasting global institutions often underpinned by 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 gave the EU 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. As authors have demonstrated in their analysis of the creation of the Internet Corporation for Assigned Names and Numbers (ICANN), the US government was instrumental in resolving tensions between rival coalitions (Mueller 2002; Singh 2009) 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 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 an 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 move to global structures in order to ensure the interoperability of the Internet.

The second aspect of the article's analytical framework refers to EU internal factors (Jørgensen 2009; 10). This reflects the EU's capability to respond to opportunities in any given sector in order to shape the evolving (institutional) order. It raises a number of concerns germane to this article. The first is how the EU's internal logic – its institutional structures and internal politics - 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 who represents the EU in the relevant international institutions within the sectors under investigation (Jørgensen 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 message 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; Kissack 2009).. Overall, what is salient in terms of analysing internal factors is to illuminate the extent to which EU policy processes either constrain or facilitate action in response to 'opportunity'.

The third dimension of the analytical framework is the EU's 'presence' as an actor within any given issue area. For Allen and Smith (1990), presence captures the multidimensional aspects of the EU in world affairs and its considerable structure, salience and legitimacy in processes of international politics. They focus on the external behaviour of the EU and the perceptions of other international actors in assessing its ability to act, asking questions of how the EU can make its presence felt and indeed, how it can move from presence to purpose. Bretherton and Vogler (2006) define presence as the ability of the EU to shape

the perceptions, expectations and behaviour of others, and exert influence beyond its borders. However, for them, presence does not denote purposive external action. Taking the concept further, and building on the definition of Bretherton and Vogler in the context of regionalism, Hettne (2007: 110) defines presence as an expression of the impact of the region on its external environment, and argues that purposive action is an important component of actorness that requires an active element: the conscious effort to influence international order in accordance with one's own values and interests.

We use presence in a similar way and define it as the ability of the EU to exert influence beyond its borders through purposive external action, whether normative or material in nature. Beyond this, and somewhat linked to the 'opportunities' and 'EU internal' contexts, presence also pertains to other important criteria. Firstly, the degree to which the structure and function of the international institution within which the EU operates is malleable or, put another way, the stability and rigidity of the body in question, is important. A second criterion is the number and relative strength of the actors which take their place in the institution in question and which the EU encounters, including the propensity of all institutional actors to form alliances. Finally, and very much related to Allen and Smith's (1990) notion of legitimacy in defining presence, is the issue of the recognition of the EU as an actor within the opportunity structures that exist and the perception of the EU's role within such opportunity structures in any given issue area.

It is important to note that telecommunications and Internet governance are different cases that throw up different questions at an overarching level in terms of EU presence. As illustrated below, in telecommunications, the analysis is less about influencing the institutional form within which telecoms negotiations played out (that is, the World Trade

Organization), but rather the governance and policy framework for global telecommunications, underpinned by the EU's own projection of what this should be and how it should function. In terms of Internet governance, the still contested and aspirational nature and identity of its global institutions, in particular the Internet Governance Forum, 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's construction of policy objectives and subsequent activities within the WTO in influencing (primarily) the Agreement on Basic Telecommunications (ABT). In Internet governance, it is on how the EU has sought to shape the institutional design and reform of the Internet Corporation for Assigned Names and Numbers (ICANN) and the Internet Governance Forum (IGF).

## **TELECOMMUNICATIONS**

### *Opportunity*

Telecommunications, the oldest part of electronic network communications, has been viewed as a sector of strategic international importance since the late 19<sup>th</sup> 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 (see Hills 2002, 2007). 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 (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 (Humphreys and Simpson 2005). Thus, 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 (Thatcher 1998). 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, the European Commission took

significant pains to point out to Member States, many of whom were initially reticent about liberalization, 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 also 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 (Michalis 2007). 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 its replacement, the Body of European Regulators in Electronic Communications (Simpson 2009, 2011).

### *Presence*

Whilst the EU has grown in institutional importance in telecommunications internally, it has also developed its presence as an international political actor on behalf of its Member States in telecommunications, through the projection of a particular normative (ideological) model and exerting its material interests. 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 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 (ABT) 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).

## **INTERNET GOVERNANCE**

### *Opportunity/External logics*

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 telecommunications, the EU only obliquely articulated an interest in the Internet in the

Bangemann report, *Europe and the Global Information Society* (1994). Nevertheless, an opportunity for increased involvement in shaping the evolution of global institutions for 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 this system’s functioning. Despite this the potential global interoperability of the Internet meant that important international actors, the EU among them, had to be included in any process of the internationalization of domain names. In this context, the EU’s presence was exerted through its own normative preferences and 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 many other interests and coalitions involved.

