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## **Reinventing Media Activism:**

Public Interest Advocacy in the  
Making of U.S. Communication-  
Information Policy, 1960-2002

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## Introduction

In July 2001, a 27 year old Russian computer programmer named Dmitry Sklyarov came to the United States to speak at DEFCON, a hacker conference in Las Vegas, Nevada, where he discussed and demonstrated weaknesses in the security of Adobe eBooks.

Prompted by the software company Adobe Systems, Inc., the FBI arrested Sklyarov as soon as he finished the talk. The FBI claimed that the Russian citizen was violating the anti-circumvention features of the Digital Millennium Copyright Act (DMCA), a U.S. law. Because his demonstration program was available over the Internet to all countries, the FBI argued, he was subject to jurisdiction in US courts. Sklyarov was jailed in the United States for several weeks and detained there for five months.

Eventually Sklyarov was permitted to return home. An embarrassed Adobe Systems Inc. withdrew its complaint against him, and his employer, Russian software company Elcomsoft, was ruled “not guilty” in the DMCA-based lawsuit brought against it. But a just outcome in this case did not just happen. Sklyarov’s arrest galvanized simmering opposition in the U.S. against the DMCA, sparking three months of public protests, leafleting, letter-writing and Internet-based oppositional activities. Protest rallies and candlelight vigils were held in at least 15 major U.S. cities, as well as in Rome, London, Moscow, Geneva, and Edinburgh. A global Internet chat summit, allowing activists and the public to discuss the case in real time, was held in August 2001. Advocacy organizations such as the Electronic Frontiers Foundation offered their expertise, assisted with the litigation and promoted public mobilization. The Sklyarov incident, in other words, was more than just a legal drama acted out in the courts. It involved the mobilization of public opinion by dedicated activists and advocacy organizations.

This report is a long-term analysis of citizens’ collective action to influence public policy toward communication and information. In Chapter 1, we discuss in greater detail what is meant by communication and information policy (CIP) and why we think it is worthwhile to study it as a distinctive domain of public policy and citizen action. In this introduction, we want to focus on the concept of *citizen collective action* and explain why we studied it and what methods we used. We also provide a road map for the rest of the report, outlining what is in it and acknowledging what is missing.

This is the first of what will be two reports. This report concentrates on citizen action in the United States and looks backwards, tracing the long-term evolutionary trajectory of communications-information advocacy in the USA. The second report will concentrate on international institutions and transnational advocacy related to communication and information policy, and will focus more on contemporary activity and issue networks.

### **Public Interest Groups**

In a free and democratic society, citizens influence the political process not just by passively voting every two or four years. They also organize to continuously shape policy and legal outcomes, and to express their opinions to public officials so that the officials

will make decisions that reflect their own needs, problems and interests. Most of this lobbying is driven by economic interests – individual business enterprises, labor unions, farmers, industry and professional trade associations, or other “materially interested” groups and individuals. But there are also citizens who organize to promote some concept of the public interest. These groups promote ideas, ideologies, values, policies, laws or regulations that they believe will benefit society as a whole. Jeffrey Berry (1977), following theory developed by Mancur Olson (1966), defines a public interest group as “one that seeks a collective good, the achievement of which will not selectively and materially benefit the membership or activists of the organization.”

Public interest groups focused on communication and information policy issues have existed for a long time. They can be liberal, conservative, socialist, non-ideological, something else. The American Civil Liberties Union, one of the oldest liberal groups, was formed in 1920 to promote freedom of expression. Public Knowledge, one of the newest liberal advocacy organizations, was formed in 2002 to resist overly aggressive intellectual property laws.

This report had its genesis in a realization that there was no long-term, strategic analysis of public interest advocacy around communication and information policy, despite the fact that philanthropic foundations and members fund such groups and many people join or support them. How effective has such advocacy been? What are its sources of strength and what are its weaknesses? How have changes in technology and political institutions affected modes of organization, the agenda of the advocates, and the ability of public institutions to incorporate citizen action into communication and information policy?

## **Methods**

To answer these and related questions, the report relied on three distinct methods:

1. An analysis of the long-term organizational ecology of public interest groups focused on CIP

Organizational ecology is a social science method that looks at organizations in a particular field as a population and analyzes how the size and composition of the population changes over time. Our research gathered data on the formation and disbandment of public interest advocacy organizations devoted to CIP issues in the United States from 1961 to 2002. That data permitted us to estimate changes in the size of the population, its ideological composition, which media or information policy issues the groups focused on, and which modes of advocacy were employed.

2. A quantitative examination of hearings and testimony on CIP issues before the U.S. Congress

We gathered comprehensive data about congressional testimony on communication and information policy issues in the U.S. Congress from 1969 to 2002. That data permits us to objectively measure the amount of Congressional activity on CIP issues in a given year, permitting analysis of how it changed over time and how the numbers compared to other issue areas. It also tells us how often specific public interest organizations and the individuals who work for them have gained access to lawmakers.

### 3. A critical historical narrative

The report weaves a narrative around the quantitative data, tracing the evolution of citizen advocacy across the broadcast licensing challenges of the late 1960s and 1970s, the telecommunication regulation revolution of the 1980s, the battles over privacy and Internet censorship of the 1990s and the conflicts over digital intellectual property and media concentration in the 2000s.

As far as we know, this is the first study to apply the tools of organizational ecology specifically to communication and information policy, and it is also the first to utilize recently developed data sources on congressional hearings in that policy domain. Although based on quantitative social science methods, the report is written to be accessible to ordinary readers interested in communication-information policy. We believe the report will be of interest to advocates, activists, lawmakers and policy analysts as well as scholars in information and communication policy, political scientists, and students of social movements.

### ***Limitations of the study***

No study of complex, long-term social phenomena is complete or perfect. Many things are missing from this study; in the discussion below we identify some of these gaps.

First, we were only able to focus on a particular type of public interest advocacy. During our research, we came to understand that activism occurs on two levels. At the grass roots, there exists a buzz of loosely coordinated communications, meetings, demonstrations and cultural activities based upon interpersonal networks. This might involve participating in a local demonstration, attending a meeting, handing out leaflets on the street or at a shopping mall, or just persistently promoting one's political views among friends and colleagues. We refer to this type of activity as *activism* or *social movement activity*. At another level, there are formally organized citizens groups that interact directly with the policy, law, and regulation-making apparatus of the government. We refer to this type of activity as *advocacy* and see it as rooted in *advocacy organizations*. Advocacy organizations attempt to directly influence what happens in Washington, DC or other governments, and as such must participate in making the bargains and trade-offs that define public policy in a given domain.

This report focuses almost entirely on the formally organized advocacy groups. We did not have the time or resources to also study the grass roots and local manifestations of activism in a comprehensive, empirical way. Nevertheless, we realize that there is a symbiotic relationship between these two levels of citizen action. Social movement activities are based on communities of the like-minded – subcultures or ideologies that are based on shared norms and values more than on support for specific policies or laws. Activism of this kind tends to be more fluid and ephemeral, less formally organized and almost always less well-funded than national advocacy organizations. Nevertheless, it plays a critical role in creating and sustaining political demand for (or against) public policies. Advocacy organizations on the other hand are more in the business of translating the demands of constituencies into specific laws and regulations – and must also deal

with the problems of sustaining the organization itself. They provide a critical and unavoidable interface between social movement activity and political decision makers. Like social movement activists, advocacy groups also seek to generate demand for their policies, but in order to do so they need to mobilize activists and the social networks that sustain them. Very few, if any, organizations bridge the two functions.

Another important limitation of this study is that we were able to touch on the influence of ideas, intellectual movements, think tanks, and foundation funding sources only in passing. As was the case with social movement activity, the more we looked into public interest advocacy groups the more we understood that there was a relationship between the formation and disbandment of these groups and the diffusion of policy ideas and political ideologies, which in turn are related to philanthropic giving and foundation grants. Our attempt to quantify the population and testimony of advocacy groups did not make it possible for us to also trace these relationships in any detail. However, by treating one aspect of the phenomenon of citizen collective action thoroughly, we believe that we have made it easier for other researchers to fill those gaps.

Finally, with respect to the historical narrative we acknowledge that this narrative, like all others, is selective. Those familiar with the details of any given time period, group or event are almost certain to find things missing that they think are important. We encourage such readers to give us feedback, by means of the comment mechanism associated with the report's web site.

## ***Overview of the study***

### Chapter 1: A Vision of the Policy Domain

We define and defend a vision of *communication and information policy* (CIP) as a comprehensive and integrated policy domain. We also define and describe the three primary modes of advocacy around CIP issues.

### Chapter 2: A Goal: Institutional Change

We draw on theories of institutions and institutional change to provide a framework for the report. We assert that the concept of institutional change provides both a *goal* for specifying what citizen collective action could achieve, and a *benchmark* for assessing its historical impact.

### Chapter 3: A Bird's Eye View: Four Decades of Congressional Activity and Interest Group Organization in CIP

We present a macroscopic overview of the quantitative data. We show how the population of public interest advocacy groups has changed over 40 years and the growth in Congressional hearings on CIP from the 1960s to the present. We compare and contrast the public interest organization population with the population of commercial and professional advocacy organizations over the same time period.

### Chapter 4: The 1960s and 1970s

We describe and assess the mass media activism of the mid-1960s and 1970s, the period of the most rapid rate of growth in the population. We show that most advocacy at this

time focused on broadcasting and cable TV. We discuss four major institutional changes in CIP that occurred in this period, with or without the advocates' participation.

#### Chapter 5: The 1980s

We describe how the 1980s was characterized by major changes in both the political climate and the type of communication-information policy issues under consideration. We document the appearance of computer professionals and technologists organizing around computer-related policy issues in the organizational population for the first time.

#### Chapter 6: The 1990s and early 2000s

We show how digital technology became the focal point of institutional change in CIP, leading to an explosion of Congressional activity, bringing in a new generation of advocacy groups and creating a major change in the composition of the advocacy organization population.

#### Chapter 7: Conclusions

We attempt to summarize our findings and draw some conclusions about the future of CIP advocacy organizations and their policy agenda.

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# 1. A Vision of the Policy Domain

In this section, we define and defend a vision of *communication and information policy* (CIP) as a comprehensive and integrated policy domain. We also define and describe the three primary modes of advocacy around CIP issues.

## 1.1 Communication-Information Policy (CIP)

Communications and information policy refers to the role of laws, regulations, and public institutions in shaping the deployment and use of communication and information systems. The late 20<sup>th</sup> – early 21<sup>st</sup> century is distinguished by a technological revolution in information and communication and a re-structuring of businesses and social institutions employing the technologies. The effects are not confined to the mass media but embrace the entire economy and society. As this revolution has progressed, the boundaries of communities and polities have been redefined, laws and regulations have been rewritten, cultural identities and repertoires have been altered, and economies and organizational capabilities have been transformed. Public policy has played, and cannot avoid playing, a major role in this revolution – either as shaper, facilitator, or obstacle.

Despite its centrality to all kinds of social endeavor, information and communication policy is not typically cited as an issue-area known for sustaining social movements, activism or advocacy. Instead, it tends to be viewed as a highly segmented and technical realm of policy making. But this seems anomalous, given the pervasiveness of the media in modern society, the economic and political importance of information and communication technologies, and the major political and economic struggles that have been and are taking place on this terrain. If information and communication are as critical to modern life as everyone seems to think they are, where is the public engagement over the politics of communication and information?

In seeking to answer a similar question, law professor James Boyle (1997) wrote a paper drawing an extended parallel between the environmental movement and the struggle over intellectual property rights in the digital environment. The analogy was apt. Environmental problems and policies are grounded in what are often highly technical and specialized fields of knowledge. Yet when we speak of “the environmental movement” or an “environmentalist” almost everyone understands what it is and why an individual citizen might be engaged in it or contribute to it. Most members of the public have heard of organizations like Greenpeace or Friends of the Earth and can intuitively grasp how and why a citizen might see as related the passage of a bottle bill, the preservation of wilderness, and a campaign against toxic waste sites. The concept “environmentalist” links a distinct set of social problems to a policy agenda, an ethos, and a social movement.

Communication-information policy does not yet benefit from the same generality, the same linkages. We do not even have a label. There is no such thing as a “communication-informationist” (at least, not yet). To some, the term “media activist” serves as a crude

substitute, but that is inadequate and outdated because it promotes a focus on the mass media to the exclusion of everything else.

Until now, studies of the policy and social problems of communications and information have tended to be segregated into separate literatures. Mass media, especially television, has drawn the lion's share of research attention in communication and journalism schools. The policy issues of telephones, computers, and various other networked media (e.g., postal systems) were neglected for many years. When infrastructural policies were taken up in the late 1960s and early 1970s, they were left to economists and engineers. Issues of intellectual property and privacy became specialties within law schools. As a result of this segmentation, common normative standards and methods of analysis applicable to the whole domain of communication and information policy never developed.

We believe that the digitization of information and communication technologies and the resulting convergence of media forms end that segregation. For that reason, in studying public efforts to shape policy we included not just broadcasting and television-related advocacy but all policy issues related to digital communication and the production and consumption of information products and services. Our view of advocacy includes battles over encryption and privacy, access to government information, the proper scope and definition of intellectual property, universal access, subsidies to content production, telecommunications regulation and radio spectrum allocation. This conception of "media" policy engages people not just as watchers of the tube, but also as transmitters and receivers of data; recorders, modifiers and small-scale publishers of content; consumers of fixed and mobile telephone services; writers and consumers of computer programs; e-commerce customers; users and consumers of government information and participants in governmental processes online.

## **1.2 Modes of Advocacy**

While arguing for an integrated view of CIP, we nevertheless recognize that different communication-information issues and problems have inspired different modes of activism. (See the Table on the next page) A great deal of advocacy and activism around the mass media, for example, has been focused on the *content* of the messages transmitted to the public. Public debate has focused on whether media are politically biased, culturally stereotyped, harmful to health, overly commercial, and so on. Content-oriented critiques of policy tend to be cultural in orientation and effect. Their object is to shape the public environment by affecting the messages to which we are exposed, or to create alternative cultures and worldviews based on alternative sources of message production and distribution. On the other hand, policy controversies around telecommunications infrastructure tend to be focused on *political economy* issues. Political economy concerns questions such as how to find needed sources of capital investment, the conditions of access and interconnection, the costs and benefits of government regulation or prices, market entry and service, the affordability of prices, the effects of competition, or the degree to which various regions or groups should be subsidized. In these debates, norms and expertise involving efficiency, economic

# Advocacy Modes in CIP

## Content

**Definition:** Advocacy organized around criticizing or problematizing the *messages* produced by the media.

**Examples**

- Calls to censor or restrict access to messages deemed offensive or indecent
- Attacks on or exposure of stereotypes or negative representations of ethnicities, races and religions
- Monitoring and criticism of political bias in journalism or the quality of reporting
- Calls for production of socially responsible programs or the suppression of programs and messages deemed irresponsible

**Characteristic methods:** Monitoring the media, regulatory interventions (e.g. license challenges), advertiser boycotts, persuasion of producers, civil disobedience, alternative production.

## Economic

**Definition:** Advocacy that attempts to influence the conditions of supply of communication and information products and services

**Examples**

- Efforts to impose price, quality, market entry or market exit regulations on CI businesses
- Attacks on media concentration
- Efforts to direct subsidies toward alternative producers
- Efforts to redistribute wealth among consumers and producers (e.g., universal service programs)
- Efforts to influence or shape technical standards
- Promotion of open source software

**Characteristic methods:** Legislative lobbying, regulatory advocacy, participation in standards development, support or subsidization of alternative production capabilities

## Rights

**Definition:** Advocacy that asserts individual rights related to communication and information.

**Examples**

- Defenses or assertions of free expression rights or anti-censorship campaigns
- Advocacy of privacy rights
- Promotion of right of access to government information
- Defenses of fair use in regards to intellectual property
- Claims of property rights (e.g., a claim that consumers have a right to acquire police radar-detection equipment)
- Agitation for new legal rights related to communication-information

**Characteristic methods:** Litigation under existing law, promotion of legislation to define and create new rights, civil disobedience

development and technological innovation tend to have greater weight, although concerns of equitable distribution are also present. There is a third mode of advocacy that focuses on legal rights or entitlements. Privacy, first amendment and intellectual property-related activism fall most obviously into this category. In each area, activists contend that individuals have a right to engage in certain kinds of activities, and seek to protect that right against the incursions of the surrounding society, even when they are resisting a majority. These rights-oriented norms often run orthogonally to cultural and political-economic norms. Advocates of first amendment protection for racists, for example, may not believe that there is any cultural value to the messages they are protecting, but they do think that the value of protecting an individual's right of free expression outweighs most other considerations. Likewise, advocates of privacy protection may be willing to impose substantial costs or "inefficiencies" on the infrastructure of information handling in order to preserve the security and confidentiality of protected data and an individual person's right to determine how information about him or her is used.

Thus, in addition to being segmented by the specifics of the technological medium, advocacy related to communication and information has followed at least three distinct modes: the cultural or content-oriented mode, the political economy mode, and the rights-oriented mode. Each of these modes is associated with different academic communities, different professional communities, different activist strategies, different forms of law and policy. Roughly speaking, cultural critiques tend to find their home in communication scholarship; political economy analysis is associated with economics and political science departments; rights-oriented thinking is grounded in law schools.

### ***1.3 Toward a Reinvented Activism***

This report is based on the assumption that segmentation of communication and information policy by medium or technology is no longer feasible or desirable. Digitization of communications and information processing has incorporated nearly all media forms into interoperable technological systems. This requires an integrated approach to policy – and to public interest advocacy as well. Quite apart from the technological fusing of media forms, which makes policy interdependent, the social and political issues raised by communication and information require treatment in a holistic way. If the information and communication industries account for nearly ten percent of the economy, advocates of cultural norms cannot ignore or avoid concerns about jobs, production and economic growth. If the implementation of information and communication technologies by government (so-called "e-government") will reshape access to government decision makers, information and services, then advocates of democracy cannot be innocent of the constraints and capabilities of technology.

One of the main goals of this report is to broaden and reshape our concept of the relevant policy domain. The issues and problems associated with the mass media need to be incorporated into a broader and more abstract framework of human rights related to communication and information activities. Such a broadening must also involve an understanding that such rights permeate all of 21<sup>st</sup> century life, embracing the private sphere as well as public discourse.

## 2. A Goal: Institutional Change

*“Periods of reform are puzzling moments when those with less power are able to change the rules by which old elites have prospered.”*

– Elizabeth Clemens, The Peoples Lobby.

A core feature of the study is its focus on the potential of activism to catalyze institutional change in the communication and information sectors. The concept of institutional change provides both a *goal* for specifying what political activism could achieve, and a *benchmark* for assessing its historical impact. Our focus on institutional change is normative as well as positive. We prefer not to view advocacy or activism as an end in itself or as a lifestyle.<sup>1</sup> We take an instrumental view of citizen collective action, and see institutions as the strategic target for advocates serious about achieving long-term change. We also believe that the new institutional economics, particularly the strand that emphasizes the distributional effects of institutions and institutional change, can contribute a great deal to the reinvention of “media” activism.

### 2.1 Defining “Institution”

Institutions are not a simple target. In common usage, the word “institution” is often used to refer to any well-established organization, such as the Ford Foundation or the Library of Congress. But in social theory institutions are not specific organizations. They are ordered patterns of social interaction in a particular domain. (Clemens, 1997; North, 1990) Organizations shape and are shaped by institutions, but institutionalism focuses more on the *rules* than the players. Knight (1992, 2) defines an institution as “a set of rules that structure social interactions in particular ways,” with the proviso that “knowledge of these rules must be shared by the members of the relevant community or society.” In addition to explicit laws, there are the customs and social norms that strongly affect how such rules are interpreted and put into practice. The term “rules” in this definition means both formal and informal expectations.

An example of a relatively simple social institution is the convention of driving on the right side of the road. This pattern is grounded not only in drivers’ habits and expectations, but is also codified in written laws and enforced by police. The institutionalization of this domain of human activity makes driving more predictable and so reduces the costs of routine interactions. Institutions thus create social benefits.

But one cannot explain the development of institutions solely in terms of the collective benefits they achieve. Knight (1992), Libecap (1989) and others have documented how the structure of institutions affects the distribution of power and wealth. Property rights are the social institutions that determine who has how much decision making authority over valuable resources. Without stable property rights, productive economic exchange is hindered if not destroyed. But property rights are not, as the extremes of both left and

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<sup>1</sup> For an alternative view, see Calhoun (1995).

right would have it, a binary variable that either exist or do not exist. They can be defined in a variety of ways, and how property rights are defined strongly affects the distribution of wealth. A simple example of this is the term length of copyright protection. Longer periods of copyright protection transfer wealth from the consumers of intellectual property to the copyright owner, by eliminating competition in the reproduction of the work for a longer period of time. Shortening the term shifts wealth from copyright owners to consumers.

Likewise, the design and structure of political and governance institutions strongly affects the distribution of political power. As an example of the latter, consider the following three governance structures that might be adopted by an international institution: a) a one country, one vote legislative assembly; b) a one person, one vote global electorate; c) a shareholding structure of the type associated with corporate governance. While any stable governance structure is likely to be better than none, the relative winners and losers would change dramatically depending on which of these institutional structures was adopted. Small countries would be relatively empowered by governance structure a), populous nations or ethnic groups would be empowered by structure b), and wealthy stakeholders would be more empowered under structure c). Some theorists go so far as to claim that the collective benefits of institutions are merely a byproduct of the way interest groups work out conflicts over distributional issues. (Knight, 1992, 27-47)

The institutions ordering communication and information in the United States are complex and manifold. They involve numerous rule-making entities (Congress, the Federal Communications Commission, state regulatory commissions, international organizations and treaty negotiations), dispute resolution bodies (courts at various levels), a large and complex industry, and numerous technical standards and standard-setting organizations.

## **2.2 Institutional Change**

If institutions are rules-based processes that channel social interaction, then institutional change occurs when something disturbs those patterns at both the mental and behavioral levels, provoking a systemic adjustment in the relations among organizations and individuals. That disequilibrating force must be strong enough to call into question the collective benefits created by existing institutions. “Institutional change” means overcoming the inertia of existing institutions and securing into place new rules and new organizational forms that deliver tangible new benefits to significant social constituencies. To elaborate, institutional change means that:

- Changes in *rules and norms* occur, not just the changes in the behavior of specific actors in specific situations.
- The rule changes alter the distribution of wealth or power in a significant way;
- The new rules, like the old ones they supersede or replace, become self-reproducing over time, and create their own inertia. Typically, this means that the changes must be broadly accepted as legitimate and that they are compatible with basic material constraints.<sup>2</sup>

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<sup>2</sup> E.g., one can pass a law decreeing that everyone in a society will have million dollar annual incomes, but the law is meaningless unless the new organizations and institutions actually have that wealth to deliver.

More concretely, institutional change takes the form of major new national (or international) laws and policies and the allocation of resources required to make them effective; the creation (or abolition) of large government agencies; major shifts in the allocation of governmental and private resources; and the internalization of new social norms by the dominant culture in a way that legitimates and sustains the changes in power and wealth distribution. Most if not all of these aforementioned factors must be in play to qualify as the kind of institutional change we are interested in, not just one of them.

Civil rights and environmentalism are clear examples of social movements that produced institutional change of the sort we are concerned with here. In both cases, sustained contention between organized citizens groups and their antagonists produced 1) major and difficult-to-reverse changes in state, federal and local laws; 2) new, more or less well-funded government agencies with novel forms of regulatory power;<sup>3</sup> 3) major shifts in the distribution of political power; and 4) widespread inculcation of new social norms into private behavior (overt racism or sexism is publicly unacceptable, pollution is stigmatized, etc.).

### ***2.3 Why Bother with Institutional Change?***

Not all activism produces institutional change, nor is it intended to do so. Many advocacy groups see themselves as upholding or sustaining existing laws or norms. Many activist organizations and causes are targeted at localized issues or problems and have little interest in systemic transformation of an existing order.

Thus, we need to introduce an important distinction between advocacy focused on institutional change, and advocacy that is not. This report is interested in the former, and less so in the latter. By adopting this focus, we do not wish to imply that activism targeted on institutional change is “worthy” and other forms of activism are “less worthy.” On the contrary. Collective action by citizens to improve local conditions or to resist specific bad actions by government or the private sector is a vital part of an open society. From a normative standpoint, advocacy that sustains or defends good institutions is just as important as activity aiming in new directions. For example, a campaign or legal defense fund to prevent a particular group or web site from being censored constitutes a kind of activism that (in the United States at least) upholds widely accepted liberal norms and existing constitutional rights.<sup>4</sup> Charitable efforts to ameliorate poverty may have a beneficial effect on the recipients, but most of this activity does not pretend to be catalyzing a long-term, institutionalized shift in the distribution of wealth. That kind of activism is just as important – and certainly more common – than sustained social movements aimed at systemic change.

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<sup>3</sup> The Equal Employment Opportunity Commission and the Environmental Protection Agency.

<sup>4</sup> On the other hand, efforts to prevent censorship from taking a new form and from being applied to a new medium such as the Internet, such as occurred with resistance to the Communications Decency Act, has long-term institutional significance.

Nor do we wish to overlook the ways in which more concrete and localized forms of activism might generate longer term institutional change. One can focus a great deal of energy on a specific corporate actor such as Clear Channel Radio, and have a real impact on that actor's fortunes and behavior. In some cases, altering the conduct of that individual business may not have a long-term impact on the rules governing the structure of the broadcasting industry or on the norms and ideas guiding the legislatures' and courts' treatment of broadcasters. On the other hand, it is possible for advocates to make specific actors such as Clear Channel a "poster child" for abuses or problems that call into question existing policies. That in turn can lead to more generalized changes in attitudes and rules. As one leader of an advocacy group has put it,

"When activist groups single out individual companies as the targets of their campaigns (e.g., RJR, Exxon, Nike), the goal is not just to change the behavior of that individual organization, but to raise the issue in the press, frame the public debate, and influence policy makers. There are numerous examples of how these strategic, focused interventions have had significant impacts on industry-wide practices as well as public policy decisions."<sup>5</sup>

In general, activism aimed at institutional change is more difficult and expensive, longer-term, more uncertain and riskier than activism targeted at smaller objectives. Indeed, because of the complexity of human society and the pervasiveness of unintended consequences, there is no guarantee that efforts at radical institutional change won't make things worse rather than better. Why then does this report focus on institutional change? There are four major reasons.

- First, the Ford Foundation is an organization capable of investing substantial amounts of time, energy and resources promoting some kind of social change. As a matter of efficient use of human and financial resources, it may as well think big. That is, Ford's support of communication/information activism should be designed to produce effects that are institutionalized, systemic and "locked in," as opposed to effects that are temporary, sporadic and localized.
- Second, public interest activism as we know it was itself both a catalyst and a byproduct of institutional change that took place in the 1960s and '70s. Most veteran advocates understand that, and the evidence gathered by this report will further document it. What is less well understood is that the specific organizational forms and social norms of that period have themselves become institutionalized. What were once new challengers employing new organizational forms, new norms and new methods have become familiar, an adjusted-to part of the political landscape. Consequently, much of their energy or ability to transform has been spent. We wish to convey a sense that the specific form taken by public interest activism needs *revitalization* and *reinvention*, rather than *reassertion* and *repetition*.

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<sup>5</sup> Comments on "Reinventing Media Activism (Preliminary Review Draft)" of Dr. Kathryn Montgomery, President, Center for Media Education, Professor, American University. July 28, 2003.



- Third, we note that many of the groups now involved in communications activism aspire to create institutional change, particularly change of the sort achieved by the civil rights and environmental movements. But many of these groups sense, correctly in our opinion, that they are no longer generating systemic change but are defending or preserving values and institutions against a competing movement (neoliberalism) with more momentum and power. Other groups, on the other hand, do see their current advocacy as agents of major institutional change. We are convinced, however, that all too often the second camp fails to appreciate the substantial burdens, both intellectual and political, that such a commitment entails. In particular, while valid and powerful expressions of dissatisfaction with the media status quo abound, the formulation of alternative institutional arrangements and the articulation of a politically feasible pathway to them are not so abundant. Thus, an analysis of how activism is related to broader institutional change seems to be needed in both instances.
- Finally, institutional change in our field is taking place whether we want it to or not. The only choice is whether to participate actively or passively, as shapers or reactionaries. New institutions are being constructed at the international and national level in response to globalization and the rise of the Internet, e-commerce and e-government. That in turn creates pressure for adjustments at the national level. Institutional change is particularly evident in the domain of communication and information because of the drastically lowered costs of transnational communication and the liberalization of trade in communication/information services and equipment. The construction of new transnational rules, organizations and norms pertaining to communication and information will have a major impact on national institutions. The international arena presents a field of action that is more open to innovation and change than the national arena. In the developed countries at least, stable patterns of contention among the relevant constituencies have been forged and entrenched in the domestic arena over a longer period of time. Things are in greater flux internationally.

## **2.4. The Paradox of Institutional Change**

The quote from historical sociologist Elizabeth Clemens at the beginning of this section presents a paradox. Like all good puzzles, it makes one stop to think. Thinking about it clarifies one of the key issues posed by institutional change. The paradox is this:

*If (as institutional theory suggests) the rules and norms currently in place reflect and reproduce the prevailing distribution of wealth and power, how do groups or individuals who are disadvantaged by or dissatisfied with those patterns of interaction ever manage to change them?*

What kind of social leverage or organizational jiu-jitsu is needed to make this happen? Is it driven by happy accidents? Technological change? New ideas? Violent conflict?

The theory of institutions we are using provides a generalized account of what might lead to institutional change. If institutions are based on distributional bargains that reflect the

relative bargaining power of various social groups when institutions are formed, then change could come about by:

- Changes that dramatically improve the bargaining strength of the formerly weaker parties
- Changes that dramatically reduce the bargaining strength of the stronger parties
- Changes that significantly alter the collective benefits that might be achieved by an institutional framework, either expanding or contracting them
- Changes that allow the relative losers in one institution to migrate to alternative institutional arrangements

We must stress, however, that no amount of scholarly research is going to provide a simple, reproducible recipe for altering institutions going forward.<sup>6</sup> The achievement of consciously pursued social changes is an art, not a science. Social science can only give us clues as to where to look for strategic levers, and generalized descriptions of how various movements have done it in the past. Thus, below we provide a brief description of two particular phenomena with which institutional change has been associated in the past: 1) social movements, and 2) innovation in organizational forms. These are advanced not as guides to future action but as frameworks that help us to analyze and understand our historical review of advocacy in communications and information.

### **2.4.1 Social Movements**

Research on social movements tells us that successful movements will take advantage of political opportunities unique to a historical moment, strategically mobilize the resources available to them, and successfully frame issues in ways that appeal to the public. Charles Tilly (2002) compares a social movement to a “kind of campaign, parallel to an electoral campaign,” but notes that “whereas an electoral campaign pays off chiefly in votes...a social movement pays off in the effective transmission of the message that its program’s supporters are (1) worthy, (2) unified, (3) numerous, and (4) committed.” In social movements the relationship between actions and the goals of the movement are diffuse and indirect:

...as compared with striking, voting, smashing the loom of a nonstriking weaver, or running a miscreant out of town, [a social movement’s] actions remain essentially symbolic, cumulative, and indirect...Social movement mobilization gains its strength from an implicit threat to act in adjacent arenas: to withdraw support from public authorities, to provide sustenance to a regime’s enemies, to move toward direct action or even rebellion. (Tilly, 2002, 88)

According to Sidney Tarrow, disruptive forms of contention are the strongest weapon of social movements because they “spread uncertainty and give weak actors leverage against powerful opponents.” However, disruption is also a highly unstable tactic. It requires high levels of commitment on the part of participants, and as Tarrow notes, “commitment in social movements is difficult to maintain over long periods except

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<sup>6</sup> Indeed, such a formula, if it could exist, would be self-negating, because if anyone could follow it everyone would follow it, allowing the expectations of opponents of social change to converge on strategic countermeasures.

through formal organizations, which movements do not like, can seldom master, and – when they do – often turn them away from disruption.” (Tarrow, 1994, 98) Regular reliance on disruptive tactics tends to split movements into “militant minorities tending toward violence” and “moderate majorities tending toward convention.” (Tarrow, 1994)

## 2.4.2 Organizational Innovation

While the social movement literature emphasizes ways to undermine or disrupt the equilibrium that sustains existing institutions, sociologists such as Elisabeth Clemens have called attention to the way organizational innovations usher into place new patterns of social interaction, locking in changed institutions. Clemens’ work emphasizes the ability of people to manipulate organizational forms and organizational repertoires. Her analysis is based largely on detailed studies of the historical origins of interest group politics in the progressive era, which contrasts the achievements of labor, farmers, and woman movement in that period. (Clemens, 1993, 1997)

According to Clemens, *how* people organize is as important as what resources they have and what purposes they organize for. Think of what it means to organize as a social club, a paramilitary force, a religious order, or a Washington DC-based public interest lobbying group. Each one of these organizational forms is associated with a different repertoire of behaviors and actions. Each creates quite different expectations in the minds of its participants and invokes a different type of response by others in society. These internal expectations and external responses both enable and constrain what the organization can achieve. Shared mastery of known organizational forms facilitates collective action. Mutual knowledge of organizational forms facilitates cooperation based on tacit knowledge rather than explicit instructions. Organizational forms may also be a source of shared identity. (Clemens, 1997, 49-50)

Once routine patterns of interaction are articulated and established, they become “modular” and can be transposed from one setting to another. This transposition of organizational repertoires can be a catalyst of institutional change. One strategy for securing institutional change is to organize “as if” existing institutions already apply to formally excluded categories of actors or domains of activity.” (Clemens, 1997, 189) The organized lunch counter visits of the civil rights movement, wherein African-Americans acted as if they had the same rights as whites, fall into this category. This method dramatizes contradictions in society’s rules, reorienting peoples’ thinking and creating the opportunity of altering patterns of participation. An important insight from this perspective is that challengers who adopt familiar models of organization and use them for familiar purposes will simply *reproduce* existing institutions. The reverse strategy – challengers who adopt modes of organization that are completely unfamiliar to and disruptive of the surrounding society – is likely to invoke incomprehension, rejection and repression. Institutional change is most likely to come from challengers with organizational forms that combine familiar and unfamiliar elements. (Clemens, 1997, 62) Clemens’ perspective also offers insight regarding where to look for the wellsprings of institutional change. Contrary to romantic notions of the poor and downtrodden rising up to alter their conditions, institutional change almost always comes from constituencies in the middle. “Rather than resulting from the resistance of the most disempowered, lasting

rearrangements of institutionalized rules are more likely to be produced by the least marginal of the marginalized, the most advantaged of the disadvantaged.” (Clemens, 1997, 12)

## **2.5 Conclusion**

This section identified *institutional change* as the appropriate object of activism and advocacy, and provided definitions and descriptions clarifying what is meant by it. An argument was advanced as to why a focus on institutional change in communications and information is appropriate. Then, some tentative ideas were put forward about how institutional change occurs, and two methods of analyzing social change, the social movement literature and the organizational sociology of Elisabeth Clemens, were introduced.

### 3. A Bird's Eye View: Four Decades of Congressional Activity and Interest Group Organization in CIP

In this chapter, we present a macroscopic overview of communication-information policy advocacy from the 1960s to the present. Two kinds of quantitative data were gathered.

First, we examined the number of U.S. Congressional hearings devoted to topics in communication and information policy from 1969 to 2002. The data shows both the level of activity (number of hearings) and the specific CIP issues upon which the Congress was focused at any given time.

Second, we collected data about the formation and disbandment of communication-information advocacy groups from 1961 to 2003. That method, known as organizational ecology, treats advocacy groups as a population. It contributes new data to the discussion of basic questions about advocacy as a long-term contributor to institutional change. Most of the evidence up to now has been based on anecdotes and case studies. We wanted to address more objective questions, such as: How many CIP advocacy organizations have there been? When did the number grow and when did it shrink? What is the composition of the population, in terms of advocacy modes or ideological orientation? What type of policy issue or communication medium did the organizations focus on? This kind of data about the population does not answer cause and effect questions, but it does provide a factual grounding for other discussions.

The data we collected forms the backbone of the narrative exposition in later chapters.<sup>7</sup>

#### 3.1 Congressional Hearings

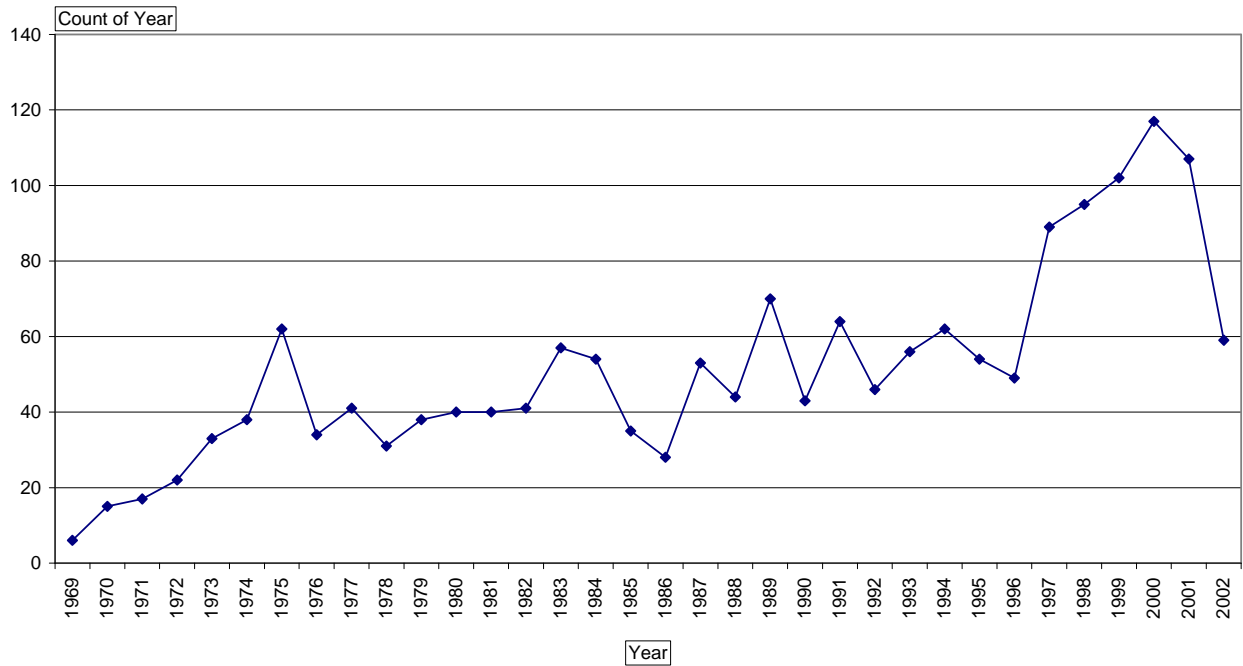
To better understand the evolution of CIP issues over the period of study, we collected congressional hearings data using the Congressional Information Service (CIS) Index. The CIS Index provides access to all regularly produced congressional publications, including House, Senate, joint and special hearings. After reviewing available index subjects, we created a list of terms that captured hearings relevant to CIP issues. These terms included: “freedom of information act,” “right of privacy,” “intellectual property,” “broadcasting,” “computer and telecommunications,” “Internet,” “cable television,” “telecommunications regulation,” and “telephone.”<sup>8</sup> In total, we collected 2281 records of hearings dating from 1969 to 2002. In general, the amount of Congressional activity on CIP has risen significantly over time. In 1969, there were only six hearings on CIP topics; in 2000 the number of CIP hearings rose to its maximum of 117. (Chart 3.1)

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<sup>7</sup> The presentation here is intended for a lay audience. We try to avoid getting deeply involved in social science jargon and statistical techniques. The data and the analysis, however, are grounded in social science methods. We describe those methods in detail and explain their strengths and limitations in Appendix 1.

<sup>8</sup> Some hearings were classified under more than one search term. In order to avoid double-counting, we created a category “Multiple search terms.” The historical rise in the number of hearings classified under multiple search terms (see Chart 3.2) is in itself an interesting indicator of change in the nature of communication-information policy.

**Chart 3.1**  
**Total Number of Congressional Hearings on CIP issues - all topics**  
**(Duplicates counted once)**

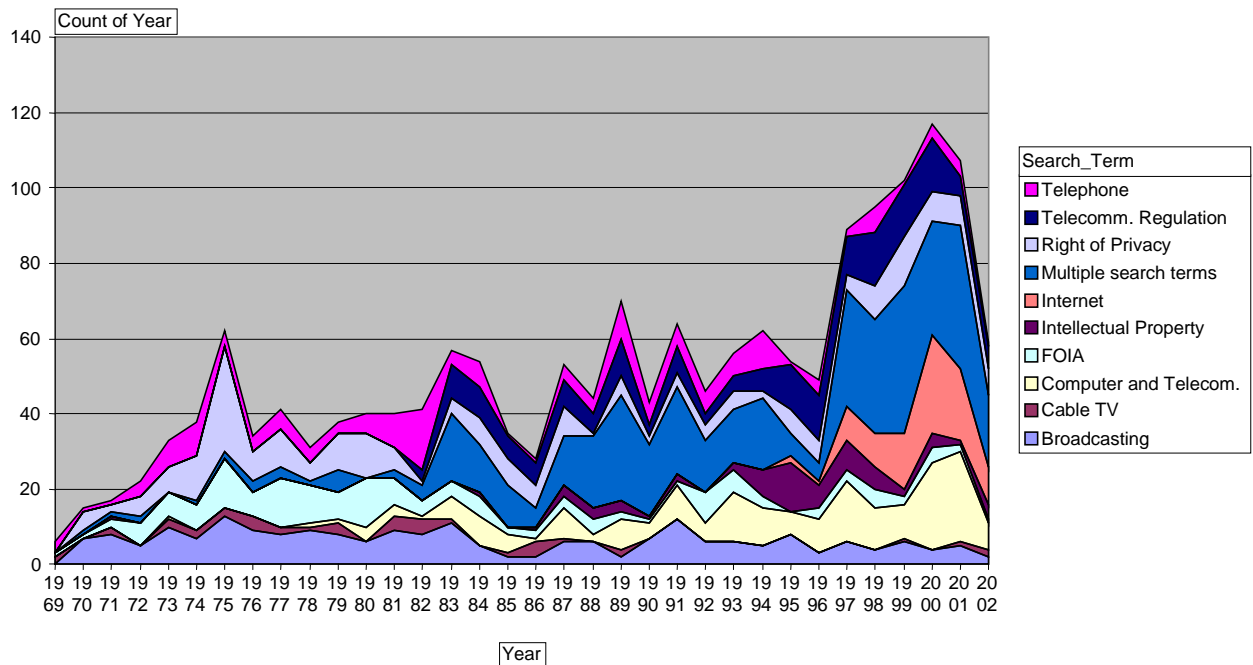


There are three peaks of congressional activity, each attributable to a distinct set of issues. The largest peak of activity by far is the one that occurs from 1997 to 2001. This can be called the “digital convergence peak” because it was driven by concerns associated with the interaction of computers, telecommunications, the Internet and cable television. Privacy issues were also a major concern. During this period, hearings that fell under multiple search terms (color-coded blue in Chart 3.2 below) were the largest single category. During that 5-year period, Congressional hearing activity on CIP stayed at somewhere between double and triple the amount for previous years.

Prior to that, there were three other surges of hearings activity. A series of late 1980s-early 1990s peaks reflects an interest in National Information Infrastructure that continued from the first Bush administration through the first Clinton administration.<sup>9</sup> A smaller peak in 1983-84 was driven by issues pertaining to the AT&T divestiture. A surge of hearings in 1974-75 was generated by a conjunction of broadcasting regulation matters and post-Watergate concerns about privacy and the freedom of information act. In fact, that combination of topics (broadcasting, privacy and FOIA) dominated CIP hearings all through the 1970s.

<sup>9</sup> The “sawtooth” pattern characterizing the second half of the 1980s is well known to students of Congressional activity; congresspersons tend to be more active with hearings and related activity in odd (non-election) years.

Chart 3.2  
U.S. Congressional Hearings on CIP topics - By Search Term  
(Duplicates Counted Once)



If we compare Congressional activity on CIP to hearings activity on other social movement-related topics (Baumgartner & Mahoney, forthcoming), we see that communications and information has become one of the largest focal points of policy activity in the U.S. Congress. Since 1982 CIP has routinely exceeded 50 hearings per year and erupted to around 100 for five straight years at the turn of the century. In contrast, women's issues reached a peak of 48 hearings in 1992 and rarely exceeded 30 hearings a year. Civil rights and human rights-related hearings never exceeded 30 hearings per year during the entire post-World War 2 period. Only environmental issues generated a comparable number of hearings during the same period. In 1992, hearings on environmental topics reached a level of Congressional activity that exceeded the CIP peak of 2000. After 1992, however, environmental issues declined to much smaller levels than CIP hearings.

### 3.2 Analysis of the Population of CIP Advocacy Organizations

Congressional activity both responds to and provides an opportunity for interest groups and advocates. In this section, we try to quantify the advocacy groups working on CIP issues. We examine two distinct populations. One consists of public interest organizations primarily devoted to CIP advocacy. The other consists of commercial and professional associations in communications and information industries involved in

policy advocacy. The separation of the two populations is based on collective action theory's distinction between interest groups that are economically-motivated, such as business lobbyists, labor unions and trade associations, and "advocacy groups" or "public interest" groups motivated primarily by ideological or policy purposes.<sup>10</sup> Both types of organizations play a role in shaping CIP, but fulfill different roles in the political process. The trade association Recording Industry Association of America (RIAA), for example, consists of music publishers and was formed to lobby for the economic interests of that industry. If the laws and policies it promotes are enacted, its members receive most of the benefits. A public interest group such as Electronic Frontier Foundation (EFF), in contrast, would advocate policies different from those advocated by the RIAA, but if it is successful most of the benefits would go to people who are not members, supporters or contributors to EFF.