Thus, the normative parameters for the governance of domain names were decided by the intervention of the US government in the domestic debate and international deliberation that emerged on globalizing domain names. The outcome in terms of governance structure and principles was ICANN, a self-regulatory, not-for-profit, private organization underpinned by US law, which was effectively a compromise between those with a post-industrial vision of the Internet (the technical community) and those with commercial 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 a US Department of Commerce Green paper (1998a) and statement of policy in the form of a White paper (1998b) that the EU, and

more specifically, the European Commission, reacted to the US position, securing several concessions. The EU criticised US unilateral control of the emerging domain name system and a lack of multilateral governmental influence in proposals to establish ICANN. Several years after ICANN's establishment, the 2008 global financial crisis and the expiration of the exclusive contractual oversight agreement between the US government and ICANN (the Joint Project Agreement)<sup>1</sup> provided the space and opportunity for the EU to take stock of its achievements in Internet governance and to reassert its preferred way forward, focusing in particular on how external and multilateral accountability could be incorporated into ICANN processes.

#### *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<sup>2</sup> early on. Key individuals in its Directorate General Information Society (DG IS) developed strong epistemic knowledge of the Internet allowing the Commission to assert itself as something 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. Wilkinson was also instrumental in proposing the launch and construction of the EU's own top level domain name, .eu (Christou and Simpson 2006, 2007). However, as time proceeded, the influence of the Commission was constrained by national governmental representatives within the EU High Level Group on Internet Governance (HLGIG) which was established internally and separate to the IIG to provide strategic direction on Internet governance. The IIG still

exists as an informal body chaired by the Commission consisting of Member State ICANN Governmental Advisory Committee (GAC) representatives. Whilst the IIG is not a policy making forum, ‘it is a way of like-minded European GAC reps doing a bit of thought-sharing and reporting [before ICANN meetings] so they can share their knowledge’ (authors’ interview, April 2010).

In contrast to telecommunications, it is important to note that there is no formal mandate or process for the construction of EU positions on Internet governance. Thus, although the HLGIG is the lead coordinating actor it has 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’ (authors’ interview, April 2010) but it only does this on the basis of issues that it deems important that the EU speaks on with a single voice and message (such as the expiration of the JPA and the review of the IGF). The lack of a formal legal competence has several implications for internal (in) coherence and the way in which messages are projected on Internet governance, often leading to tensions between the Commission (especially under former Commissioner Viviane Reding<sup>3</sup>) and the HLGIG, and between other key GAC players and the Commission (authors’ interview, April 2010). It has also meant that no formal EU representative sits on the GAC - the Commission has a seat because of .eu, but does not represent the EU as a whole. There are also individual EU Member State representatives which though they meet before any GAC meeting through the IIG, do not speak with an EU voice but as representatives of their respective countries.

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 coordinated way. This multi-representation is also evident within the IGF and alongside the lack of any formal process EU representation (presence) has been a source of confusion for other actors and stakeholders, exacerbating the well-recognised problem of who speaks for the EU. It has often led to divergent positions, with the HLGIG (as principal) on occasion having to rein in an often ambitious Commission (as agent) with its own political agenda (authors' interview, April 2010). Where the Commission has sought to project uncoordinated messages, the HLGIG has requested that it retract them publicly or at least acknowledge that they were Commission only views. However, the informality of the internal EU process has worked well at times in producing and projecting coherent, purposeful and consistent EU positions, as was the case in the deliberations for renewing the IGF mandate and the Affirmation of Commitments (AoC) which replaced the JPA.

### *Presence*

Given the informal nature of the construction of positions on Internet governance it is not surprising that the EU, despite its presence, has had mixed results in achieving its initial policy objectives on Internet governance (see European Commission 2009). An explanation for this can be found in the strategic 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 projected on Internet governance.

In terms of ICANN, the EU, led by the European Commission, was able to act purposefully and exert influence in obtaining important concessions in the initial negotiations for its construction. Specifically, its normative reasoning underpinned by notions of co-regulation, alongside the need for the US to achieve consensus, ensured the creation of the GAC within ICANN. Although the GAC allayed European concerns to a degree, it was not seen as completely satisfactory given that it did not guarantee an equal status for governments in the decision-making process where issues of public policy were concerned (Christou and Simpson 2006, 2007). In addition the main mechanism for accountability and oversight of ICANN was controlled by the US. The European Commission with the support of other international actors (such as the Intellectual Property (IP) community) also employed tactics of a normative nature in securing the creation of a Uniform Domain-Name Dispute-Resolution Policy through the World Intellectual Property Organization (WIPO) (see Singh 2008: 244-5).