### *Public Interest Organizations*

Looking at the 42-year study period as a whole, we identified 223 organizations engaged in public interest advocacy on various aspects of CIP. Chart 3.3 shows how the population changed over time. From 1961 to 2003, it displays the number of foundings, the number of disbandments, and the cumulative number of organizations.

Starting with only 13 organizations in the 1961 period, the cumulative total of CIP advocacy organizations grew rapidly until the 1981 period, reaching 93 organizations. After 1981, the population continues to increase but the growth rate declines. The population reaches a peak of 115 co-existing organizations in 1997, and then begins a sustained decline over three periods. By 2003 the total had slipped back to the level it was at in 1981.

An observation that leaps out from this data is that the fastest growth in the population of CIP public interest advocacy organizations took place not with the rise of the Internet, but in the late 1960s and the 1970s. That period coincided with the emergence of the foundation-funded advocacy group devoted to specialized policy issues. The same phenomenon took place over a wide variety of issue-areas, including environmentalism, civil rights, and gender as well as communication-information. (Baumgartner & Mahoney, forthcoming; Berry, 1999) Although initiated by liberals, the organizational form of the public interest lobbying group focused on specific issue-areas was later adopted by ideologically conservative groups.

In short, the citizens group was what Clemens (1997) called a generic "organizational form;" as such we would expect it to take root in a variety of policy areas, not just in CIP. Its adoption and utilization in communication-information, however, was legitimated by a critical change in the political opportunity structure: the United Church of Christ Office

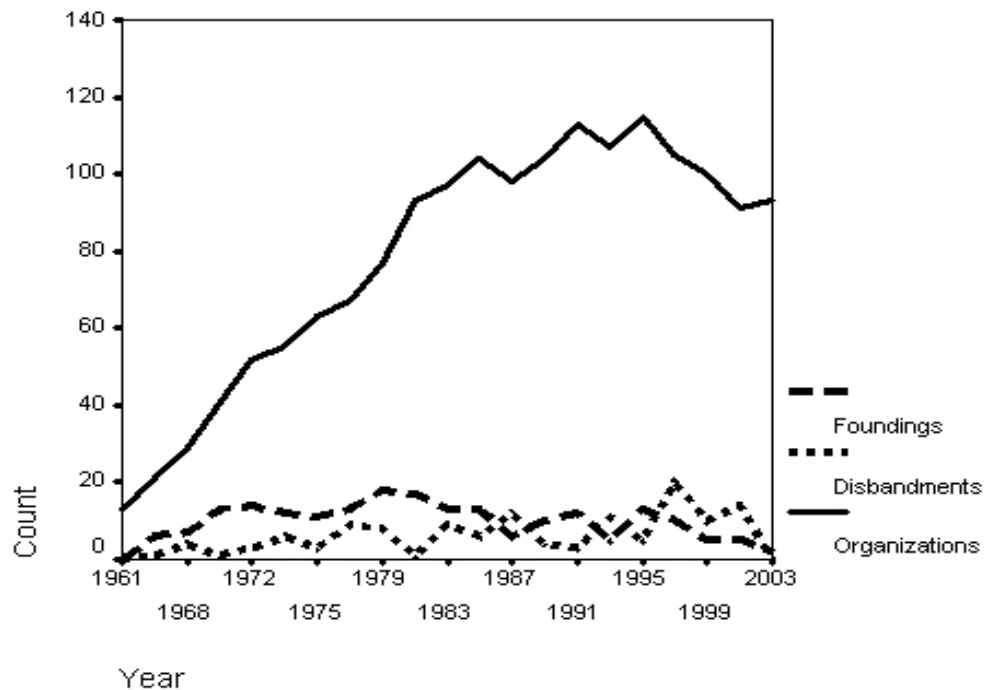
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<sup>10</sup> As Berry argues, one can attach the term "public interest" to organized advocacy groups without committing oneself to the idea that any of the groups' goals correspond to some universally valid Public Interest, or even that there is such a thing as "the" public interest. What matters is that the group advocates a collective good that, if achieved, will not result in the material benefits produced being selectively concentrated on its members or activists. In making this distinction, Berry is relying on the collective action theory of Mancur Olson (1966).



of Communications' legal victory giving citizens standing in broadcast license challenges (see Chapter 4).<sup>11</sup> The first favorable decision in that case came in 1966,<sup>12</sup> and was decisively resolved by an appeals court in 1969.<sup>13</sup> In percentage terms, there was a huge jump in foundings in the 1970-71 period. As we shall see when we discuss the coding of the organizations, most of the organizations created in the surge of activism in the 1970s were focused on broadcasting policy and practices.

Chart 3.3 Public Interest Advocacy Organizations (1961-2003)



Thus, the public interest advocacy organization achieved legitimacy in the mid-late 1960s and proliferated rapidly during the 1970s and the early 1980s. But, following the inverted U-shaped pattern commonly seen in studies of organizational populations, the number leveled off in the late 1980s as birth rates declined and death rates increased, presumably because of limits imposed on the overall size of the population by the availability of human and financial resources and public interest in CIP issues. In the early and mid-1990s, the growth of Internet-related advocacy organizations led to a moderate but brief surge in birth rates and in the cumulative total. After 1997, however, the decline continued, fueled primarily by huge die-offs of organizations in 1996-97, and 1998-2001. The main impact of the rise of the Internet was to change the *composition* of the population, not its size (See Chapter 6).

### *Commercial and professional organizations*

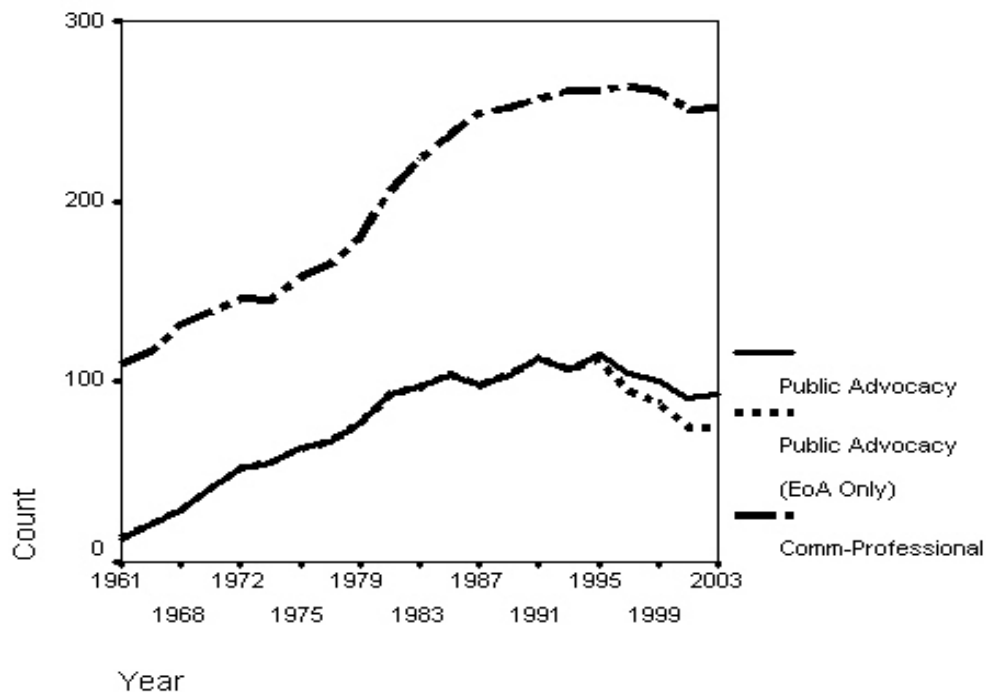
<sup>11</sup> See Horwitz (1997) for a review of the case.

<sup>12</sup> Office of Communication of the United Church of Christ v. FCC, 359 F.2d 994 (1966).

<sup>13</sup> Office of Communication of the United Church of Christ v. FCC, 425 F.2d 543 (1969).

The corresponding data for commercial-professional organizations concerned with CIP makes for a useful contrast with the public interest groups. There are a lot more commercial-professional groups than public interest groups. We counted a total of 357 different organizations that came into existence during the study period. Of those, slightly more than 250 trade and professional groups existed in 2003, compared to 93 public interest groups.<sup>14</sup> This is not a surprising finding. According to one recent political science study of interest group organization, “Survey after survey has revealed that companies and industry associations outnumber other [interest groups in Washington DC] by a large margin.” (Hart, 2003)

Chart 3.4 Comparison of the Population Size of Commercial-Professional and Public Interest Advocacy Organizations, 1961 - 2003



Industry and professional groups tend to be highly specialized in focus and surprisingly diverse in their politics. For example, the American Library Association must be classified as a professional group with a material interest in its policy positions, but it frequently aligns with rights-oriented public interest groups such as ACLU in communication-information advocacy. Likewise, several of the professional groups in communication work to advance the interests of ethnic identities and thus may frequently share goals with civil rights-oriented advocacy organizations. There is in fact a great deal of interaction between public interest advocacy groups and trade-professional groups; on any given issue one can see public interest groups coalescing with “materially interested” groups. Such cooperation can greatly increase the leverage of the citizens’ advocates, and vice-versa.

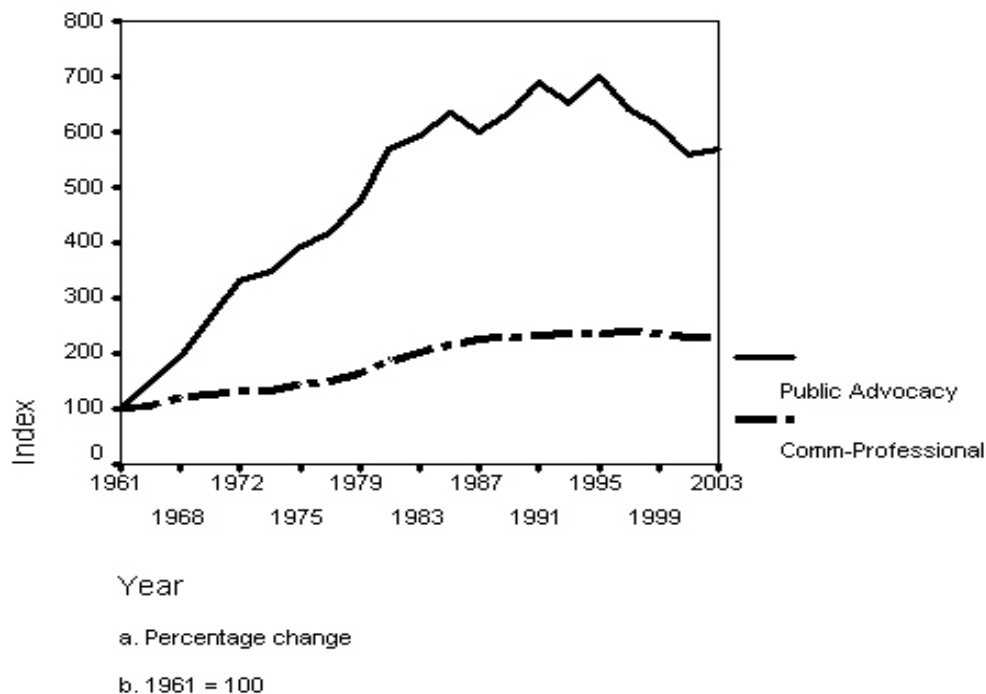
<sup>14</sup> Of course, this method counts only organizations, it does not count lobbyists for individual firms, which would tilt the lobbying scales even more toward the commercial and professional sectors.

Indeed, a valid criticism of the organizational ecology method is that isolating a specific population of organizations may obscure the ways in which one population might interact with another set of organizations. As one comment on the original report noted:

[T]his kind of quantification [does not] capture the actual ebb and flow of organizations in and out of media activism. This is particularly true of large multi-issue groups such as the National PTA, Consumers Union, ACLU, NAACP, etc. For example, Children Now, a children's advocacy group founded in 1988, did not enter the national children's media policy debate until 1993, as part of a coalition of child advocacy, health, and education groups that was formed during early days of the Clinton Administration.<sup>15</sup>

When the commercial-professional and public interest group populations are compared, there is a significant difference in the timing of population change. Starting in 1961, a year where both populations exhibited similar growth, Chart 3.5 indexes the annual percentage change in cumulative organizations. We see the population of public interest groups increasing by more than 600 percent in the late 60s and 70s, as compared to the more steady growth in the population of trade and professional groups, which merely doubled. Whereas the public interest groups grew most rapidly in the 1970s, the commercial-professional groups move to a new plateau during the 1980s, corresponding to the rise of the computer industry and the liberalization and growth of the telecommunications industry.

Chart 3.5 Organizational Growth Rate Index (1961-2003)



<sup>15</sup> Comments of Kathy Montgomery, 29 July 2003 convening sponsored by the authors and the Ford Foundation.

There is also a notable difference in the way the two populations adapt to changing conditions. Mergers are more frequent among commercial-professional groups, and the names they adopt change more frequently in reaction to changes in technology and markets. Public interest groups on the other hand tend to adopt a more persistent identity and rarely merge. A persistent identity also means that the citizens' organizations themselves tend to be less sustainable. Of the 223 public interest organizations observed over the 42-year period, only 93, or 41%, still existed in 2003. For the commercial-professional groups, 71% of the 357 observed organizations survived at the end of the period. There is a huge difference in the survival ratio. To summarize bluntly, the population of public interest groups responds to changes in the political environment by letting old organizations die and forming new ones, whereas the population of trade and professional groups is more likely to adapt by modifying their behavior, name and membership.

### *Modes of advocacy*

One of the most important mechanisms of adaptation is for newly formed public interest groups to adopt a different mode of advocacy. The orientation of advocacy groups toward content, rights or economic modes of mobilization has changed dramatically over the four decades studied. Once again, a major change is visible between the late 1960s to the 1970s. But in this case instead of stabilization from the 1970s to the present we see continual change in the proportion of organizational observations representing various modes of advocacy. In particular, the rise of Internet-related policy issues in the late 1990s seems to have made a big difference, pushing advocacy away from content and more toward contestation around individual rights and economics.<sup>16</sup>

Table 3.1 Modes of Advocacy by Decade

	Content	Econ	Rights	Combination
1960s	40%	20%	34%	6%
1970s	51%	20%	20%	8%
1980s	50%	17%	23%	10%
1990s	44%	19%	29%	9%
2000s	33%	23%	33%	11%

Percentage of organizational observations in each decade

In the 1960s, rights-oriented advocacy organizations constituted 34% of the observations. As communication policy issues were caught up in larger social movements for civil rights and peace in the late 1960s and 1970s, the mode of advocacy became predominantly content-oriented. Activists claimed that mass media programming did not

<sup>16</sup> The change would be even more pronounced if one took the UCC case, rather than the somewhat arbitrary decade change, as the point of division. The first of the two UCC decisions was resolved in UCC's favor in 1966; the rise of activism around broadcast license challenges started to produce new organizations in 1967. If 1967 is used as the point of division between the two periods, rights-oriented activism rises to over 41% of the observations in the early-mid 1960s and content-oriented activism drops to about 34%.

adequately represent the viewpoints or faces of various contentious groups.<sup>17</sup> In addition to civil-rights oriented advocacy, the late 1960s-early 1970s produced a major rise in demands for mass media content to be more socially responsible. Organizations such as Action for Children's Television, Project SMART (dealing with alcohol), campaigns against cigarette ads and violence all fit into this category. Also forming during this period of intense ideological conflict were advocacy organizations of both liberals and conservatives devoted to countering bias in reporting and representation of news. All sought to contest and/or regulate the messages produced by the mass media.

Thus, in the 1970s content-oriented activism rose to 51% of the observations, and that mode of activism remained dominant (at 50%) throughout the 1980s. Conservative responses to the liberal-dominated 1970s contributed to the dominance of content. In the late 1970s and early 1980s, culturally conservative organizations took a content-oriented approach to influencing policy, exposing what they saw as biased reporting (Accuracy in Media, Eagle Forum, World Media Association, Fairness in Media) or supporting the suppression of what they saw as programs encouraging or reflecting immoral and anti-Christian values (National Federation for Decency, Clean Up T.V. Campaign, American Family Association). (Montgomery, 1989)

In the 1990s, however, a growing number of organizational disbandments in the 1992-93, 1996-97 periods, coupled with a significant number of new organizational foundings in the 1990-91, 1994-95, and 1996-97 time periods, produced a major change in the composition of the population. Content-oriented advocacy falls to 43.5% of the observations. The organizations dying off were predominantly content-oriented: anti-pornography organizations, social responsibility advocates, advocates of ethnic representation and opponents of defamation. Notable disbandments include Action for Children's Television (1993) and the venerable National Association for Better Broadcasting (1997). The new organizations, on the other hand, were more often rights-oriented advocates associated with computers and the Internet, such as the Electronic Frontier Foundation (1990), Electronic Privacy Information Center (1994), Center for Democracy and Technology (1995), Internet Free Expression Alliance (1997), and Domain Name Rights Coalition (1996). In the 2000s, the trend intensified, with new foundings such as Public Knowledge (2001) and Center for Digital Democracy (2001) and major die-offs of content-oriented groups such as Parents Music Resource Center and National Black Media Coalition. Observations of organizations devoted to individual rights-oriented advocacy grew to its highest level since the 1960s (33%); content-oriented advocacy fell to its lowest level ever (33%).<sup>18</sup>

Economics-focused advocacy seems to have retained a steady share of observations (around 19%) throughout the study period. In the 2000s, however, it reached its largest

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<sup>17</sup> Such organizations, however, sometimes spanned economic and content modes of advocacy by pushing regulations and policies promoting access to mass media, or by attempting to influence the hiring practices of broadcast stations. The National Citizens Committee for Broadcasting is an example of an organization that was coded both ways.

<sup>18</sup> As Appendix 1 shows, we performed a statistical test (Chi-square) on the advocacy mode data, from which we conclude that the two nominal variables (decade and mode of advocacy) are not independent. The test is significant at the 0.05 level.

portion ever (22%). This category includes consumer organizations and policy advocates focused on communications and information industry regulation, such as Consumers Union, Media Access Project, Progress and Freedom Foundation, Consumer Project on Technology. The number of groups that combine economic modes of advocacy with other modes has increased steadily. This seems to have occurred as advocates realize how closely their policy goals intersect with the larger (and once considered obscure and technical) issues of infrastructure regulation. More generally, combined modes of advocacy steadily rise during the study, from 6% to 11%, perhaps indicating a more integrated approach to CIP.

### *Ideology*

Organizations were coded for their ideological perspective, when it could be known. Categorization was based on a combination of information about their positions and their funding sources. Organizations that combined liberals and conservatives, or which focused on a narrow issue capable of appealing to both perspectives (e.g., spam control), were classified as nonideological. Socialist and liberal-socialist united front organizations were put into a fourth category.

The data reveal considerable changes in the ideological composition of public interest groups. It would appear that compared to the 1960s, more groups are divided into an ideological camp, and that most of the polarization took place between decade 6 and decade 7.

Table 3.2 Ideological orientation of CIP advocacy groups

	NONIDEOL.	LIBERAL	CONSERV	SOCIALIST	UNKNOWN
1960s	25.4%	33.8%	18.3%	12.7%	9.9%
1970s	15.1%	54.0%	14.6%	5.2%	11.0%
1980s	13.5%	48.2%	20.6%	3.8%	13.9%
1990s	15.1%	58.8%	16.8%	3.0%	6.4%
2000s	12.6%	67.6%	13.5%	3.9%	2.4%

Percentage of organizational observations in each decade

From the 1960s to the 1970s, observations of organizations coded as “conservative” declined from 18% to 14.6%, while organizations coded as “liberal” jumped from 34% to 54%. About 5 – 6 years after the surge of media-oriented liberal public interest organizations in the late 1960s and early 1970s, conservative groups began to organize on similar lines. Across our observations of the 1980s, observations of conservative organizations jumped from 15% to 21%, and liberal organizations’ share dipped for the first and last time. (The large number of unknowns for the 1980s could raise questions about the significance of this data.) What is most noteworthy, however, is the degree to which liberal organizations’ share of the observations increases after the 1980s. By the last decade, ideologically liberal organizations account for nearly 68% of all observations. Conservative organizations that focus on Internet policy are particularly rare.

If one breaks down resource measures by ideology, one finds notable differences between liberal and conservative organizations. There seems to be many more liberal groups competing for the same members and financial resources. The existence of a few large liberal organizations, such as ACLU and Consumers Union, skew the distributions and make the statistical means almost meaningless. But if one takes the median as a measure of central tendency one finds that liberals have a median budget of \$386,759, a median staff size of 5, and a median number of members of 500, whereas conservative organizations have a median budget of \$838,604, a median staff size of 7, and median number of members of 14,000. Thus, liberal groups, while much more numerous, typically have fewer members and financial resources, while conservatives have far fewer organizations with more members and bigger budgets.

#### *Communications-Information Medium*

Another, more obvious form of adaptation is for citizens' organizations to devote their attention to different media forms, such as broadcasting, print, computers or telecommunications. We coded organizations by the media form(s) they targeted. Table 3.3 summarizes the results.

Table 3.3 Media Forms Targeted by Advocacy Groups

	1960s	1970s	1980s	1990s	2000s
Broadcasting & Cable	42%	46%	29%	24%	23%
Broadcasting, Cable & Telecom	8%	3%	2%	2%	2%
Print	16%	11%	8%	6%	5%
Print, Broadcasting, Cable	4%	9%	17%	15%	9%
Telecom	9%	5%	4%	5%	3%
Telecom & Internet	-	-	-	4%	6%
Computers, Internet	-	2%	5%	12%	23%
All	11%	11%	14%	11%	12%
Government info (FOIA)	-	-	2%	3%	2%
Unknown	1%	6%	11%	6%	1%
Other	8%	6%	10%	13%	13%

Percentage of organizational observations in each decade

Here we see a great deal of adaptation and change over time. As one might expect, broadcasting occupied the lion's share of advocacy groups' attention in the 1960s and 1970s. But by 2003 policy issues raised by computers, telecommunications and Internet made up the primary focus of about the same number of groups as all forms of mass media combined. We saw no trend toward organizations focusing on "all" issues indiscriminately, however. While most organizations remain specialized in this regard, we do see a more even distribution of their efforts over a wider variety of media forms.

### **3.3 Analysis: Public Interest Advocacy and Institutional Change**

The relevance of the data above will become clearer as we go through a more detailed, decade by decade narrative in the next three chapters. Some general observations are in order, however.

The hearings data show that CIP has taken its place alongside “the environment” as one of the main preoccupations of lawmakers over the past two decades. In the explosion of congressional hearings we see that a larger portion of the hearings are indexed under multiple terms, indicating a trend away from the segmentation of communication-information policy issues into different discourses and different legal and regulatory regimes.