Since its inception, both within and outside ICANN, the EU has sought to secure movement on the two issues that it initially thought problematic when the former 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 to decide on issues with public policy relevance (Kleinwachter 2008: 17), the EU has not achieved its aim of complete equality between governance actors. The global financial crisis and the subsequent questioning of self-regulation provided a general context for the Commission 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 certain Commission projections have advocated more than an advisory role for governments in Internet governance, a representative of the HLGIG has suggested its position 'is to ensure that what it [GAC] says is respected by the Board...and the Board justifies any decision not to follow GAC advice' (authors' interview, April 2010). In the context of the new Affirmation of Commitments<sup>4</sup>, which is providing more of role for the GAC with regard to ICANN accountability and representations to its Board, the EU position is that '...we [the HLGIG] are supporting the multistakeholder 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...' (authors' interview, 2010).

This is a view that is supported by Commission officials involved in Internet governance (European Commission 2009), and reflected in a Presidency statement in support of the AoC and its new review procedures. However, certain projections under the leadership of former IS and Media Commissioner Reding suggested a much stronger role for governments within ICANN and Internet governance such as her call for a 'G12' for Internet Governance (2009). This intervention was not only uncoordinated internally, but left stakeholders 'surprised' in the multi-stakeholderism context (Internet Governance Hearing, May 2009), and the EU embarrassed in its official representations and projections for Internet governance. The official EU view appears to resonate with that of



other salient Internet governance stakeholders where merely a fine-tuning of the current multi-layered, multi-stakeholder system, is advocated 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; authors’ interview, April 2010). This is particularly important in the context of countries that do not participate in the GAC or are sceptical of it and have pushed for, under the banner of ‘enhanced cooperation’, a greater role for the International Telecommunication Union in domain name management and an IGF. 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 World Summit on the Information Society process after the EU supported by the developing world, put forth an alternative proposition for a multilateral and more equal governance structure. This 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 (unilateral) US control was essential for the security and stability of the Internet. The EU considered the IGF as an alternative forum for discussion which did not in any way replace existing institutional arrangements. There has been a high level of coherence internally within the EU on this matter, including strong support from the European Parliament on the continuation of the IGF which allowed the EU to speak with a single voice within the 2010 IGF review process under UN auspices.

In its assessment of the IGF, the EU’s HLGIG concluded that it was a valuable ‘platform for non-binding multi-stakeholder 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 projected by the Czech Presidency within the initial UN discussions on the IGF (in May 2009), was 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). This was a position that was reiterated in letters by the subsequent Swedish Presidency (jointly with the Commission in December 2009) and the Spanish Presidency (without the Commission in March 2010).

Having said this, whilst the outcome of the IGF review certainly reflected the preferences of the EU and other major actors (i.e. it was given a further five year mandate), the EU must still demonstrate more obviously in practice its rhetorical commitment to the multi-stakeholderism principle that underpins the IGF if it is to gain more credibility internationally as an actor in Internet governance. Indeed, whilst there is some evidence to suggest that there has been absorption of the multistakeholder principle in the EU's internal process, through institutional mimicry of the IGF at EU Member State level and the Commission's participation in multistakeholder European Internet Governance platforms such as EuroDIG (see [www.eurodig.org](http://www.eurodig.org)), it could be argued that it does not 'walk the talk' as much as it could in practicing multi-stakeholderism and promoting European multistakeholder platforms (authors' interview, April 2010).

## **CONCLUSIONS**

This article has shown the EU to have developed into an important actor in global electronic network communications policy-making through a comparative analysis of its activities in telecommunications and the Internet seen through the complementary analytical lenses of opportunity; internal factors; and presence. The article has pointed to a number of similarities, but also clear differences, in EU behaviour in these related, though at the same time rather different, sub-sectors. The evidence and analysis presented also underlines the conditions under which the EU is more likely, and less likely to be able to exert itself successfully in global sectoral contexts.

## **TABLE 2 HERE**

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. Here, it faced a challenging international operating environment in terms of capitalizing on external opportunities and the establishment of a convincing international actor presence due to the domination of US ideas and practices. The telecommunications case 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 the EU and the US arguably stood to gain most from developing and exercising their presence through the pursuit of 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 develop quickly its presence as a key representative of its Member States in the WTO despite harbouring reservations. Given the strong (and perhaps unusual) coherence of EU positions, due in considerable part to powerful internal factors bound up in the contemporaneous intra-EU policy agreement on telecommunications liberalisation, the European Commission was viewed as the best means of securing EU interests in the WTO on telecommunications. A future challenge for the EU in this sector is to ensure that its coherence in policy construction and projection can be translated into more effective implementation of its agenda for extensive global trade liberalization, beyond some more recent aspirational policy statements and consultations. At the time of writing, there is currently no clear evidence of significant progress having been made in this regard.