The increase in Congressional activity is associated with growth in the cumulative size of the population of advocacy organizations. Statistical analysis reveals a strong, positive relationship between the cumulative number of public interest and commercial-professional organizations and the number of congressional hearings.<sup>19</sup> This is consistent with what has been demonstrated across several social movement organization populations and policy areas. (Baumgartner, Leech, & Mahoney, 2003)

There was, however, a moderate negative relationship between the number of congressional hearings and the number of births of new public interest organizations devoted to CIP.<sup>20</sup> Given the enormous increase in CIP legislative activity associated with the 1997 – 2001 period, it is somewhat surprising that there was not a corresponding surge of organizational foundings. Instead, there was a major increase in organizational deaths among public interest groups. We interpret this fact as follows. By the 1980s, the size of the advocacy organization population was nearing the “carrying capacity” of the political-economic system. The growth in death rates in the 1990s was associated with change in the *composition* of the population as opposed to change in its size. Dramatic changes in the communication and information industries, in technology and in social impact in the 1990s and early 2000s led to a major redistribution of membership and financial resources across issue-areas and media forms. Most notably, CIP advocacy responded with dramatic shifts in the dominant mode of advocacy: there was a steady diminution of the content-oriented advocacy associated with the 1970s and a move toward rights and economics. More organizations combine more than one mode of advocacy.

This leads to one of our most important conclusions. We believe that the rise of public interest organizations in the 1960s was mainly a product of identifiable structural changes in U.S. political institutions.

David Vogel describes some of those structural changes in his book on the political power of business in the United States. (Vogel, 1989) He observes that from 1966 to 1968 there was a tremendous outpouring of regulatory legislation from Congress in response to the rise of consumer and environmental movements.<sup>21</sup> Reform-minded

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<sup>19</sup>  $r(35) = .53$  for public interest groups and  $.63$  for commercial-professional groups,  $p < .01$ , two-tailed.

<sup>20</sup>  $r(35) = -.41$ ,  $p < .05$ , two-tailed.

<sup>21</sup> The National Traffic and Motor Vehicle Act, the Fair Packaging and Labeling Act, the Federal Hazardous Substance Act, the Federal Meat Inspection Act, the National Gas Pipeline Safety Act, the Truth in Lending Act, the Flammable Fabrics Act, and the Child Protection Act. For some reason Vogel does not track the civil rights movement as carefully as consumerism and environmentalism, but if the period is extended to 1964 – 1968 it includes passage of the Civil Rights Act of 1964, which created the Equal



environmental and consumerist politicians and public advocates gained a political advantage by redefining the terms of policy debate. Environmentalism and consumerism shattered old patterns of business influence by raising issues that cut across nearly all industries and multiple policy domains. Business interest groups had been organized for and accustomed to sector-specific programs and lobbying. But environmentalism as a norm, for example, affected automobile manufacturing, product packaging, energy production, public sewage and waste disposal and a host of other sectors that had in the past been segregated into distinct policy domains. Business interests had few established mechanisms for coalescing with other businesses in other sectors, were not prepared with counter-arguments against the newly formulated norms, and thus were not prepared tactically to counter public interest advocacy in the wider political arena.<sup>22</sup>

Vogel identifies a number of other historically specific conditions that led to the rise of public interest movements and a decline in the relative strength of business interest groups during this period. Most critical in his opinion is that post-World War II economic growth had been robust for many years and was largely taken for granted. Long-term growth bolstered public confidence that government could redistribute wealth or impose costs on business to improve social conditions with little pain. Another important change was the massive expansion of higher education that took place during the 1960s. The “citizens’ movement” was able to identify and mobilize a new constituency, consisting of educated, upper middle class baby boomers, while drawing on the classical liberal-democratic coalition. Other changes facilitated these tendencies. The rise of national television and of direct mail as a fundraising technique reinforced the prospect of issue-oriented politics. All of these factors changed the rules of lobbying in ways favorable to the new forms of interest organization, creating opportunities that were seized by public figures such as Ralph Nader and Martin Luther King.

Complementing Vogel’s argument, the work of Jeffrey Berry (1977; 1999) focuses specifically on public interest advocacy groups in roughly the same period covered by our study. Berry argues that public interest advocacy organizations (or what he calls “citizens groups”) constitute a new kind of “post-materialist politics” and shows that this form of politics has been institutionalized since the mid-1960s. Citizens’ groups “have been remarkably successful in influencing public policy” in Washington and at getting media coverage for their views. (1999, p. 2-3)<sup>23</sup>

The citizens lobbying group (usually focused on specific policy issue-areas), and the public interest law firm (also typically focused on specialized areas of law) can thus be considered new modular forms of interest organization that developed in the late sixties

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Employment Opportunity Commission, and the Voting Rights Act of 1965. During this period, too, the Federal Trade Commission issued a report proposing to ban cigarette advertising on television. The ban on cigarette advertising was implemented in 1970.

<sup>22</sup> At that time, the Business Roundtable, a lobbying group of 200 or so CEOs from the nations largest firms started in 1972, helped redirect specific business lobbying efforts towards more general business issues. For instance, they took up issues such as labor law, which cut across industry boundaries, in an effort to drive the congressional agenda. (Berry, 1984)

<sup>23</sup> Incidentally, his data shows that liberals are much more effective at using this organizational form than conservatives, at least when it comes to influencing Congressional legislation.

and early seventies.<sup>24</sup> These groups created a visible, issue-focused presence in the media, Congress, and the regulatory bureaucracies that would follow up on and advance reform agendas. Like several other political scientists who have studied interest group organization and political opportunity structures, Berry (1999, p. 29-30) describes a self-reinforcing cycle that occurs when the advocacy groups succeed. Early political entrepreneurs engage the institutional system in some way; if the system rewards them by opening up channels for influence and producing positive results, more collective action follows. (See also Walker, 1991) Once an activated interest or advocacy group has been formally incorporated into an institutional structure, it is not unusual to see the institutional structure subsidizing the groups directly – for example, the Community Relations Service of the Justice Department in the early 1970s is known to have aided broadcast license renewal challenges by minority groups. (Schement, Gutierrez, Gandy, Haight, & Soriano, 1977)

In conclusion, if we were to attempt to identify the underlying recipe for institutional change in the mid-1960s-1970s we would see:

1. An articulation and long-term cultivation of challenging new social norms (racial equality, feminism, consumerism, environmentalism) by sustained social movements;
2. The insertion of these norms into the political and institutional structure in ways that cut across entrenched power relationships;
3. Changes in national political structures and communication technologies that created opportunities for new political entrepreneurs;
4. An identification and mobilization of new constituencies, not simply a rallying of existing constituencies;
5. The development and institutionalization of a new organizational model, the public interest lobbying and litigation organization, capable of serving as the interface between the newly mobilized constituencies and the government.

Note well that item #5 on the recipe seems to have come after, rather than before, most of the major institutional changes were well underway. Vogel (1989, p. 38-39) shows that formal organization of most consumer advocacy groups took place after the rush of consumerist regulatory legislation enacted between 1966 and 1968. The same proves to be true of the first wave of media advocacy organizations. Public interest advocacy groups helped to maintain and extend the social movements of the 1960s; they do not seem to have been the principal cause of them.

It follows that any major revival of public interest activity around CIP will hinge more on structural changes in political institutions than on an increase in legislative activity per se.

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<sup>24</sup> The public interest law firm had a longstanding precursor in the American Civil Liberties Union (ACLU), which we count in our data as a communications-information advocacy organization. ACLU was founded in 1920. It acted as a legal defense fund for socialists whose freedom of speech or association was violated during the red scares of the 1920s, suffragists and sex educators, and many other types of defendants. It used litigation to pursue liberal and progressive policy goals long before the public interest law firm became a generic form.

## **4. The Rise of Activism: the mid-1960s through the 1970s**

This chapter describes the origins of contemporary media activism and the conditions that led to its proliferation in the 1970s. The mid-1960s and 1970s was the period of the most rapid growth in the cumulative number of advocacy organizations. For the most part, the advocacy surrounding communications and information during this period was connected to and subordinate to other social movements – civil rights, consumer, environmentalist, feminist, and peace. We also show, however, that the early debates over cable television sowed the seeds of an autonomous communication-information advocacy movement.

### ***4.1 Political Opportunity and the WLBT Case***

Ultimately it was broadcasting, and specifically broadcast licensing, that ushered in the era of the media advocacy group as the major mechanism for citizen participation in communications policy. Some background may be necessary here. The Radio Act of 1927 nationalized the radio spectrum and subjected broadcasting to a regime of licensing. Until fairly recently, broadcast licenses were the most important channel of mass communication to the public in any given locality, and were highly restricted in supply. This made broadcast licenses extremely valuable in economic and political terms. The history of U.S. broadcasting is rife with contention over their control and management. The result of that contention was a social compact in which licensees became “public trustees.” They were granted exclusive use of a scarce and valuable resource (the broadcast channel and license) and thus were obligated to submit to regulation by an independent agency, the Federal Communications Commission (FCC). The FCC served as a proxy for the public and applied a public interest standard to their conduct, including programming decisions. Radio and television licenses had to be renewed every three years. While the “scarcity” on which this system was based was overstated at the time and has long since been abolished, the institutional structure has remained due to the strong linkages it forged between regulators, local broadcast outlets, and a US political structure based on territorial representation. (Galperin, 2004; Hazlett, 1990)

#### *Latent activism*

Prior to the citizens’ challenges associated with the late 1960s and early 1970s, there was a long period of latency in which consumers organizations and listeners associations expressed dissatisfaction with broadcasting and occasionally (and always unsuccessfully) mounted challenges to license transfers. (Guimary, 1975, p. 34-36) Public dissatisfaction with commercial broadcasting began to manifest itself around 1959. Two key indicators were the quiz show scandals of 1959 and FCC Commissioner Newton Minow’s widely quoted speech describing television as a “vast wasteland” in 1961. Asked by Congress to review the performance of regulatory commissions, the Consumer’s Union in 1959 singled out the FCC for some of its strongest criticism. (Guimary, 1975, 34) A Consumers Union report called for the creation of a Television Consumer Council with the authority to review all FCC licensing decisions, and mandatory hearings in the affected locality before a broadcaster’s license could be renewed.

*UCC v. WLBT and broadcast license renewal challenges*

The proliferation of activist groups in communication and information followed a textbook case of a political opportunity created by an innovative act of public interest litigation. The innovation was to link a broadcast license challenge to the civil rights movement. This was done in a particularly challenging, even dangerous context: a Jackson, Mississippi broadcaster with ties to the white Citizens Council, WLBT-TV, was challenged by Everett Parker, head of the United Church of Christ's (UCC) Office of Communication in partnership with a local NAACP chapter and another African-American resident in the viewing area. Parker started the challenge in March 1964:

The station had failed to serve the interests of the substantial Negro community in its viewing area (which represented approximately 45% of the total population within the station's prime service area), and had further failed to give a fair presentation of controversial issues, especially in the field of race relations. (Horwitz, 1997)

This conduct was clearly inconsistent with the public trustee mandate of the law, but the FCC routinely failed to do anything about it. UCC gathered the resources needed to document the station's practices and challenge the station's license before the FCC at renewal time. Because the station's performance violated the public interest provisions of the Communications Act, the petitioners asked that they be permitted to intervene and be heard in the license renewal proceeding. (United Church of Christ, 1964) Parker's purpose was not only to overturn the offending conduct of the station, but also to give minorities and citizens groups legal standing in FCC proceedings.

Reflecting its status as a regulator deeply enmeshed in a don't-rock-the-boat equilibrium with the regulated industry, the FCC voted 4-2 that Parker and his compatriots lacked the legal standing to participate in the license renewal proceedings. The UCC appealed the denial of standing in federal court, and in 1966 won a decision upholding their right to participate in license renewal proceedings.<sup>25</sup> Even after granting UCC standing, however, the FCC renewed WLBT's license after a highly biased hearing in Mississippi. After appeal of the hearing results by United Church of Christ, the same U.S. Appeals court overturned the FCC decision and revoked the license.<sup>26</sup> Winning the WLBT case made *United Church of Christ v. FCC* a major precedent employed by environmental and consumer public interest groups.<sup>27</sup>

The WLBT cases altered the advocacy landscape in two significant ways. First, it formally gave members of the public legal standing in license renewal cases before the FCC. Second, it signaled that licensees who violated civil rights norms were vulnerable to such challenges, thereby issuing an open invitation for mobilized minority groups and

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<sup>25</sup> Office of Communication of the United Church of Christ v. FCC, 359 F.2d 994 (1966).

<sup>26</sup> Office of Communication of the United Church of Christ v. FCC, 425 F.2d 543 (1969).

<sup>27</sup> Indeed, the issue of citizens' standing before regulatory authorities was litigated simultaneously by environmental groups. *Scenic Hudson Preservation Conference v. Federal Power Commission*, (1965). Cited in Horwitz (1997).

others dissatisfied with broadcasters in their locality to organize challenges. Schement, Guitierrez, *et al* (1977) document one of many such challenges in San Antonio Texas.

That in turn led to massive growth in the number of advocacy groups focused on broadcasting. (See Table 4.1 below) From 1967 to 1975, a large number of national organizations and local coalitions of ethnic and minority groups arose to focus on license renewals. The major liberal philanthropic foundations (Ford, Markle, Rockefeller) donated millions of dollars to the support of these efforts. The national organizations served as centers of legal expertise or coordinating committees for the smaller, more numerous and less well-organized and -funded local groups.

The WLBT case not only led to an increase in the number of media activists and advocacy organizations, but also shaped their methods. Most citizen collective action focused on license renewal challenges – or entered into direct negotiations with the broadcasters or networks about programming or hiring knowing that a challenge was always an option. The tremendous economic value of license renewal to broadcasters and the costs of defending themselves in renewal proceedings gave the challengers considerable leverage. As media activism proliferated, the number of petitions to deny grew by several orders of magnitude. By 1975 the FCC had a backlog of 200 unsettled petitions. (Grundfest, 1977) Seventy five percent (75%) of license renewal challenges in this period were based on alleged failures to ascertain the programming needs of minority viewers or employment discrimination issues. (Guimary, 1975, 48)

## ***4.2 The Organizational Ecology of the Period***

The UCC lawsuits linking mass media policy to the civil rights and citizens movements had a major impact on the organizational ecology of the period. From 1964, the date the UCC lawsuits were initiated, until 1979 the cumulative total of advocacy organizations grew from 18 to 77. The focus of the new advocacy organizations was overwhelmingly on broadcasting, and usually targeted its content. A smaller minority of organizations dealt with cable television. There was a major shift in the mode of advocacy toward content (from 40% to 51%). There was also a major shift in ideology, with liberal organizations rising from 34% of the total in the 1960s to 54% of the total observations in the 1970s, and conservative organizations declining from 18% of the total observations in the 1960s to only 14% of the total observations in the 1970s.

Table 4.1 lists 49 advocacy organizations focused on communication and information policy founded from 1967 to 1975, inclusive. Of those, twenty-nine (29), or about 60%, were focused primarily on broadcasting and cable. (If the time span is reduced to 1967 – 1971, about 71% of the organizations are focused on broadcasting and cable.) Only five (5) of the organizations were conservative in orientation; most of the rest were identifiably liberal or “progressive.”

### ***Congressional Hearings***

As can be seen from Chart 4.1 (two pages below), Congressional activity trended upwards during the 1970s, moving from less than 10 in 1969 to consistently over 30 per year by the end of the decade. The focus of congressional hearings was on privacy,

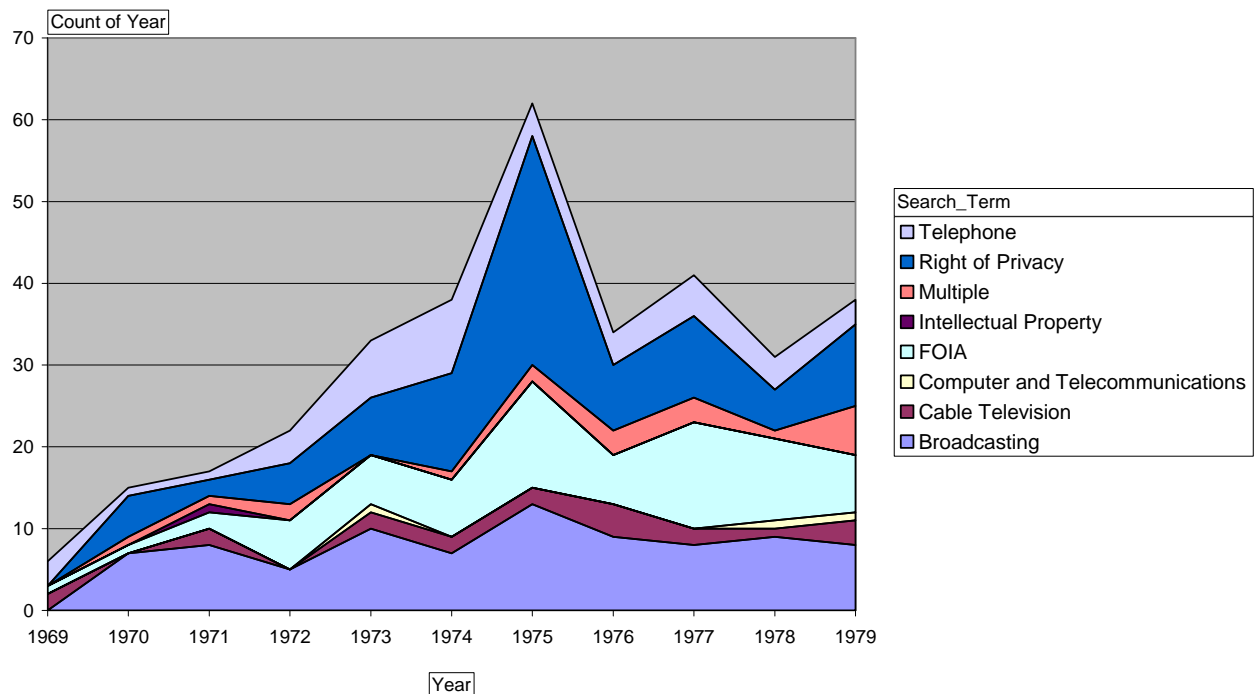
freedom of information and broadcasting. The peak of CIP activity in 1975-75 reflects a combination of the Watergate scandals, the passage of the 1974 Privacy Act (see section 4.4 below) and some legislative changes regarding broadcast licensing.

Table 4.1 Organizational Foundings, 1967 – 1975

Name	Founding	Primary interest
Consumer Federation of America	1967	
Council for Children's Television and Media	1967	Broadcasting
National Citizens Committee for Broadcasting	1967	Broadcasting
Action for Children's Television	1968	Broadcasting
Christians United for Responsible Entertainment	1968	Broadcasting – Conserv
National Friends of Public Broadcasting	1968	Broadcasting
National Mexican American Anti-Defamation Committee	1968	Broadcasting
Accuracy in Media	1969	Conserv
Black Efforts for Soul in Television	1969	Broadcasting
Citizens Communications Center for Responsive Media	1969	Broadcasting
Crusade for Decency	1969	Broadcasting – Conserv
Foundation to Improve Television	1969	Broadcasting
Reporters Committee on Freedom of the Press	1969	
Alliance to End Repression	1970	
Black Awareness in Television	1970	Broadcasting
Council on Children, Media and Merchandising	1970	Broadcasting
National Committee for Sexual Civil Liberties	1970	
Task Force for Community Broadcasting	1970	Broadcasting
Women's Film Co-op	1970	
Nosotros	1970	Broadcasting
Black Citizens for a Fair Media	1971	Broadcasting
Media Access Project	1971	Broadcasting/Cable
National Association of Progressive Radio Announcers	1971	
Network Project	1971	Cable
Open Channel	1971	Cable
Public Citizen	1971	
Publi-Cable	1971	Cable
Justicia	1971	Broadcasting
Committee on Public Doublespeak	1972	
Gay Media Task Force	1972	Broadcasting
Speak Out!	1972	
Student Legal Action Organizations	1972	Broadcasting
Synanon Committee for a Responsible American Press	1972	
Women's Institute for Freedom of the Press	1972	
Center for the Rights of Campus Journalists	1973	
Federation of Information Users	1973	
National Black Media Coalition	1973	Broadcasting
National News Council	1973	
Truth in Advertising	1973	Broadcasting
Caucus for Producers, Writers and Directors	1974	Broadcasting
Media Action Research Center	1974	Broadcasting
National Coalition Against Censorship	1974	
National Council for the Public Assessment of Technology	1974	
Student Press Law Center	1974	
Americans for Decency	1975	Broadcasting – Conserv
Eagle Forum	1975	Conserv

Feminists on Children's Media	1975	
Media Alliance	1975	Broadcasting
National Citizen Communication Lobby	1975	Broadcasting

**Chart 4.1**  
**U.S. Congressional Hearings on CIP topics: 1970s**



Congressional testimony by public interest advocates from 1969 - 1979 was dominated by the American Civil Liberties Union. The ACLU accounted for 20 percent of all testimony on CIP issues by all public interest groups.

**Table 4.2 Top Ten Public Interest Organizations Testifying on CIP issues, 1970s**

Organization name	% of testimony by p.i. groups
American Civil Liberties Union	18.33%
Consumer Federation of America	4.00%
Common Cause	4.00%
United Church of Christ	3.67%
National Black Media Coalition	3.00%
Citizens Communications Center	2.67%
National Citizens Communications Lobby	2.67%
Public Citizen	2.33%
National Organization for Women	2.00%
NAACP	1.67%
Center for the Study of Responsive Law	1.67%

### *Economic advocacy*

While the grass-roots organizations focused primarily on challenges to local licensees, the Nader-related, Washington-based groups started to develop an economic agenda for media advocacy.

Media advocates in the 1960s and 1970s seized on a 1943 *NBC v. FCC* Supreme Court decision to advocate successfully for rules regulating the structure of the industry. For example, the Syndication and Financial Interest rules (Fin-Syn) prohibited networks from owning their programming, forcing them to rely on independents for programming in order to increase the diversity of ideas that received access to the airwaves. The Prime Time Access Rules (PTAR) required networks to “give back” half an hour of prime time to local affiliates. Of greatest significance, however, were the creation in this period of both the newspaper/broadcast cross ownership prohibition in 1976 and the cable/broadcast cross-ownership prohibition in 1975. In backing the FCC’s Fin-Syn and PTAR regulations, the advocates aligned themselves with content producers and local affiliate stations, respectively, whose economic interests were greatly enhanced by the rules.

### *Cultural Conservative advocacy*

Contentious repertoires and organizational forms can be learned, imitated, and adapted to the purposes of groups not in accord with the original intentions of their developers.

Thus, only about five or six years after the surge of media-oriented liberal public interest organizations in the late 1960s and early 1970s, culturally conservative groups began to organize on similar lines. Of the 30 advocacy organizations classified as “Conservative” throughout the whole period, 15 came into being in the mid-1970s and early 1980s. The older conservative organizations, formed in the 1940s, ‘50s and ‘60s, tended to be associated with the Catholic Church. Three of these went out of existence in the 1970s.<sup>28</sup> Many of the newer conservative organizations were Protestant, and saw themselves as locked in a “culture war” with “the liberal media” and more broadly with the counter-cultural, relativistic, and secular ideas of the period. As such, they focused on content policy, either exposing what they saw as biased reporting (Accuracy in Media, Eagle Forum, World Media Association, Fairness in Media) or supporting the suppression of what they saw as programs encouraging or reflecting immoral and anti-Christian values (National Federation for Decency, Clean Up T.V. Campaign, American Family Association). Donald Wildmon’s National Federation for Decency teamed up with Jerry Falwell’s Moral Majority to pioneer the use of boycott threats against advertisers to get networks to change TV programming. (Montgomery, 1989)

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<sup>28</sup> National Office for Decent Literature, Citizens for Decent Literature, Catholic Broadcasters Association (UNDA-USA).



### **4.3 From Broadcasting to Cable Television: Early Encounters with Convergence**

Cable-related activism also started in the late 1960s and early 1970s and involved some of the groups already involved in broadcast license challenges (e.g., Media Access Project, National Citizens Committee for Broadcasting). But there was an important difference. Broadcasting was a mature technology and industry lodged in an institutional setting that had been in place for decades. Cable TV, on the other hand, was a newly developing infrastructure still trying to find out where it stood in the legal and regulatory environment. Its emergence attracted idealistic hopes and visions as well as legal and policy conflict. Like public television and later the Internet, cable came to be viewed by liberal elites and media activists as the “last best chance” for realizing the potential of mass media TV. Revealing widespread dissatisfaction with the quality and responsiveness of commercial TV, there were at this time frequent expressions of the fear that cable would devolve into something like commercial broadcasting. Several activists we interviewed attributed a decline in Foundation funding of media activism in the later 1970s to the foundations’ belief that cable TV would solve problems of terrestrial broadcasting. The attitude was that “there will be a channel for everyone and you won’t have to fight about it any more.”<sup>29</sup>

#### *Guerilla Television and Public Access*

One offshoot of the late 60s/early 70s counterculture was a utopian belief in the power of communications technology to transform society. The ideas of Marshall McLuhan (1964, 1969) melded with early manifestations of techno-culture formed around developments such as the experimental film and the portable video camera. (Youngblood, 1970) Two products of this intersection were the concepts of “guerilla television” and “public access.” Guerilla television envisioned small-scale independent producers of documentaries that would promote social justice by exposing unacceptable social conditions and giving voice to the voiceless members of society. The concept of public access was conceived as the means of disseminating this revolutionary mode of content production. It sought to replace one-way mass audience entertainment transmissions of commercial broadcasting with what we might now call a “commons:” a completely unrestricted and nondiscriminatory pipeline to the public, unsullied by marketing and advertising. George Stoney, a documentary filmmaker based at New York University, co-founded with Red Burns the Alternative Media Center, a meeting and training locale for many of the activists who fought for cable access.

In its push for completely unmediated access between content producers on the street and an engaged public, this vision tended to downplay or ignore altogether critical economic constraints, such as the need to recoup major investments in infrastructure and content production and the need to market and promote productions to get audiences’ attention. It also exaggerated the degree to which the general public (as opposed to the subculture involved with independent media) wanted to be involved with and challenged by TV rather than entertained and diverted by it.

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<sup>29</sup> Telephone interview with Jeff Chester, Center for Digital Democracy, February 3, 2003.

The alternative television movement was more of an artistic counter-culture than an attempt to formally change institutions. But they influenced many legally inclined, mainstream advocates, who took their visionary ideas and tried to translate them into policy proposals. These proposals involved three prongs: 1) common carrier status for cable distribution, 2) promotion of public access channels, and 3) technological mandates. The main leverage for imposing these policies came from local franchising decisions. Efforts by local activists to intervene in franchising decisions were supported by foundation-funded cable TV information services and research efforts. (Smith, 1972, 81)

### *Structural regulation*

A catalytic role in policy proposal formation was played by the ACLU's Communications Media Committee, formed in 1968. Personalities such as Sidney Dean, Irwin Karp and Fred Powledge were involved.<sup>30</sup> In 1972, the ACLU Committee published what it called "rough guidelines" for its chapters to help "involved citizens" influence cable policy. (Powledge, 1972, 31-39) "First and foremost," ACLU believed that cable franchisees should be limited to building the distribution system and then leasing the available channels to other programmers. In this model of industry organization, cable operators would not possess any control over the programming that they carried.<sup>31</sup> If common carrier status was achieved, there would be no need for set-asides or subsidized access for public access channels. As a common carrier, cable operators also would have no liability for censored content. The ACLU saw no need for the equal time and fairness doctrines either if cable became a common carrier, but believed in retaining those rules until such status was achieved. Rates should be "fair, reasonable, and nondiscriminatory." As of 1972, ACLU was "in the process of formulating its position on the entire question of cross-ownership," but the pamphlet noted that it "tends to believe" that cross-ownership among media forms inhibits diversity.

### *Public access channels*

Other advocacy groups urged franchise authorities to require cable systems to set aside channel capacity for public access. This would give people in a community an unrestricted right to either air programs they had produced or to speak out live. Open Channel was one of the leading organizations promoting the concept. Demands for public access channels eventually came to be grouped together with the demands of educational groups and local governments for set-aside channel capacity; thus, the concept of "PEG channels" (Public access, Education, Government) was born. PEG channels were a distributional issue in which advocates asserted non-economic, noncommercial criteria as a mechanism for allocation of channel capacity, one of the most vital resources of the new distribution medium of cable. Needless to say, this distributional principle was

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<sup>30</sup> Dean, a former advertising agency executive, was involved in communication policy also on behalf of Americans for Democratic Action (ADA). According to our data on Congressional testimony ADA was one of the most frequent testifying organizations on CIP issues in the 1969 – 1971 time frame.

<sup>31</sup> The separation of content and conduit actually was endorsed by a Presidential Cabinet Committee appointed by Nixon and run by Clay Whitehead in 1974. See Whitehead, C. T. (1974). Cable: Report to the President. Washington, DC, Cabinet Committee on Cable Communications: 122.

stoutly resisted by most of those who owned and invested in cable systems; they wanted to allocate channel capacity on the basis of optimizing the economic value and profitability of the cable system. However, cable system developers were willing to bargain with local authorities to win franchises, and this gave PEG advocates leverage. The outcome of this clash of allocation principles was a policy bargain in which PEG channels won an institutionalized right to exist but were contained as a small minority of total channel capacity. Longer term, the impact of PEG channels was minimized not so much by their smaller channel capacity as by their inability to compete successfully with commercial channels for finance and viewers' attention and allegiance. Unlike the market-based system with which it was competing, PEG channels lacked an institutionalized capacity for economic sustainability, strategic resource allocation and self-promotion. As an unorganized commons, public access channels had no way to create a feedback loop between audiences and producers that would direct more resources and air time to programs, ideas and formats that the public responded to and wanted to see more of. The commercial sector of cable, of course, did have such a mechanism (the whole apparatus of ratings, advertising sales, premium subscription rates and the like). Here again, we see the appealing normative vision of the media activists unable to successfully translate itself into sustainable economic institutions.

#### *Technological mandates*

Cable was probably the first communications arena in which public interest advocates and some elements of technical expert opinion tried to anticipate the future and use public policy to define the pace of development and the technical architecture of the medium.<sup>32</sup> Studies by the Sloan Commission, the Markle Foundation and Ford-funded RAND Corporation studies contributed to an anticipatory set of expectations about cable technology. (Sloan Commission on Cable Communications, 1971; Smith, 1972) Inspired by notions of what cable systems could do technically, many advocates proposed to use franchise requirements or FCC regulations to accelerate or require the deployment of advanced features. At a minimum, advocates called for capacity requirements; e.g., systems should have at least twice as many channels as required to carry local broadcast stations. (Powledge, 1972) At the other extreme, some commentators in the early 1970s heaped upon cable TV systems expectations for capabilities that were not fully realized until the advent of the Internet twenty-five years later. Forrest Chisman (1977, 83) of the Markle Foundation wrote, "Typically these groups wanted the cable industry to assume in the near future the responsibility of implementing innovative services which earlier visionaries had said it would only eventually provide. Among the services which these groups hoped the FCC would demand were two-way communications, reserved channels, funding for public access, and interconnection." Chisman mentions the UCC Office of Communications and Open Channel as groups actively lobbying to require cable systems to be more advanced.

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<sup>32</sup> Don LeDuc noted sardonically that "the studies and reports of the proponents of cable tend to blur the crucial distinction between potentiality and actuality; they predict the imminent emergence of a nationwide 80-channel coaxial system, while the cable television industry of the early 1970s...still furnishes less than a dozen channels to [an average] 2,300 subscribers [in small markets and rural areas]." Le Duc, D. R. (1973). *Cable Television and the FCC*. Philadelphia, PA, Temple University Press, p. 5.

### *The Legacy of Cable Advocacy*

Far-reaching visions of what cable could be had to contend with the gritty realities of business and local franchising politics. For the most part, politics as usual was the order of the day. Cable franchises were monopolies and potentially lucrative. In awarding monopoly franchises, cities would often “soak” cable operators to give themselves more revenue and perks and then allow local rates to be set higher to recover costs. Combinations of prominent local citizens with inside ties to local government teamed up to apply for exclusive franchises. (Smith, 1972, Chapter 6)

For all its excesses and failings, cable-related activism contained the germ of a homegrown communications-information movement. Presaging the Internet, it contributed to the rise of a techno-culture animated by a belief in the transformative powers of interactive communication. It brought the cultural and content elements of policy into close connection with ideas about industry structure and regulation. Engagement with cable development was also the first to raise privacy issues in the modern sense of a concern with the use of the technology for surveillance. (Smith, 1972, 98) Cable activists also seem to have suffered from a problem that continues to dog communication-information activists to this day: they had to convince people that their focus on what seemed to be an obscure, technical policy specialty should be of interest to the broad masses of people. (One must keep in mind that cable television in the 1970s, unlike today, reached a small minority of the public.)

## **4.4 Four Major Institutional Changes**

The ferment from the mid-1960s to the mid-1970s produced additional institutional changes distinctive to communications and information. We consider the Freedom of Information Act and Public Broadcasting to be two such changes.<sup>33</sup> There were also important changes in copyright and privacy law during this period. And yet, with the exception of the ACLU, which was deeply involved in privacy issues, the latter two areas of information and communications policy were not central to the media advocates’ agenda.

### *Freedom of Information Act*

Enacted in 1966, the Freedom of Information Act (FOIA) was the first law to establish an effective legal right of citizen access to government information. The bill, passed by an overwhelming margin, emerged from widespread recognition that the growth of the federal bureaucracy led to a need for more transparency in government. The existing Administrative Procedures Act was perceived as inadequate and problematic with respect to information access. FOIA was authored and sponsored by Congressman John Emerson Moss of California, a leading consumer advocate who also authored the law that established the Consumer Product Safety Commission. In 1955 Moss began a crusade of

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<sup>33</sup> Prohibitions on cigarette advertising might also be considered a noteworthy institutional change in media policy. In 1970, after years of maneuvering between the Federal Trade Commission, health advocates and the cigarette industry, Congress acted to ban all cigarette advertising on television and radio. This can be characterized as an extension of the consumerist-health movement to media policy more than a change in media institutions as such, although its economic impact on advertising-supported broadcasters was profound.

investigations, reports and hearings on government information policy, and after 11 years his efforts were rewarded. In the ensuing 38 years, citizens, scholars, and reporters have used FOIA to obtain vital information; indeed, FOIA complemented and empowered the citizens groups formed later under the new model. By developing expertise in the rights granted to them under the law and using that expertise to sift through government documents, they could play a more effective role in formulating policy, reacting to government initiatives, or countering lies told by government or business.

FOIA and the principles behind it are mainstays of Jeffersonian liberal democracy, and have long-term historical roots. The purest manifestation of those principles prior to the American law was the Swedish Freedom of the Press Act of 1766, which not only guaranteed freedom of speech and the press but also enabled free public access to any official document. The Swedish Publicity Principle was not modified until a 1937 Secrecy Act, passed during the dark hours of fascism, but many aspects of the 1766 law are still in place today.

Although FOIA was supported by the ACLU, a more important role in its passage was played by professional and commercial interest groups associated with broadcasting and publishing. Many of these groups, such as the American Society of Newspaper Editors, Sigma Delta Chi, National Press Photographers, American Newspapers Publishers Association, and National Newspaper Association, set up “Freedom of Information Committees” to support the law. FOIA was also supported by the New York State Publishers Association, the National Association of Broadcasters, and the American Bar Association.

Since the 1980s, the US government has tightened up its control of information and carved out numerous exemptions to FOIA. Still, the Act qualifies as a major institutional change, as it does permit citizens groups to obtain valuable information about the activities of government. State versions of FOIA laws have also been passed, and the concept has been occasionally taken up by non-US polities.

### *Public Television*

A second major institutional change was the Public Television Act of 1967. The public broadcasting law emerged from a Carnegie Foundation Commission report and several Ford Foundation initiatives, as well as pressure from educational broadcasters. The Carnegie Commission had been formed in 1965. Its January 26, 1967 report concluded that “a well-financed and well-directed educational television system, substantially larger and far more pervasive and effective than that which now exists in the United States, must be brought into being if the full needs of the American public are to be served.” The report called the public television proposal “a system that in its totality will become a new and fundamental institution in American culture.” Only 10 months after the release of the Carnegie report (November 1967), a new law creating the Corporation for Public Television (CPT) was passed. CPT (later the Corporation for Public Broadcasting) began operation in 1968.

It is difficult to know how much general public support there was for public television. We do know, however, that public broadcasting resulted from the cultural concerns of educated elites dissatisfied with the lowest common denominator programs of the commercial mass media, and from pressure generated by educational programmers seeking better distribution for their content. (Pepper, 1975) The new media advocacy groups played no role in its founding because they did not exist yet, although some of them would later help resist budget cuts. It seems likely also that the older consumer groups and listeners associations helped to generate a climate of opinion critical of commercial broadcasting and favorable to a major reallocation of resources to a noncommercial alternative. Like FOIA, public broadcasting has suffered reversals, mainly attributable to financing issues, but must still be considered a lasting institutional change.

### *Privacy and Intellectual Property*

Two other important laws affecting communication and information policy passed in this period. One was the Privacy Act of 1974. Colin Bennett (1992) documents how in economically advanced Western democracies the impact of computer technology on privacy and personal data moved from “an abstract intellectual concern” to “a contentious political issue” in the late 1960s - early 1970s. The development in national governments of large-scale databases with records on individuals, the automation of census procedures around 1970, and the release of popular books on computers and privacy<sup>34</sup> all contributed to the emergence of what Bennett describes “as an international policy community.” The environment of technological uncertainty associated with computerization of records, he writes, “produced a strong motivation...for cross-national lesson-drawing, which stimulated frequent interaction among a tightly-knit community of mainly legal specialists.” However, for the most part this transnational issue network was limited to data protection issues and did not advance a comprehensive agenda for telecommunications and media policy. Privacy-related popular activism had to wait until the 1980s and 1990s (see Chapter 6).

In the United States, from the beginning of 1965 to the end of 1974 there were 47 separate sets of congressional hearings and reports on privacy-related issues. The 1974 Privacy Act in the US was passed to ensure that government records were accurate, timely, complete, and relevant. The law originally proposed to create a new federal Privacy Commission; but President Gerald Ford prevented that by objecting to the creation of more bureaucracy. (Diffie & Landau, 1998, 127) Passage of the Privacy Act and other privacy-related laws were also fueled by the need to impose restraints on the use of electronic surveillance by the FBI and CIA. This followed exposure of the abuses during the civil rights and antiwar movements. Although privacy issues began to be discussed in connection with the rise of cable television in the early 1970s, for the most part the new media advocacy groups did not consider privacy-related discourse a core part of their message. While the civil rights and antiwar groups that had been abused by the FBI played a significant role in generating opposition to government surveillance, and

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<sup>34</sup> Bennett (1992, 54) singles out Vance Packard’s *The Naked Society*, 1964; Myron Brenton’s *The Privacy Invaders*, 1964; Alan Westin’s *Privacy and Freedom*, 1967, and Arthur Miller’s *Assault on Privacy*, 1971.

of course the ACLU was a major source of testimony and expertise, compared to the digital era there was little interaction between privacy and mass media issues.

Another important change was the Copyright Act of 1976. Like the privacy legislation, this major revision of copyright protection took place in reaction to technological changes: the rise of the photocopying machine and of cable television. The new media advocates, however, played no role in its formulation or passage.<sup>35</sup> Without further research it is difficult to determine whether the Copyright Act as a whole can be characterized as a significant institutional change. No marked redistribution of wealth is immediately evident; it appears to be more of a brokered compromise among various professional and commercial interest groups. However, the law did much to institutionalize concepts of fair use, particularly with respect to photocopying printed media.

It is notable that FOIA and public television *preceded* the growth of organized media advocacy groups, and that the other two laws (the Privacy and Copyright Acts) did not involve communication activists as a major part of the picture. At this time, the field was still fragmented into separate issue networks.

#### **4.5 License Renewals and Institutional Change**

Undoubtedly, the media activism of the 1970s was successful and influential insofar as it maintained and marginally extended the gains of civil rights and related social movements. But its success in transforming the economic basis of the media, or the institutional structure of communications regulation, was much more limited. When compared to other aspects of the advocacy movements of the late 1960s and 1970s, especially environmentalism and consumerism, the changes achieved in the media sphere seem modest and often temporary.

Action for Children's Television (ACT) was one of the few citizens groups that mounted a sustained attempt to add new regulatory content to the FCC's agenda. Formed as a local group in 1968, it went national with substantial foundation funding in 1970. ACT sought to improve the quality of children's programming and eventually came to seek an outright ban on advertising on children's programs as the means to that end. ACT succeeded in gaining significant publicity and a sympathetic hearing from the FCC's chairman at the time, Dean Burch (a Nixon appointee). The FCC was prompted to hold a rulemaking on children's programming – one of the few rulemakings directly attributable to a non-industry group in this period. However, in July 1972 the FCC investigation came to the unsurprising conclusion that a commercial broadcast regime dependent on advertising revenue would eliminate most children's programs if ads on them were banned. The overall impact of the ACT effort was ameliorative rather than structural: the National Association of Broadcasters was pressured to amend its advertising code to reduce by about 25 percent the minutes per hour of advertising on children's programs. (Guimary, 1975)

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<sup>35</sup> Not a single CIP-related public interest group testified in the hearings on the new Copyright Act.

In other areas of content regulation, neither liberal-moderate-conservative coalitions concerned with televised violence, nor conservatives focused on sex and traditional values, nor joint feminist-conservative action against pornography, succeeded in institutionalizing their norms. The standards of sexual content acceptable on broadcast television moved toward ever-greater permissiveness, although there is still a disjunction between the more-regulated broadcast world and cable.

The *United Church of Christ v. FCC* decisions did, for a while, create an important institutional change in the relationship between citizens and regulators. The media activism that followed in its wake infused the norms of the civil rights and women's movements into the management, employment, and programming of the broadcast media. As Horwitz (2003) observes, the civil rights movement gave the FCC's vague mandate to foster "diversity" in programming a specific regulatory substance (racial or gender representation in content and hiring). Hence, the FCC was fairly active in translating those norms into regulations affecting broadcaster conduct.<sup>36</sup>

Some social science studies of broadcast license challenges seem to indicate that the efforts of advocacy groups were counterproductive in the regulatory context.<sup>37</sup> While this data is an interesting reflection on the effectiveness of advocacy in the *regulatory* process, for license challenges to be effective it was not necessary for the FCC itself to act. The tornado of petitions to deny led to direct bargaining between the license holder and the challengers. Major adjustments in employment and programming practices were made without involving the FCC. (Chisman, 1977; Guimary, 1975; Montgomery, 1989; Slavin & Pendleton, 1983)

But the bargaining between advocacy groups and the licensees raised an important institutional issue in itself – one that goes to the heart of the model of participatory democracy implicit in the organized advocacy of the period. The simple fact is that the petition to deny was an institutionalized possibility open to those with venal intentions as well as good intentions. As one contemporary observer noted, it created some "potential for improper and excessive payments to citizens groups and the danger of promoting extortionist behavior." (Grundfest, 1977, 87) More broadly, the FCC found that its (nominal) role as guardian and monitor of the public interest could be usurped by private agreements between the licensee and a challenger. This raised fundamental issues about how the public interest was to be defined. Should it be defined through essentially entrepreneurial actions of contending advocacy groups claiming to represent the public or some portion of it? Or should appointed governmental regulators, subject to judicial oversight, scrutinize these deals and apply standards based on interpretation of the law? Which method is more "democratic?" The FCC (predictably) tilted away from the participatory ideal. It initiated a series of proceedings regarding whether it should

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<sup>36</sup> However, because the changes were only embodied in regulations, never in legislation, they have proven to be reversible by the Courts as conservative thinkers have gained positions and preeminence in the law. (Horwitz, 2003)

<sup>37</sup> These studies contrasted proceedings in which public interest groups intervened against a broadcaster with proceedings in which there was no public intervention. The data show that the FCC was more likely to take away a license or fine the broadcaster in proceedings where there was no intervention by advocacy groups. (Linker, 1983; McLauchlan, 1977)



supervise or approve agreements between broadcasters and challenging groups.(Grundfest, 1977) The FCC proceedings produced two Final Report and Orders in 1975 and 1976 regulating, respectively, agreements and reimbursements between broadcast licensees and the public.<sup>38</sup>

Our point here is that petitions to deny and similar forms of public intervention could never form a stable basis for a public interest media system. A license renewal challenge is a precipitous and conflictual act; in essence, it is a struggle to completely expropriate the incumbent holder of a valuable right. The rationale for viewing license challenges as a policy tool was expressed well by Cheryl Leanza of the Media Access Project, in the convening reviewing an earlier draft of this report:

[License renewal challenges] could have led to a change in societal norms with respect to the public's attitude toward the mass media. The public could perceive that if the news did not reflect them, or what they perceived as truth, they could not just accept that vision as real or valid, but take action to challenge this. The [renewal challenge] changed the interaction between the people with wealth and power (broadcast station owners) and the citizens and viewers.

The problem with this perspective is that there are many different groups with completely different, usually incompatible notions of what the news “should” look like. If all of them can threaten the economic existence of a broadcaster, freedom and diversity of expression is thwarted, not helped. Challenges of what constitutes “truth” could just as easily come from people with wealth and power who feel threatened by views of reality broadcast by critical but weaker groups. Such exposure simply leads to constant contention among social groups to impose their views on the rest of society.

Deeper questions can be raised about the long-term sustainability of license challenges as a mechanism for public accountability. When a property right (the broadcast license) with high commercial and political value is involved, an incumbent will fight like hell to keep it. Thus, one immediate effect of the UCC litigation was that virtually every year from 1969 to 1974, broadcasters tried to get legislation increasing their certainty over the license. By 1974, broadcasters successfully prodded Congress to propose legislation extending the term of the license from 3 years to 5 years.<sup>39</sup>

One could explain this as simply business interests getting the upper hand. A more accurate way to look at it, however, focuses on the tendency of social institutions to gravitate toward more predictable, coordinated structures. Short-term uncertainty and unpredictability may be a necessary concomitant of social change; long-term

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<sup>38</sup> Final Report and Order in the Matter of Agreements Between Broadcast Licensees and the Public, Docket 20495, FCC 75-1359, December 19, 1975; Final Report and Order in the Notice of Inquiry and Proposed Rulemaking in the Matter of Reimbursement for the Legitimate and Prudent Expenses of a Public Interest Group for a Consultancy to a Broadcaster in Certain Instances, Docket 19518, FCC 72-473, June 7, 1972.