The Internet presents a rather different situation. The EU was not able to develop any kind of coherent position on its governance internally before it became a high profile global communications policy matter. Thus, since the late 1990s, the EU has aimed to articulate and establish its interests and presence 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 external constraint has been the relative power differential and the EU's key policy differences with the US. There are, however, signs that the two parties are much more aligned in their preferences for future Internet governance than in the past. The EU has gained policy ground and established a relatively strong presence, assisted by significant uncertainty and some turbulence in the development of global Internet policy agendas, which has involved contestation of ICANN and the IGF.

As shown in the article, the EU, however, has struggled in the past to project a clear, cogent message on Internet governance. This can be accounted for in terms of our model by the persistence of informal internal policy processes for constructing positions on key external policy matters and the opportunities that this afforded those in the Commission with their own political agenda to influence global proceedings. The result has been multiple messages, evidence of split presence through multiple EU representatives in different global fora and consequent 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 have been in many instances. The Information Society and Media Commissioner, Neelie Kroes, who succeeded Viviane Reding, has apparently adopted a less assertive role and, as illustrated in the article, there is evidence of the development of an internal mechanism that is delivering more consensual policy-making and the projection of more coherent EU positions in matters of crucial importance for the future of Internet governance. Nevertheless, 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. The lack of formal external EU representation will continue to be problematic for the EU and threatens to undermine the EU’s policy aspiration to be taken seriously as a leader and coherent actor in Internet governance, beyond its own rhetorical self-projections. Addressing this would certainly alleviate the two key problems of identifying first, the ‘official’ EU position (and the process through which it is constructed), and second, which party speaks and negotiates for the EU on Internet governance. It could serve to allow the EU to exert its influence

more purposefully on key issues, such as the renewal of the IANA contract in 2012. More broadly, it may contribute to the achievement of the policy objectives of ensuring the efficiency, accountability and sustainability of the multi-stakeholder model the EU supports and projects.

## Endnotes

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<sup>1</sup> Essentially relinquishing US unilateral control over ICANN

<sup>2</sup> And the EU Telecommunications Committee in which national Member States were represented.

<sup>3</sup> Neelie Kroes, successor to Viviane Reding as Commissioner for Information Society and Media, 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, April 2010).

<sup>4</sup> Which replaced the Joint Project Agreement between the US Department of Commerce and ICANN on 1 October 2009

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**Table 1 Telecommunications and the Internet: Comparative Criteria**

Criterion	Internet	Telecommunications
Technological change	strong	strong
International features	strong	strong
Internationalisation speed	strong	strong
Historic EU presence	weak	weak
Propensity for change	strong	strong
Historic governance	self-regulatory	state-led
Global institutional context	Evolving	Well established but changing
EU national centricity	low	high

**Table 2 The EU as an actor in Telecommunications and Internet Governance**

	<b>Telecommunications</b>	<b>Internet Governance</b>
<b>Opportunity</b>	<p>Key actors: US and Japan, MNCs and major Telecoms companies</p> <p>Factors: Globalisation, liberalisation, free market neo-liberalism</p>	<p>Key actors: US government dominant, although this has now dissipated somewhat given the Affirmation of Commitments</p> <p>Factors: Commercialisation, global inter-operability of the Internet, crisis challenging self-regulation as governance tool</p>
<b>Internal</b>	<p>Formal process of policy construction (trade)</p> <p>Commission as lead agent (Member State as Principals)</p> <p>Coherence, with the Commission projecting a clear message at the WTO</p>	<p>Informal process (no formal mandate)</p> <p>HLGIG lead in policy construction with Commission</p> <p>Commission/Presidency as lead external representatives and EU Member State representatives. Coherence/consensus when constructing positions on key issues such as the renewal of the IGF and the Affirmation of Commitments.</p>
<b>Presence</b>	<p>Presence – strong</p> <ul style="list-style-type: none"> <li>Some normative/ideological and structural constraints in implementation</li> </ul> <p>Able to act with purpose in order to influence key regulations through:</p> <ul style="list-style-type: none"> <li>Alignment with/support for/projection of neoliberal ideas (with US/MNCs etc)</li> <li>Perception as credible international economic actor thus able to project policies/form alliances with key MNCs/telecoms companies challenging dominant ITU positions</li> </ul>	<p>Presence – medium</p> <ul style="list-style-type: none"> <li>Structural and normative constraints</li> <li>Informal process worked well, and a coherent message was projected where there were no internal contradictions/ independent interventions in process</li> <li>Hindered in terms of ‘presence’ (influence and action) by confusion among other actors on who projects the official EU position in certain fora (GAC, IGF). Issues of visibility and credibility</li> </ul>