<sup>39</sup> A few years later, the Reagan Administration FCC instituted “postcard” renewal and abolished the need for community ascertainment of programming needs, making the broadcast license a much more secure property right and the paradigm of supply more commercial. (See Chapter 5)

unpredictability, lack of certainty as a fixture of business, is extremely costly and rarely serves the public interest. Institutional arrangements will inexorably equilibrate on stability in assigning rights. And in the long run, whoever has the most to gain from stability and certainty is bound to invest enough in litigation and/or the political process to get it. In other words, there will always be an incumbent bias. Except in rare moments of social turmoil or the most extreme forms of malfeasance or monopoly domination, public authorities will be loath to yank valuable resources away from their incumbent holders. This has been proven true of similar forms of media interventions, e.g. challenges to cable TV franchise renewals.

Finally, the broadcast license was a fertile point for organization only insofar as it was an extremely scarce and limited resource awarded to private users as a trust laden with public interest obligations. The proliferation of alternative means of distributing television or radio content has undermined the broadcaster's special status as a "public trustee."

To conclude, license renewal challenges offer a mixed legacy. As a short-term mechanism for injecting civil rights norms into the broadcasting industry, they were effective and justifiable. As a long-term mechanism for promoting a diverse and free mass media, they were problematical from a First Amendment standpoint and probably unsustainable as a long-term process.

## 5. The 1980s: Liberalization and Seeds of Change

The 1980s was characterized by major changes in both the political climate and the type of communication-information policy issues under consideration. Public contention over the content of the mass media continued, but the emergent “information society” was increasing the importance of CIP. As this happened, economic and regulatory issues associated with technological change assumed center stage. The media activists of the 1970s were not well prepared to handle this shift in the terms of the policy debate. They were mostly on the defensive during this period.<sup>40</sup>

But the decade also planted the seeds of a new kind of CIP activism. Computer professionals and technologists organizing around computer-related policy issues show up in the organizational population of the 1980s for the first time. A decade later the rise of computer-related activism would produce major changes in the topical focus of CIP advocacy, the composition of the population, congressional testimony patterns, and mode of advocacy (see next chapter).

This chapter begins its discussion of the 1980s with an overview of organizational foundings and the general population ecology (section 5.1). It then discusses advocacy related to content (section 5.2). Next, liberalization of telecommunications (section 5.3) and broadcasting (section 5.4) are considered. Section 5.5 analyzes the battles over cable regulation. Section 5.6 describes the early computer-oriented advocacy and activism.

### 5.1 The Organizational Ecology of the 1980s

The 1980s were perceived by many of the activists themselves as a period of retrenchment and defensiveness among activist organizations.<sup>41</sup> Although we lack systematic data, it is probably true that funding from liberal foundations was not as readily available, and it is certainly true that the political climate was less favorable for liberal groups. In terms of organizational *foundings*, however, our data indicate that the period from 1979 to 1985 was one of the most active in the entire study. An average of 7 new CIP advocacy organizations formed every year, and during the whole decade 59 new organizations were founded. It was the elevation of the *death rate* from 1977 to 1987 that is new. The main difference between the 1980s and the 1960s and 1970s is that the overall size of the population stopped growing rapidly. The total population flattened out at around 100 organizations. The population started to approach the social “carrying capacity” – the upper limit on the cumulative total of organizations devoted to CIP that the surrounding society would support.

Also during the 1980s, the ideological composition of the advocacy organization population shifted in the conservative direction. During the 1970s, 57% of the

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<sup>40</sup> It should be noted that the activities of public interest groups during the 1980s are not as well documented in the secondary literature as the broadcast-oriented activism in the 1970s.

<sup>41</sup> One contemporary observed that what had once been a fairly robust media reform infrastructure had “dissipated” by the early 1980s, with only a few survivors holding down the fort. Interview with Kathy Montgomery, Feb. 7, 2003.

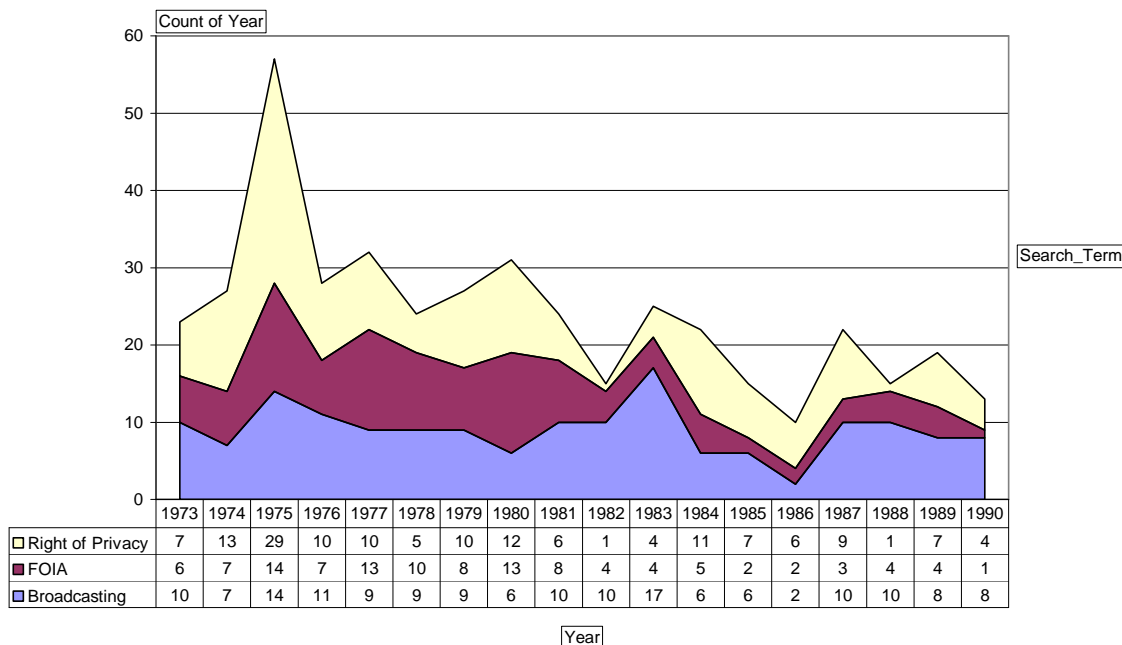
organizational observations were classified as liberal or socialist, and only 15% as conservative. In the 1980s, the conservative organizational observations jumped to 21% and the left-liberal declined to 50%.

The decade is correlated with a major change in the policy environment; Charts 5.1 and 5.2 document the dramatic shift in the nature of the CIP issues considered by Congress. Chart 5.1 shows that the number of hearings devoted to the three main preoccupations of the 1970s – broadcast policy, privacy, and freedom of information – declined steadily throughout the 1980s from its peak in 1975. In contrast, Chart 5.2 shows telecommunication infrastructure-related hearings rising from consistently under 10 in the 1970s to a peak of 56 in 1989.<sup>42</sup>

With such major changes in the focus of communications information policy, one would expect to see elevated death rates among public interest groups. In Chapter 3 we indicated that the population of public interest advocacy organizations tends to adapt in the Darwinian manner. Old organizations suited to old conditions die off while new ones grounded in the new conditions are founded. Trade and professional groups, in contrast, are more likely to adapt through continuous modification of the behavior, membership and agenda of established organizations.

Chart 5.1

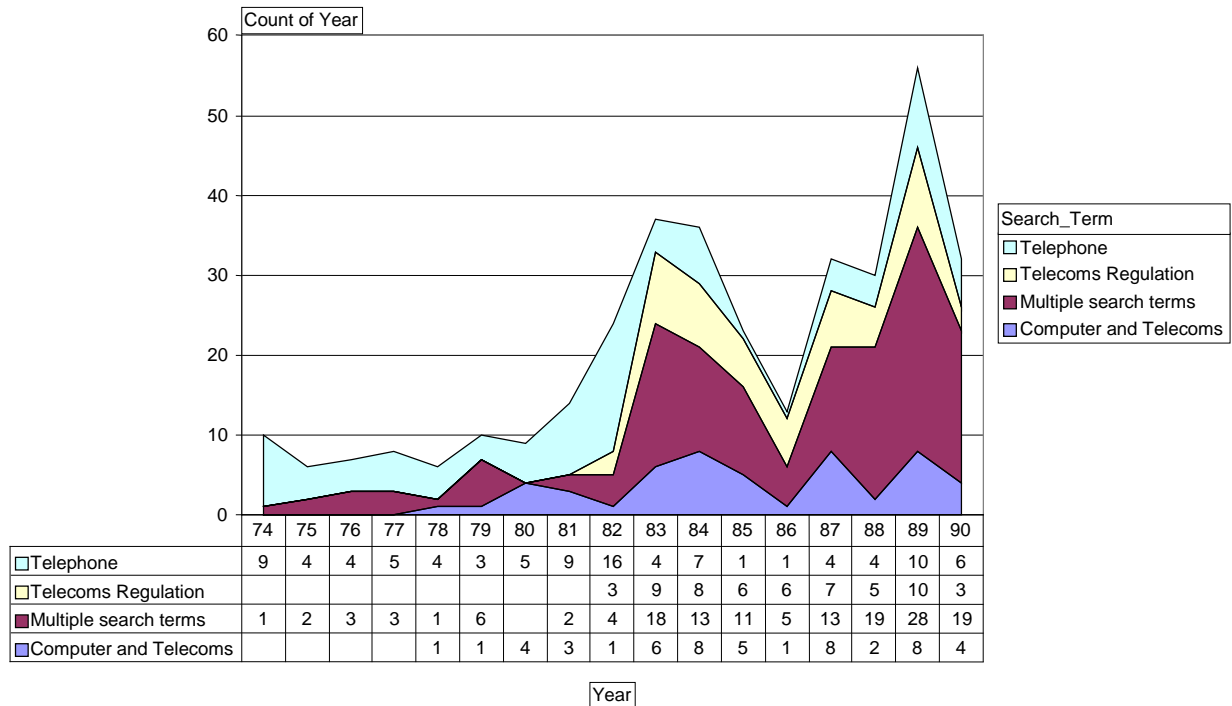
Hearings on FOIA, Broadcasting & Privacy, 1970s-1980s



<sup>42</sup> It should be noted that most of the hearings categorized under multiple search terms involved duplication of the terms “telecommunications regulation” with the term “telephone” or “cable TV” or “computers and telecommunications.”

Chart 5.2

U.S. Congressional Hearings on Telecom Infrastructure-Related Topics, 1974 - 1990



Throughout the 1980s, mass media content attracted the most attention from CIP advocates, as it did in the 1970s. Exactly half of the organizations in the total population we have identified are classified as part of the public discourse about content – only a one percent decrease from the 1970s. However, the survival rate of content-oriented organizations established in the 1980s was quite low, as Table 5.1 (next section) documents. Only four of the 18 organizations formed in the 1980s and primarily concerned with content still existed in 2003.

Surprisingly, given the importance of the AT&T divestiture and cable television regulation, not many new public interest organizations devoted to telecommunications infrastructure economics and policy were created during this period. Only two, or arguably three, new organizations focused on those issues appear on the list.<sup>43</sup>

<sup>43</sup> The Telecommunications Research and Action Committee (TRAC) was formed in 1983 when the old National Citizens Committee for Broadcasting was reoriented to concentrate on telecommunications issues. Concerned Citizens for Universal Service was a reaction to the rate rebalancing of the AT&T divestiture and may have been a telephone industry front group. Alliance for Public Technology, formed in 1989, focused on telecom policy but was more a part of the public dialogue about access to infrastructure characteristic of the NII debate of the early 1990s.

## 5.2 The Content Wars, Continued

The growth of mass media channels and content production in the 1980s intensified competition for viewers. Media outlets responded with programming that was more controversial and pushed the boundaries of established norms regarding taste, violence and sexuality. Quite apart from the relaxation of FCC licensing standards (see section 5.4 below), pressure to attract audiences in a more competitive and diversified environment worked against traditional self-regulatory program standards. (Hill & Beaver, 1991) In the incumbent networks, standards and practices departments were cut back by 25% between 1986 and 1987. (Montgomery, 1989) Newer media outlets entering the market in the 1980s, such as Fox and TBS, did not have formal standards for the review of programming.

Table 5.1 Content-Mode Advocacy Groups Formed in the 1980s

Organization Name	Founded	Disbanded
American-Arab Anti-Discrimination Committee	1980	2001
Asian Media Coalition	1980	1989
National Coalition on Television Violence	1980	
Alternative to the New York Times Committee	1981	2001
Coalition for Better Television	1981	1985
Citizens Against Pornography	1982	1993
Foundation for Moral Restoration	1982	2001
National Coalition Against Pornography	1983	2001
Citizens for Media Responsibility Without Law	1984	1999
Feminists Fighting Pornography	1984	1997
Media Watch	1984	
Project Smart	1984	1987
Fairness in Media	1985	1995
Parents Music Resource Center	1985	2000
Fairness and Accuracy in Reporting	1986	
Institute for Media Analysis	1986	1997
Strategies for Media Literacy	1988	1999
Children Now	1988	

Whereas the '70s were dominated by left-liberal content advocacy, during the 1980s conservative groups were equally likely to mobilize around media bias and the emergence of more controversial, sexual or violent programming. But while the left-liberal activism of the 1970s had died down, its cultural pressure had not been eliminated. It had, in fact, been internalized and institutionalized within the major content networks' standards and practices departments and among scriptwriters and program producers. Initially, as Montgomery (1989, p. 59-64) explains, networks such as NBC hired advocacy groups as "technical consultants" when developing programs that might be perceived as objectionable. Eventually, however, there was more integration between network elites and ethnic groups, and minority hiring replaced consultations with outside groups. Relationships with advocacy groups were institutionalized; standards and practices executives, according to Montgomery (1989, 199) became "uniquely skilled at spotting a word, a phrase, or a plot sequence that would evoke a negative reaction from any one of the two hundred or so groups that had made themselves known to the networks."

Religious conservatives on the other hand adopted different and more confrontational tactics in the 1980s. Donald Wildmon's Moral Majority bypassed network standards and practices departments and focused on boycotting advertisers. The founding of the Parents Music Resource Center by Tipper Gore in 1985 indicated the growing importance of digital content as a packaged commodity. The group mobilized around offensive lyrics published to young people on music CDs and came to advocate rating of published content.

Over the long term, however, the nature of mass media content was being driven more by the actions of consumers, producers and advertisers in the commercial marketplace than by political activism and regulation. Content rating is the perfect bargaining result of content-focused advocacy in a market context. It adopts the paradigm of product labeling and gives informed consumers the right to make their own choices. The new market paradigm did create some space for activism: advertisers have a strong natural incentive to avoid alienating sizable segments of the audience. Even without government regulation, protests, petitions and boycotts by advocacy groups can scare advertisers into withdrawing support for a program. Advocacy was recognized by networks, producers and advertisers alike to have an effect on the norms governing mass media content (Hill & Beaver, 1991), but it served more as a minor adjustment to the prevailing directions dictated by the market.

On issues where society is divided, the diversity of opinion usually makes content-oriented advocacy a zero sum game. In cases such as homosexuality, abortion, or portrayals of controversial politicians, programs that satisfy one ideological point of view are bound to anger those with opposing views. In the 1980s portrayals of gays on TV series like *L.A. Law* and *thirtysomething* won support from the Gay and Lesbian Alliance Against Defamation, but outraged the American Family Association. On the other hand, truly dominant social norms will be reinforced by content advocacy. Few groups would form to actively speak out in favor of gratuitous violence or pornography on prime time television, or to promote positive portrayals of narcotics use. Thus, content-oriented activism around dominant social norms can be effective but actually works against the airing of diverse views. Truly challenging programs will attract political challenges that may result in their withdrawal, segregation into time zones that restrict access, or similar restrictive measures.

When groups attempt to resist content-oriented advocacy's reinforcement of dominant norms, they adopt the advocacy mode of individual rights. Defenses of content that threatens dominant norms will take the form of anti-censorship campaigns or promotion of individual rights to free and diverse expression. In 1980, liberal television producer Norman Lear founded People for the American Way as a counter to the Moral Majority, adopting the language of constitutional rights. Rock Out Censorship was formed in 1989 as a counter to Tipper Gore's campaign against music lyrics. In American society at least, rights advocacy trumps content-mode advocacy.

Most of the media activist organizations created in the 1970s, and many of the new ones formed in the 1980s, did not participate in the infrastructure regulation battles. But the

changes in economic regulation were fomenting a revolution in communication and information industries that would do more to define the terms of content delivery than any of the policies and regulations sought by content-oriented advocates.

### **5.3 AT&T Divestiture & Telecom Liberalization**

From the second half of the 1970s until 1996 the communications infrastructure of the nation went through systematic and sustained institutional change. In telecommunications, the model of a monopoly utility subject to public interest regulation was replaced by the idea of a competitive marketplace guided by norms of efficiency, consumer choice and entrepreneurial freedom, although substantial regulation remained. Cable television and broadcasting also went through various levels of deregulation.

Telecommunications liberalization – the most appropriate label for this process<sup>44</sup> – started in the U.S. but came to include virtually every developed country and many developing ones as well. (Drake, 2001) The liberalization trend constituted a global institutional change that was as significant – and as irreversible – as civil rights and environmentalism. For the most part, left-liberal activists were on the defensive during this period. Although that change in the underlying policy paradigm has now run its course, many current activists still have not progressed beyond the regulation-deregulation dialectic set in motion during the 1980s.

Liberalization of the communications industry had its roots in a scholarly critique of business regulation that had been building for two decades. Critical examination of regulatory agencies and processes by academics in the 1960s and 70s discovered that regulatory agencies often were captured by the regulated industry. Established businesses themselves often created the political demand for regulation and other forms of government intervention. The effect of regulation was often to protect incumbent businesses from competition. More generally, the new political economy held that it was wrong to view government action as somehow always in the interest of the public and exempt from self-interested behavior. Regulators, bureaucrats, politicians and economic interest groups advocating regulation have something to gain from their actions, and much could be learned about government behavior and appropriate policy by keeping that in mind. Far from being a rightwing conspiracy, that critique was rooted in research spanning the spectrum from leftist (See the work of Gabriel Kolko on early railroad regulation), to mainstream liberal (Marver Bernstein), to free market “Chicago School” thinkers (Ronald Coase, Harold Demsetz, George Stigler). The essential outlines of this critique were accepted by liberal as well as conservative legislators and regulators, and the ideas came into prominence in the mid-1970s.<sup>45</sup> There was a newfound appreciation

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<sup>44</sup> We use the term “liberalization” rather than “deregulation” because deregulation of prices, exit and entry is typically only one part of the process. Many aspects of telecommunications have been regulated as a result of liberalization; e.g., interconnection, numbering, and network infrastructure unbundling. Also, the divestiture of AT&T itself involved an act of fairly aggressive antitrust intervention in the industry’s market structure.

<sup>45</sup> Liberal Democratic FCC Commissioner Nicholas Johnson supported the early admission of new entrants into common carrier markets. Deregulator Fred Kahn was appointed CAB chair by President Carter, and the bill deregulating airlines in 1978 was sponsored by Ted Kennedy. Henry Geller, a former FCC Counsel, NTIA head and policy analyst funded by the Ford Foundation, came to support eliminating broadcasters’



for values such as efficiency, competition, consumer choice, and innovation, and for the costs and problems associated with government action.

In short, liberalization constituted a countervailing social movement that introduced new ideas and new norms into communications policy making. The new norms were politically salable and backed by academically respectable research, as well as solid experience with the perversities of monopolies and regulation. Just as in the 1960s new norms pertaining to consumer protection, civil rights and environmental protection cut across multiple policy domains at once, making it difficult for an unprepared business community to fend off change, so the new norms of economic liberalization cut across multiple communication policy domains at once, making it impossible for the small community of pro-regulation media activists to fight on all the relevant fronts.

The AT&T divestiture and the 20-year process of revising the legislation and regulations structuring competition in telecommunications were set in motion by contention among economic interests. Alternative suppliers of equipment and services allied themselves with major business users to demand greater choice and openness in the public telecommunications network. (Brock, 1994; Cowhey, 1990) Incumbent telephone monopolies and state regulators resisted the changes. The economic stakes were vast; at this time telephone monopolies were often the largest single enterprises in a nation.

During this period economists assumed the lead role in offering a vision of the public interest. The theoretical and analytical tools of economists (especially the law and economics analysis associated with Chicago-School economists) provided the primary basis for comprehending the interaction of law, regulation, economics and technology. Economic modes of analysis filled a dire need, as regulators were confronted with complex technological changes and new institutional and legal problems caused by them.

Media activists who were focused more on culture and content had a difficult time participating in this dialogue. Instead, the lead public interest role in responding to telecommunications liberalization was assumed by consumer organizations. Consumer organizations defended distributional bargains favoring local telephone consumers at the expense of long distance users, while supporting the shift to a competitive model when it delivered benefits to residential users. Consumer organizations also fought for a pro-consumer mix of regulation and competition in the cable television industry. In the complex mix of business interests contending over telecom policy, they found that coalitions and alliances with different business groups could provide the leverage for influencing policy. They sided with newspaper interests against telephone companies to prevent the latter from entering information services; with cable companies against telephone companies or sometimes vice-versa; with competing smaller telephone companies against larger ones; etc.

Initially in the late 1970s, AT&T co-opted some consumer and advocacy groups by claiming that a regulated monopoly using cross-subsidies promoted universal service and

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public trustee requirements and in its place imposing a spectrum fee on stations and auctions for all new frequency assignments, using the money to support noncommercial telecommunications.

made local telephone service more affordable. Consumer advocate Sharon Nelson, who later became head of the Washington State Utility Commission, laid the foundations for a break with the traditional pro-monopoly view. Nelson was a Carter-style Democrat and believed that economic deregulation could be a progressive policy with the right safeguards.

Consumer organizations had a substantial impact on the AT&T divestiture and its aftermath. But their agenda, as noted before, was to moderate the distributional effects. They wanted to preserve low rates for local telephone subscriptions and continue to allocate the joint and common costs of the network according to the equity principles that had been used by regulators in the past, rather than the efficiency principles advocated by economists. They were influential in Congress because they were resisting rate shocks that voters would not like. Moreover, they were in a position to take advantage of divisions among industrial lobbyists.

The Lifeline and Linkup programs exemplify the type of success consumer organizations achieved. In the early 1980s, economists and regulators had proposed a “Subscriber Line Charge,” an immediate increase in monthly local telephone subscription rates designed to facilitate a cost-based realignment of local and long distance rates. The SLC as originally proposed would have doubled local rates for most consumers. Organizations such as Consumer Federation of America, Public Citizen's Congress Watch and Consumers Union filed comments at the FCC opposing the SLC, and requesting creation of a program to directly subsidize local rates for low-income consumers – a program that became known as “Lifeline.” Eventually the SLC was reduced and its implementation phased in over time. Later in the 1980s, targeted subsidies for phone line installation (“Linkup America”) were created. As a subsidy restricted to the needy, Lifeline and Linkup were more efficient than the untargeted subsidies of the old regulatory regime. The Consumer Union’s Gene Kimmelman feels that consumer groups deserve credit for making the transition to competition with “minimal consumer pain.”<sup>46</sup>

The pattern is clear: the initiative for change came from economic interest groups, and the vision and policy model came from pro-market political economists, but advocacy groups had an impact on how the cost burdens were distributed.

## **5.4 Broadcasting Regulation**

Liberalization of communications industries had a major impact on the U.S. public interest groups involved in mass communications. In the prior decade, advocacy groups had learned to rely heavily on the public trustee regulations to gain leverage over the programming, employment practices and community relations of broadcasters. Liberalization and deregulation eroded those forms of leverage, diminishing their ability to push for policy goals in the ways in which they had become accustomed.

Movement toward a market paradigm was bipartisan and preceded Ronald Reagan’s election as President. But the election of Reagan put people into policy making positions

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<sup>46</sup> Interview with Gene Kimmelman, September 30, 2002.

in the federal government who were more pro-business and more willing to take bold measures breaking with the past. This was especially true of the Federal Communications Commission, where outspoken former broadcaster Mark Fowler was appointed Chair. Fowler and others directly attacked the scarcity rationale that had served to justify regulation in the past. Noting the diversification of program outlets, they argued that consumers could “vote with the dial.” “The public’s interest [in programming] defines the public interest.” Papers in law review articles articulated a new approach to the public interest standard that equated the public interest with promoting a free and competitive marketplace. (Fowler & Brenner, 1982)

In January 1981, in a move that started under Carter, the FCC eliminated rules and policies requiring radio programming logs, commercial time limitations, ascertainment of community problems, and non-entertainment programming requirements. License terms were extended to five years for TV and seven years for radio. In 1984, similar changes were made for commercial television licensees. The number of television stations a single entity could own was increased from 7 to 12 in 1985. From 1985 to 1987, the Commission found that the Fairness Doctrine undermined the First Amendment by inhibiting coverage of controversial issues by broadcasters, and ruled that its enforcement was no longer in the public interest. The decision was upheld on appeal.

In one of the few case studies of CIP advocacy groups in the deregulation era, H. Kim (1995) examined the role of citizens groups in the Direct Broadcast Satellite proceeding from 1979 to 1982. The study shows that the basic contours of the debate over broadcast regulation had been recast in economic terms. Advocates of the new service characterized DBS as “a new source of video competition” and “the initiation of [a] new, innovative and competitive communications service for the American public.” Incumbent broadcasters, on the other hand, advanced a protectionist argument, complaining that competition from DBS would siphon away advertising revenue from local broadcasters and destroy localism in broadcasting.

Eight citizens groups drawn from the civil rights-oriented 1970s media activism intervened in the DBS proceeding.<sup>47</sup> While not opposing the introduction of DBS, their goal was to fit the new service into the mold of traditional broadcast public trustee regulation, imposing on it ownership restrictions, program diversity requirements and similar public interest obligations. That viewpoint failed to resonate with policy makers in the new conditions of the 1980s. The government and the prospective new entrants saw such regulation as an impediment to the development of new technologies and services. The advocacy groups failed to convince policy makers why new businesses should not be allowed to enter the market with minimal burdens, or why consumer choice in an expanded marketplace was not sufficient to protect consumer interests.

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<sup>47</sup> NCCB, NABB, National Black Media Coalition, UCC, Citizens Communications Center, Black Citizens for Fair Media, Committee for Community Access, Chinese for Affirmative Action, Citizens Committee on the Media, and Metropolitan Washington Coalition for Latino Radio.

## **5.5 Cable Deregulation and Re-Regulation**

Cable Television was a major preoccupation of the 1980s. As a mass medium involving content, the media activists of the 1970s showed more interest in cable than in telecommunications. But in this policy arena as well, the pro-market paradigm was more influential. The first major institutional change was the passage of the Cable Communications Act of 1984. Near the end of the decade, consumer advocates spearheaded an attempt to re-regulate the cable industry that met with temporary success in 1992.

The Cable Communications Act of 1984 represented an accommodation between two interest groups: municipal franchising authorities, represented by the National League of Cities, and the cable industry, represented by the National Cable Television Association (NCTA). NCTA was concerned about the uncertainty of franchise renewals and the rate regulations and franchise fees imposed on them by municipalities. The basic bargain was that the cable systems would be deregulated and cities would receive significant franchise fees. The law regularized franchise renewal procedures, capped franchise fees at 5%, and deregulated rates. The impact of public interest groups was felt mainly through the law's institutionalization of public access channels. The law authorized local franchising authorities to require set-asides of channel capacity for public, educational or governmental (PEG) use. It also required that 10-15 percent of cable channel capacity be devoted to leased access.

The channel access provisions represented a somewhat lopsided compromise between advocates of the "common carrier" concept, wherein cable system operators would serve as a neutral conduit for content produced by others, and the "electronic publisher" model, wherein cable system owners, like newspapers, actively selected which content to publish and promote. The parameters of this compromise were constrained by court decisions ruling some forms of common carrier regulation unconstitutional.<sup>48</sup>

Few would argue that public access channels have revolutionized mass communication, as some of the more utopian advocates had hoped they would. In general they lack the resources for self-promotion and attract tiny audiences. Their usage by the public has been constrained by the need for video production equipment and facilities, and more fundamentally by the fact that the demand for programming has expanded to the point that most capable producers of programs with the potential for popularity will be picked up by the commercial marketplace. But public access channels continue to hang on and play a valued if marginal role in cable communications. The 1984 Act's provision for leased access also seems to have had little effect on the industry structure; we are not sure why. Overall, cable has developed more as an electronic publisher than as a common carrier.

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<sup>48</sup> United States v. Midwest Video Corp., 440 U.S. 689 1979. Quincy Cable TV, Inc. v. FCC, 768 F.2d 1434 (DC Cir. 1985).

Following the 1984 Act's deregulation of cable rates in January 1987, frustration with cable companies grew among consumers. Many local franchises were exclusive, shielding them from competition. Subscription rates increased by 61%, three times faster than inflation. The responsiveness of cable monopolies to service calls became a national joke.

The Consumers Federation of America played a leading role in translating this consumer frustration into legislation. CFA's campaign began in April 1989, when it issued a press release claiming that consumers were being overcharged and poorly served. It criticized the vertical integration between content producers and cable operators and the use of programming to impede head to head competition between cable systems. It proposed a new law re-regulating cable rates and instituting measures to promote competition.

The defeat of this proposal in 1990 made Gene Kimmelman of CFA realize that he needed more powerful allies. Consequently, CFA enlisted broadcasters in the fight against the cable industry. Broadcasters now viewed cable as a dangerous competitor that siphoned programs and advertising away from them. They proposed that cable systems pay them money, known as "retransmission consent fees" for the carriage of their signal. A new version of the bill containing retransmission consent was co-sponsored by Senator John Danforth, a Missouri Republican, and eventually supported by nearly half the Republicans in Congress.<sup>49</sup> The retransmission consent ploy turned Hollywood content producers against the bill, however. After a major political battle in which broadcaster interests spent almost \$400,000, Hollywood \$350,000 and cable interests over \$1,000,000, the bill was passed and President Bush's veto overridden. In April 1993 the FCC issued new regulations fleshing out the details of the act.

In pushing for the 1992 law, Kimmelman took as a starting point industry interest group politics, and strategically maneuvered within them. This was marked as a notable shift of strategy at the time. Critics and admirers alike described CFA as engaged in a kind of "balance of power" politics. According to the New York Times, he "deliberately picks issues where he can use the money and muscle of one industry to take on another."<sup>50</sup> Regarding retransmission consent, Kimmelman said "it was a deal with the devil that I think was not a bad deal. The only way you win on this kind of an issue is if you've got enough muscle on your side. We had the perfect combination of rural, urban, consumers and broadcasters. And still it wasn't easy."<sup>51</sup>

Kimmelman's assessment of political necessity was supported by academic research on PAC contributions and the 1992 cable re-regulation act. In a statistical test of influence,

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<sup>49</sup> The 1992 Cable re-regulation bill: 1) Enabled local governments to regulate rates for the basic package of services based on FCC guidelines, and authorized the FCC to step in when they didn't do it right. 2) Set minimum customer service standards; 3) Mandated retransmission consent for broadcasters; 4) prohibited exclusive franchises; 5) permitted local governments to operate a cable system without going through the franchising process; 6) required cable operators to sell programming they owned to all comers, e.g., satellite and wireless competitors.

<sup>50</sup> Edmund Andrews, "Cable Bill Advocate Divides and Conquers," New York Times, 27 September 1992.

<sup>51</sup> Phillip Davis, "Bush Asks for Sign of Loyalty; Congress Changes the Channel," Congressional Quarterly October 10, 1992, p. 3149.

Cohen and Hamman (2003) “detected little congressional responsiveness to constituent demands... .”

Despite rising cable rates and consumer complaints to policy makers, it was not until broadcasters mobilized against cable interests to secure rebroadcasting fees that cable interests lost their hold on cable policy. (p. 366)

The disturbing conclusion is that in the American polity (and probably in many other developed industrial societies) general public demand for a policy by itself is insufficient to create institutional changes. Organized special interests must be enlisted. That fact has important implications for the future of public interest advocacy.

The 1992 Cable Act was hailed by liberal advocacy groups as the first major re-regulation of an industry since Reagan was elected in 1981. However, the bill did not reverse and in some ways was intended to foster the long term trend toward liberalization of the industry. By prohibiting exclusive franchises and exclusive deals for programming, the bill fostered competition. Regulation was positioned as a near-term substitute for competition in those areas of the market still monopolized. After only three years of implementation, the 1992 bill was superseded by the Telecommunications Act of 1996. The new law eliminated rate regulation but retained many of the pro-competitive aspects of the 1992 Act.

## **5.6 Early Computer Advocacy**

The 1980s contained the seeds of a new kind of CIP activism. Five organizations in particular represent the beginnings of a change in the organizational ecology that would intensify in the 1990s: the Free Software Foundation, Computer Professionals for Social Responsibility, the Public Interest Computer Association, Public Cryptography Study Group, and the League for Programming Freedom. FSF became a leader of the open source software movement. CPSR began with a focus on anti-nuclear and military issues, but has since grown into an international membership organization that focuses on the entire range of communication-information policy issues. The advocate behind PICA had ties to CPSR and later played a role in the formation of the Electronic Frontier Foundation and Electronic Privacy Information Center.

The new organizations reflect the existence of both new issues (policies related to computers) and a new constituency (computer-literate professionals). The members of these organizations were involved in programming computers, computer science research, and the implementation of new networking technologies and applications. Often they were based in research institutes, including military-funded ones, or universities. They were an elite group, but had a strong sense of responsibility regarding the new information technology they were developing. The Association for Computing Machinery (ACM), a professional association, was one of their organizational homes.

Table 5.2 Computer-related organizations founded in the 1980s

Organization Name	Founded	Disbanded
Computer Professionals for Social Responsibility	1981	
Public Cryptography Study Group	1983	1987
Public Interest Computer Association	1983	1987
Free Software Foundation	1985	
League for Programming Freedom	1989	

In the 1980s, the political battle over encryption that would define online activism in the 1990s was already taking shape. From 1974 – 1980, the government’s intellectual monopoly on cryptographic knowledge and technology was broken by researchers. (Diffie & Landau, 1998; Levy, 2001) The technologists who attempted to develop tools of privacy protection using computer technology encountered systematic opposition and harassment by the government. In response, they began to organize and resist. The first “Crypto conference” was held in 1981. The Public Cryptography Study Group was an expert group formed in 1983 to support liberalization of encryption. Advocacy activity converged around the 1987 Computer Security Act, which passed with support of business and civil liberties groups. The law transferred responsibility for securing the nation’s computer infrastructure and standards from the secretive, military oriented National Security Agency to the civilian National Bureau of Standards (which later became NIST). (Levy, 2001, 182) Marc Rotenberg, founder of EPIC, was a staff person for Senator Patrick Leahy, a key proponent of this legislation, at the time.

Another way in which computer professionals became a new source of energy in the CI policy realm is illustrated by the formation of the RISKS-Digest by Peter G. Neumann in August 1985. A researcher at SRI and early user of the ARPA-Internet, Neumann became Chair of the ACM’s Committee on Computers and Public Policy in the mid-1980s. RISKS-Digest was set up as an ftp-based newsletter/bulletin board system, allowing the community of online computer scientists to stay informed and exchange ideas about “our increasingly critical dependence on the use of computers.” One of the inspirations for the Digest and similar activities was the Reagan administration’s Strategic Defense Initiative, better known as “Star Wars,” which proposed to develop a computer-driven system to shoot down incoming missiles. The first issue of the RISKS-Digest quoted ACM President Adele Goldberger giving voice to concerns about the intersection of computer science with public policy:

“Contrary to the myth that computer systems are infallible, in fact computer systems can and do fail. Consequently, the reliability of computer-based systems cannot be taken for granted. This reality applies to all computer-based systems, but it is especially critical for systems whose failure would result in extreme risk to the public. Increasingly, human lives depend upon the reliable operation of systems such as air traffic and high-speed ground transportation control systems, military weapons delivery and defense systems, and health care delivery and diagnostic systems.”<sup>52</sup>

<sup>52</sup> Communications of the ACM, February 1985 (pp. 131-133).

PICA was established by Marc Rotenberg as a service organization to advise public interest organizations on how to use computer systems. Rotenberg was also on the Board of Directors of CPSR in the mid-1980s. “After working for the Senate, I thought it was important to establish a stronger voice for NGOs interested in technology policy.” So he convinced the CPSR Board to establish an office in Washington and run a “Computing and Civil Liberties” project. One of the first activities of the new Electronic Frontiers Foundation in 1990 was to make a grant to the Computing and Civil Liberties project.

This new constituency of computer professionals and developers, small and elite but strategically placed, created in the 1980s an infrastructure of human resources and online communication, the fruits of which would be reaped later during the privacy/crypto activism of the early 1990s. (See Chapter 6)

## **5.7 Conclusion**

In the 1980s, CIP started to be defined as much through battles of expert ideas as through the demands of politically mobilized constituencies. As emphasis shifted from content to infrastructure, economic issues moved to the forefront of policy, but the population of advocacy organizations did not reflect this change. Although left-liberal media activists of the 1960s and 1970s successfully institutionalized many of their cultural and social norms, they failed to impede politically or challenge intellectually liberal/market economic institutions. On the contrary, a new epistemic community with liberal and libertarian ideas about computers and telecommunications took root in this decade.



## 6. The 1990s: The Net, Convergence and Rights

In the 1990s, digital technology became the focal point of institutional change in communications and information. As a non-territorial medium and the vehicle for convergence of communication industries and media content, the Internet in particular was a disruptive force in policy and law. As the Internet altered institutional patterns, a new generation of advocacy groups came to dominate congressional testimony, and the mode of advocacy shifted notably. With the emergence of concepts of “cyber-rights,” CIP activism begins to come into its own as a movement.

A key factor in energizing and sustaining cyber-activism has been advances in theory and ideas. Legal scholars such as Lawrence Lessig, Pamela Samuelson, Michael Froomkin, Yochai Benkler, Jessica Litman, Jonathan Weinberg, Julie Cohen, James Boyle and Ethan Katsh, to name only a few, created a new, cumulative literature on the relationship between digital/Internet technology and legal rights. Originally focused on privacy, the new school of thought cut its teeth on intellectual property battles (see Section 6.4 below). This body of work, emanating from elite U.S. law schools, developed independently of the cultural and sociological critiques of the mass media and as such was largely untainted by Marxism or the “critical cultural theory” of the Frankfurt School. It was, rather, a form of liberal institutionalism. Its adherents shared a perception that the transition to a digitized technological environment required the redefinition of basic legal and institutional constructs, and that this change created both dangers and opportunities. In works like *Code* (1999) and *The Future of Ideas* (2001), Lessig in particular reached for an integrated analytical framework and ideology – something akin to the “environmentalism of the Net” heralded by James Boyle. The framework proved to be applicable to a broad variety of CIP issues, from copyright to telecommunications infrastructure regulation to radio spectrum management. The intellectual community of which Lessig can be considered the most prominent “star” was the 1990s counterpart to the law and economics school of the 1960s and 1970s (in fact, Lessig and Benkler both occasionally cite the work of Coase). Whereas the first provided the critique of regulation and the political-economy framework for telecommunications liberalization and deregulation in the 1980s and 1990s, the new school addressed the relationship between information technology, law, and institutions in a way that gave some coherence to the efforts of the new generation of public interest advocates.

Whatever the role of intellectual developments, digital info-communications provoked a flurry of major institutional changes in the mid-late 1990s: liberalization of cryptography; the Communications Assistance for Law Enforcement Act; the Telecommunications Act of 1996; a World Intellectual Property Organization treaty that proved to be the forerunner of the controversial Digital Millennium Copyright Act of 1998; various efforts to censor or manage Internet content; the creation of ICANN. The changes are noteworthy for their increasingly transnational scope.

Our data runs to the end of 2002, so we treat the early years of the new millennium as continuous with the 1990s. The chapter begins (Section 6.1) with an overview of the

organizational ecology during that period, documenting the major change in the composition of the population of public interest groups. Section 6.2 describes the privacy-oriented activism of the early 1990s, noting that it provided the crucible for the formation of a culture and political ethic for the online activism of the 1990s and beyond. Section 6.3 discusses public interest advocacy around the 1996 Telecommunications Act, including the reaction to the Communications Decency Act. Section 6.4 discusses advocacy and activism around intellectual property rights, showing how this issue provides the connective tissue tying together many of the public interest issues of the digital era. Section 6.5 looks at ICANN and the World Summit on the Information Society, indicators of the growing importance of transnational advocacy. Section 6.6 examines the strengths and weaknesses of the recent activism and advocacy around media concentration and touches on some spectrum issues. A concluding Section discusses whether Internet and computers have produced new organizational forms of activism.

## **6.1 The Organizational Ecology of the 1990s**

The 1990s produced a major change in the composition of the organizational population devoted to advocacy in CIP. This occurred at the same time as a massive increase in the number of congressional hearings on CIP issues. We can also detect a significant change in the pattern of participation in the hearings among the leading advocacy organizations.

Table 6.1 (located at the end of this chapter) shows all the activist organizations that were founded and disbanded between the years 1990 and 2002, inclusive. Fifty-one (51) organizations formed during those years, and sixty-one (61) died. The 1990s saw the founding of the Association for Progressive Communications (1990), Electronic Frontiers Foundation (1990), Center for Media Education (1990), Electronic Privacy Information Center (1994), and Center for Democracy and Technology (1995), all of which survive to the present. Organizations founded in the 1990s that did not survive include the Voters Telecommunication Watch, Digital Future Coalition, and Internet Free Expression Alliance.

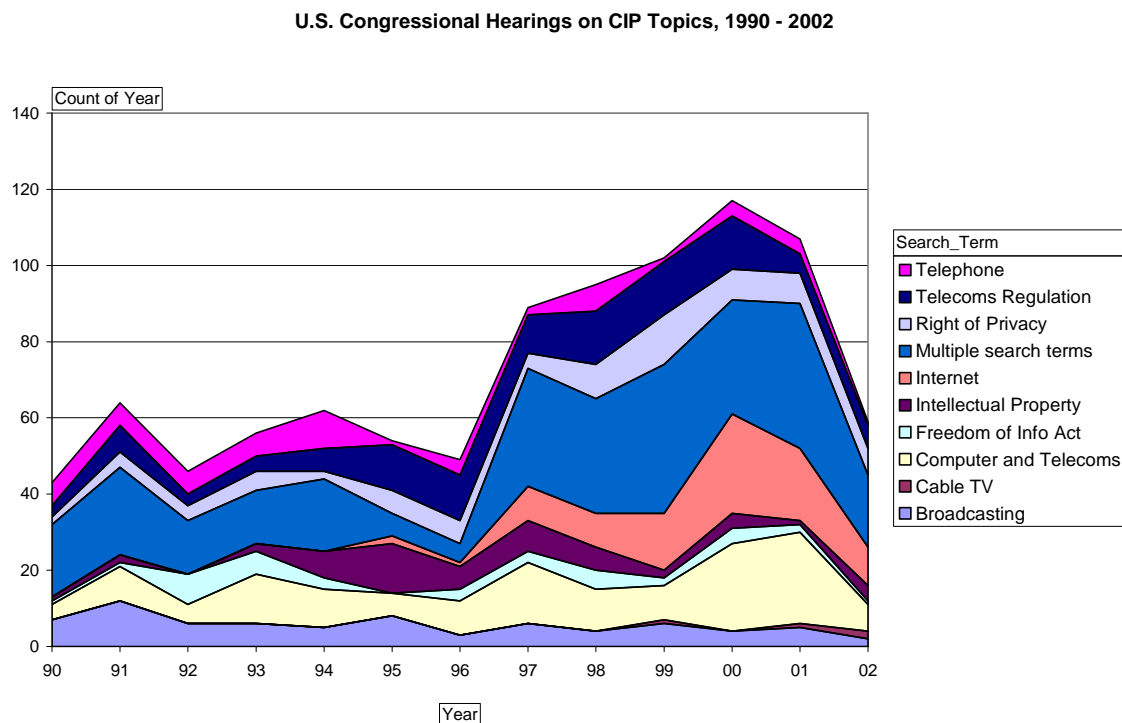
With a large number of organizational deaths in 1992-3, 1996-97, and 2000-01, we see not only a decline in population density but also a pronounced shift in its composition. Mass media oriented organizations trying to influence content, especially those focused on pornography or an ethnic constituency, declined. Notable disbandments include Action for Children's Television (1993), the venerable National Association for Better Broadcasting (1997), Tipper Gore's Parents Music Resource Center (2000), and many other pro-decency and anti-pornography organizations.

Content-mode advocacy declines from 50% of the organizational observations in the 1980s to 44% in the 1990s. It declines even further, to 33%, during the first three years of the 2000s. Rights-based advocacy rises from 23% of the organizational observations in the 1980s to 29% in the 1990s; it then continues to grow in the 2000s until it matches content, with 33% of the observations. Organizations employing multiple modes of CIP advocacy rises to its largest level ever, 11%. The combination is usually economics and

rights. The digital era is thus characterized by a greater focus on rights-oriented advocacy and by a more integrated approach to advocacy. This assertion will be demonstrated in more concrete terms in the narrative below.

Congressional activity, measured in terms of hearings, reached a frenetic peak in the late 1990s and early 2000s. (Figure 6.1) For five consecutive years, the annual number of hearings related to CIP issues hovered around or over 100. Of all the social movement-related topics, only environmental issues in the early 1990s can match this level of congressional activity. Reflecting the convergence of technologies, industries and media, multiple search terms were used by the Congressional Information Service to classify a growing number of the congressional hearings. In other words, a hearing that was classified as “computers and telecommunications” might also be classified as “Internet,” and/or “right of privacy.”

Figure 6.1



New rights-oriented groups such as EPIC, CDT, and EFF significantly altered the pattern of congressional testimony by U.S. advocacy groups. Prior to the 1990s, the ACLU dominated public interest group testimony on CIP issues. No other public interest organization came close to its share of testimony slots. Suddenly, in the 1990s, the ACLU’s percentage drops to 6%, and four other organizations (CDT, EPIC, and consumer organizations) have parity with it. This does not mean that ACLU testified less frequently or was less effective as an organization. Rather, the overall quantity of testimony on CIP issues increased so much that there was room for several other organizations, and instead of one dominant organization we have a group with roughly

equal shares. In particular, CDT and EPIC emerge alongside ACLU as leading rights-oriented organizations in terms of Congressional testimony.<sup>53</sup> Also, both the Consumers Union and the Consumers Federation of America rise to the top five of public interest groups testifying on CIP issues, whereas before they accounted for a smaller (but noticeable) percentage of CIP testimony by public interest organizations. The new prominence of consumer organizations indicates the increasing importance of CIP issues to the general public, the growing prominence of economic issues and modes of advocacy in CIP, and the decision by consumer organizations to invest resources in policy areas where the industry was divided and they could play balance of power politics.

Table 6.2 Specific Organizations' Percentage of Total CIP-related Congressional Testimony by Public Interest Organizations, by Decade.

1980s	
Organization	% of p.i. testimony
American Civil Liberties Union	14.70%
Consumer Federation of America	5.78%
Public Citizen	4.34%
Reporters Committee for Freedom of the Press	2.89%
Media Access Project	2.41%
American Association of Retired Persons	2.41%
Common Cause	2.17%
National Black Media Coalition	1.93%
Action for Children's Television	1.93%
United Church of Christ	1.69%
Organization for Use of the Telephone	1.69%
Telecommunications Research and Action Center	1.69%
Consumers Union	1.45%
1990s	
Organization	% of p.i. testimony
American Civil Liberties Union	6.33%
Center for Democracy and Technology	5.84%
Consumers Union	5.60%
Consumer Federation of America	5.11%
National Consumers League	4.14%
Electronic Frontier Foundation	2.68%
Electronic Privacy Information Center	2.68%
Computer Professionals for Social Responsibility	2.43%
Citizens for a Sound Economy	2.43%
American Association of Retired Persons	2.19%
Media Access Project	1.95%
2000s	
Organization	% of p.i. testimony
Center for Democracy and Technology	11.84%
Consumers Union	9.87%
American Civil Liberties Union	7.24%

<sup>53</sup> It is worth noting that CDT's Director Jerry Berman was affiliated with the ACLU prior to moving first to EFF and then to CDT. CDT's politics, which are more centrist and emphasize closer ties to business groups, might be related to its lead in the overall percentage of testimony slots in the 2000s.

Electronic Privacy Information Center	7.24%
U.S. Public Interest Research Group	3.95%
Americans for Tax Reform	3.29%
National Center for Missing and Exploited Children	2.63%
Citizens for a Sound Economy	1.97%
Progress & Freedom Foundation	1.97%
National Law Center for Children and Families	1.97%
Consumer Federation of America	1.32%
American Association of Retired Persons	1.32%
Public Citizen	1.32%
Common Cause	1.32%

## 6.2 The Crucible: Privacy and Crypto

Privacy issues have always provided an important, long-term area of overlap between Net activists and the traditional civil liberties and civil rights movements. During the late 1960s and 1970s, civil liberties, civil rights, and peace organizations, angered and frightened by governmental abuses of spying powers, came to oppose electronic surveillance and data collection by the growing national security state.<sup>54</sup> The early Net activists, on the other hand, came into conflict with the security apparatus of the state not as antiwar or civil rights activists, but as technologists who were cracking open a long-term governmental monopoly on advanced encryption techniques.

The encryption issue was more than just a question of de-controlling a powerful technology. It evolved into a radical assessment of the problem of identity in cyberspace, and the relationship between the individual and the state online. Encryption, coupled with David Chaum's invention of blind digital signatures and non-traceable anonymous cash, was thought to possess "the potential to make cyberspace into an identity-free zone." (Levy, 2001, 223) This potential formed the basis for a movement variously known as "cryptoanarchy," "cryptoactivism," or "cypherpunks."<sup>55</sup> The origins of that movement are usually traced to a September 1992 invitation-only meeting called by Eric Hughes, Tim May and John Gilmore in Berkeley, California. The gathering, in a playful swipe at CPSR, was dubbed "Cryptology Amateurs for Social Irresponsibility" (Levy, 2001)

The formation of EFF followed a similar pattern of confrontation with the state. John Perry Barlow, a lyricist for the Grateful Dead and regular participant in discussions on the WELL (Whole Earth 'Lectronic Link, one of the earliest online communities based in San Francisco), became concerned about the efforts of law enforcement agencies to crack down on computer crime. Barlow had links to the hacker community, which led the FBI to question him about the theft of proprietary software by a hacker group. Barlow was

<sup>54</sup> To the activists focused on broadcasting, of course, privacy was perceived as a separate, largely unrelated issue and those organizations do not appear in Congressional testimony regarding privacy rights in the 1970s.

<sup>55</sup> For the "manifesto" of the crypto anarchists, see <http://www.activism.net/cypherpunk/crypto-anarchy.html>. May's manifesto dates back to 1988. A more developed sense of the relationship between technology and privacy rights can be found in Eric Hughes' Cypherpunk Manifesto <http://www.activism.net/cypherpunk/manifesto.html>.

amazed and frightened by the FBI's ignorance of computer technology and its consequent inability to distinguish pranks from truly threatening criminal activity.<sup>56</sup> This led to the formation of EFF. EFF began its life as an activist group by making a grant to CPSR's "Computing and Civil Liberties Project," run by Marc Rotenberg.<sup>57</sup> It then began to build up its own litigation and lobbying staff, including Jerry Berman, formerly of the ACLU.

### 6.2.1 The Lotus Marketplace Episode

An early test of net activism's political potential came in the spring of 1990, and the galvanizing issue involved privacy. The Lotus Corporation had just announced a database product called Marketplace, a CD-ROM that contained information about 120 million American households. A community described as "computer specialists, academics, and privacy experts" by Gurak (1997, 27) mounted a campaign against the product. Called the "first online action" by Gurak, the campaign saw Usenet newsgroups and email listservs debate the privacy implications of the product and organize online petitions and email campaigns. Involved were Marc Rotenberg, then associated with CPSR, Mitch Kapor, the ACLU, and the Privacy Times, indicating that the "privacy community" was already fairly well defined by November 1990. Although the target was small and its outcome was isolated rather than institutional, the campaign against Lotus Marketplace was successful: the company withdrew the product in January 1991 due to the protests.

Compared to many routine activities today the privacy implications of Marketplace seem tame. Gurak's analysis of the episode highlights some of the rhetorical excesses of the anti-Marketplace action and implicitly suggests that the Marketplace product was pursued more as a potent symbolic object of concerns about privacy than as a major threat to it *per se*. Of course, all social movements work in this way, seizing opportunistically on flashpoints that will motivate their base and attempting (hopefully) to steer that social energy into the right channels.

### 6.2.2 The Crypto War

A far more significant battle ensued in 1993, pitting net activists against the U.S. Government's national security and law enforcement apparatus. The Computer Security Act of 1987 had authorized NIST, a civilian agency, to develop a new standard for computer encryption. NIST, however, proved to be pliant to the demands of the National Security Administration and developed an encryption standard with a backdoor for government surveillance. The standard, known as the Escrowed Encryption Standard and more popularly as "the Clipper chip," was released by President Clinton on April 16, 1993. Clipper posed one of the most fundamental of policy issues: the contradictions between the individual's right to secure, private communication and the state's desire to protect national security and enhance law enforcement by maintaining a systematic surveillance capability. Clipper provided a way for the U.S. government to break the encryption of any message. In order to make this possible the government had to insert

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<sup>56</sup> Barlow's own account of EFF's formation can be found here: <http://www.eff.org/Misc/EFF/history.eff>

<sup>57</sup> CPSR's Computing and Civil Liberties project began in 1985 after President Reagan, at the behest of the National Security Administration, attempted to restrict access to government computer systems through the creation of a new classification authority.

itself into the center of the encryption process as the escrow holder of private keys capable of unlocking any encrypted communication. The government had ceased attempting to suppress encryption technology outright, but was now insisting on holding on to rights to access encrypted communications.

The “clipper chip” program galvanized nearly all elements of the technical community, moderate and radical. Clipper was debated on Usenet newsgroups, via email, email discussion lists, and FTP sites. CPSR criticized NSA’s role in the development of the standard, noting that it had “largely ignored” a public advisory group. The anti-Clipper activists relied heavily on the Freedom of Information Act to make this case. EFF fostered public commentary, as 225 of 298 comments received by NIST and published in the Federal register were forwarded to it by EFF from emails received by the advocacy organization. Equally important, the crypto activists were able to enter into a powerful alliance with business software users and producers, who saw the controls as an obstacle to commerce. Clipper had negative implications for foreign trade as well as civil liberties, for if the U.S. government imposed a backdoor to all digital equipment manufactured in the U.S., what foreign citizens and companies would purchase U.S. products? The Digital Privacy and Security Working Group, a coalition of communication and computer companies and consumer and privacy advocates, was formed in May 1993, less than a month after Clipper announced.

A large number of established net activists have some link to the anti-Clipper movement. For example, the annual Computers, Freedom and Privacy conferences were initiated as a forum for the discussion and debate of the crypto issue. The Clipper standard was ultimately withdrawn, and cryptography was opened to commercial and public use. Giving some idea of the size of the mobilized community, in 2000 RSA’s annual crypto conference attracted over 10,000 people to celebrate the victory of crypto deregulation.

### **6.2.3. EFF, Computer Crime, CALEA**

The Communications Assistance for Law Enforcement Act (CALEA), commonly known as the “Digital Telephony bill,” was a battle between the FBI and the privacy community roughly contemporaneous with the Clipper-chip episode. It was an attempt by the FBI to require telecommunication companies to modify their equipment to make digital communications easier to wiretap. It was proposed under the Clinton administration based on recommendations made during the first Bush administration. The opposition to this bill reproduced, but in a weaker form, the industry-civil liberties coalition that was successful in opposing Clipper. CALEA was enacted in 1994, however, and its interpretation and implementation since have diminished privacy rights seriously. CALEA led to a famous split between EFF’s inside-Washington and outside-Washington participants.<sup>58</sup> EFF’s grass roots felt that their opposition to CALEA had been undermined by an insider deal made by the Washington staff. EFF fired its DC-based executive director and moved its headquarters to San Francisco, while the Washington-based camp, led by Jerry Berman, became the core of Center for Democracy and Technology. Tensions between these two camps persist to this day.

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<sup>58</sup> See <http://www.interesting-people.org/archives/interesting-people/199412/msg00053.html>

### **6.3. The 1996 Telecommunications Act and CDA**

When the Clinton administration arrived in January 1993 it began to promote the concept of a “National Information Infrastructure” or “information superhighway.” Around the same time, lobbying by the remnants of the Bell system to modify the terms of the AT&T divestiture agreement compelled action on a sweeping revision of the 1934 Communications Act. The conjunction of major legislative reform and a Democratic Presidency focused on communications infrastructure issues created a signal political opportunity.

The DC-based communication-information activist groups responded to this opportunity adroitly. Led by the Center for Media Education, the Association for Research Libraries and the Washington Office of CPSR, they formed an informal association known as the Telecommunications Policy Roundtable (TPR). The opportunity presented was different from that created by the WLBT lawsuits nearly three decades earlier. The citizen-based petition to deny had given media activists a direct form of leverage over broadcaster conduct. In the early 1990s, in contrast, the influence of the advocacy groups came from formulating principles and setting policy agendas, and hoping that legislators would carry their ideas into the new law.

The TPR eventually combined 40 public interest groups around a set of “public interest principles.”<sup>59</sup> According to Drake (1997, 180) the following agenda was successfully inserted into the legislative process:

- Open Platform service (switched, end-to-end digital telecom service regulated as common carrier
- Universal service. Promote access to advanced services, schools and libraries added to list of subsidized services.
- Preferential “advanced services” rates for government agencies, non-profit educational institutions, health care, public libraries, public museums, public broadcasters, and charitable organizations.
- Restrictions on the RBOCs’ ability to participate in information services and electronic publishing markets and their ability to buy or operate traditional cable systems within their telephone service area; requirements to offer unbundled access to information service providers.
- FCC was required to examine costs and benefits of requiring open interface standards for cable TV set top boxes, and to promote ownership diversity.
- FCC and NTIA were to study policies promoting civic participation in the NII.

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<sup>59</sup> “Renewing the Commitment to a Public Interest Telecommunications Policy,” Telecommunications Policy Roundtable, September 1, 1993.



- Resource reservations were to be built into the infrastructure; e.g., there should be a 5% capacity set aside for “public spaces” in telecom networks. (Originally, the groups had called for a 20% set aside.)

Drake believes that while the public interest groups got significant concepts and language into the initial drafts, all changed after the November 1994 election, which gave Republicans control of the House and Senate. The final statute was a “bipartisan compromise on liberalization with a few pro-competitive and consumer safeguards added in.” (1997, 191) While the power shift in Congress pushed back on the advocates’ agenda, they did have significant impact on the final outcome. In particular, the 1996 Act contained expansive new universal service requirements to fund networking in schools and libraries.

The TPR and participation in the 1996 Telecom Act began the process of reorienting DC-based activist groups away from the traditional focus on mass media content and toward infrastructure regulation issues. The TPR as a coalition included both traditional media activist groups and the newer Internet- and privacy-oriented public interest groups, such as the Electronic Frontiers Foundation (although the inclusion of EFF did not take place without some friction).<sup>60</sup> The groups involved in the TPR used Internet listservs and Usenet groups to disseminate their ideas and mobilize their supporters. Yet, once again, they had little impact on the overall economic structure of the telecommunications industry.

The 1996 Act when passed contained the ill-fated Communications Decency Act and the V-chip requirement.<sup>61</sup> In general, the proliferation of information sources on the Internet led to domestic and international conflicts over censorship and content regulation. This seemingly traditional communications policy issue, however, took on a radical, institution-bending cast because of the Internet’s non-territorial and individualized architecture of distribution. In the public discourse on CDA, opponents of the law made a point of differentiating Internet communications from broadcasting. To control Internet content would have required new institutional mechanisms (e.g., accurate age identification on a global basis, and exposing publishers in one jurisdiction to the laws of a remote jurisdiction) with more far-reaching effects than magazine or film censorship.

The CDA’s passage as part of the 1996 Telecommunications Act galvanized the Net activist community like no other issue has before or since. Small enough to be readily mobilized and large enough to make its presence felt, the online population spontaneously generated a major campaign. EFF formed a widely followed Blue Ribbon Campaign wherein managers of web sites would post a blue ribbon graphic indicating their support for free speech. Voters Telecommunications Watch mobilized voters and

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<sup>60</sup> The initial announcement of the Roundtable (posted to the com-priv newsgroup) suggested “that EFF’s work on infrastructure policy issues over the last year was narrow and lacking in vision.” Email from Daniel Weitzner, EFF, to Dave Farber’s “Interesting People” listserv, July 22, 1993. EFF joined the TPR in late July 1993.

<sup>61</sup> The V-chip was opposed by ACLU but not by the other activist groups.

ran a campaign to “Turn the Web Black.” The law’s constitutionality was challenged by two parties, the ACLU and a coalition of nearly 40 organizations organized as the Citizens Internet Empowerment Coalition (CIEC). The CIEC coalition included the American Library Association, America Online, and Microsoft as well as public interest groups.

When the law was ruled unconstitutional, its disappointed supporters appealed to gender and class divisions. “We know the online community overwhelmingly opposed the CDA, but only 10 percent of the country is online and they’re mostly male and mostly upper-class,” said Cathleen Cleaver, director of legal studies for the Family Research Council. “They’ve had complete freedom online and they just don’t want to burden themselves by changing their ways to protect children.”<sup>62</sup>

## **6.4 Intellectual Property Rights**

Cyber-rights truly came of age as a political tendency when it was forced to confront the ultimate institutional problem: the definition of property rights to digital resources. Debates over ownership of personal information are implicit in the computer privacy debate; data about oneself becomes alienable and can be collected, stored and processed by third parties, leading to questions about who “owns” it and the terms and conditions of its usage. But the most dramatic rights conflicts occurred (and are occurring) in relation to intellectual property rights (IPR). This includes not only the highly publicized battles over online sharing of copyrighted entertainment content, but also the movement against software patents, the open source movement, and the battles over trademarks and Internet domain names.

As Internet activities undermined the exclusivity of copyrighted music, images and text, the intellectual property community mobilized and sought stronger, globalized IPR protection mechanisms. A great deal of Net activism in the late 1990s defines itself in opposition to the policy agenda of the frightened yet militant and politically powerful IPR interests. This conflict cuts across a wide variety of CIP issues. Efforts to strengthen digital IPR often lead to proposals to heavily regulate various aspects of the communications-information infrastructure and to incursions on personal privacy. Moreover, the IPR battle turns the politics of the 1980s and early 1990s on its head, with many business interests allying with governmental law enforcement interests and abandoning ideas of “deregulation” and seeking more governmental controls over infrastructure, equipment and conduct.

Early in this struggle, for example, major copyright holders attempted to argue that the digital copies made routinely in the transmission of data over the Internet constituted infringements. (Casey, 2000) The Digital Future Coalition brought together public interest groups with Internet Service Providers concerned about the paralysis of basic Internet functions that would occur if strong, literalistic notions of copyright protection were applied to it. By taking its agenda to Geneva and seeking a global treaty, the U.S.

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<sup>62</sup> Art Kramer, Cox News Service, “Coalition Cheers Court Victory over Decency Act,” June 18, 1996.

government internationalized the struggle to define new property rights for the digital environment. (Samuelson, 1997)

IPR emerged as central because in digital systems intellectual property, freedom of expression and privacy are closely related. Content producers want to be rewarded for their efforts and thus have an incentive to track uses and users. They also have an incentive to erect technological barriers that give them the ability to exclude non-paying users. While private barriers to cultural appropriation and fair use can be legitimate, when joined to the power of the state they can become oppressive and self-defeatingly restrictive – the classic example being the Motion Picture Association of America’s attempt to ban the video cassette recorder in the mid-1980s. When IPR protections are extended too far, they can not only limit free expression, but also undermine privacy by building up an enforcement and surveillance apparatus that can be abused. They are at their worst when they are combined with governmental standard-setting and regulatory powers to become “hardwired” into the design of consumer devices and public infrastructure.

The linkage of governmental regulatory powers to IPR-related surveillance and enforcement is becoming increasingly common. One current example is ICANN’s domain name registration regulations, which require registries to reserve names for trademark holders, subject registrants to privacy-eroding rules about disclosure of contact data, and require registrants to subject themselves to a dispute resolution system biased toward trademark owners (for a discussion of activism and advocacy around those issues, see Section 6.5 below). Another example is the “broadcast flag” standards under development at the FCC, which seek to require digital broadcast receivers to contain tracking devices for detection and enforcement of content rights.

At its most sophisticated, IPR resistance constitutes a recognition that the definition of property rights has distributional consequences, and the activists strive to ensure that the institutionalization of digital property rights cultivates a robust public domain, respects and enhances the rights of end users, individuals, and consumers, and does not constitute regulation designed to unjustly transfer wealth to major corporate holders of IPR (e.g., by indefinite extensions of copyright terms). In its less sophisticated and ultimately less viable manifestations, IPR resistance constitutes a rejection of information property per se – a kind of “info-communism” that caricatures and recapitulates the failed communisms of the 20<sup>th</sup> century. Both tendencies are present in the underlying social movement activity.

Leading advocacy organizations around intellectual property include EFF, which has defended individuals prosecuted for violating some of the anti-circumvention provisions of the DMCA and resisted the Recording Industry Association of America’s attempts to prosecute individual users for downloading music files. Public Knowledge has tried to mobilize opposition to the Federal Communications Commission’s “broadcast flag” standards. Lessig joined with Eric Eldred, a noncommercial Internet publisher of public domain texts and derivative works, and others, to mount an unsuccessful Supreme Court challenge to the Copyright Term Extension Act. Consumer Project on Technology has

played a major role in the international arena, working to moderate the application of drug patents and participating in negotiations at WIPO on the status of IPR protection for webcasting.<sup>63</sup>

A related issue concerns proprietary rights over software. This includes both software patent resistance and the “open-source” issue. These are distinct policy issues but both engage around the concept of information property rights and draw upon the software developer/Internet culture’s support for open standards and information sharing. Open source can be considered a type of social movement among information technology professionals and computer programmers. Like environmentalism, it began as an aesthetic and ethical stance but succeeded in making a strong practical case as well. (Wheeler, 2003) The GNU/Linux operating system has begun to be taken seriously by major industry actors; e.g., IBM and Hewlett-Packard announced sales of Linux computers to federal agencies in 2002. Like the environmental movement, open source activism combines those who are motivated by cultural and ideological stances as well as those who see open source alternatives as a pragmatic way of getting better software and minimizing the depredations of a Microsoft’s dominance. The incursions of open source software into the consumer market are small and are likely to remain so, but in larger-scale educational, business and government information systems it has had an appreciable impact.

Some of the legal scholars mentioned earlier have developed critiques of software patents (e.g., Marc Lemley and Julie Cohen). The League for Programming Freedom, Richard Stallman, EFF founder Mitch Kapor and others in the free software community have opposed patents since the early 1990s at least.

Microsoft is to the information economy of the 2000’s what the Bell System was to the information economy of the 1970’s and 80’s. It dominates a strategically critical industry, giving itself the power to set de facto standards and influence vertically related industries. Resistance to Microsoft’s dominance of the software industry has involved using both traditional antitrust and regulatory tools and the slow but steady cultivation of open source alternatives. In the antitrust battles, public interest groups have played a less than central role, taking sides in industry conflicts (as was the case during the AT&T breakup and the restructuring of the telecommunications industry). The basic policy alternatives have been defined primarily by inter-and intra-industry economic conflicts of interest, and both sides (Microsoft as well as its opponents) occasionally enlist economists and public interest groups to weigh in.

## **6.5 ICANN and WSIS**

The Internet’s non-territorial architecture has heightened the importance of international institutions, at a time when global liberalization of the telecommunications industry was already making communications and information industries and policies more integrated

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<sup>63</sup> See <http://cptech.org/ip/wipo/wipo-casting.html>. CPT coordinated the participation of EFF, Public Knowledge, Union for the Public Domain, IP Justice, and European Digital Rights in the WIPO process.

and interdependent. Two developments at the turn of the century signal the growing importance of transnational advocacy and activism in the CIP domain.

### **6.5.1 ICANN and global democracy**

The Internet Corporation for Assigned Names and Numbers (ICANN) was incorporated in 1998. Ostensibly a private corporation, it was invoked by a U.S. Department of Commerce White Paper as part of an attempt to “privatize” the administration of the Internet’s name and address infrastructure, which had been operated by U.S. government contractors. ICANN as an institution deals with the core issues of the digital economy: intellectual property and free expression, in the form of domain name – trademark disputes; privacy, in the form of its WHOIS database that links Internet identities to personal information about domain name registrants; and competition policy, in its regulation of registry and registrar businesses.

In some respects, ICANN’s roots are in “civil society.” The Internet Society, the Internet Engineering Task Force, education and research networking organizations, and the informal series of meetings known as the International Forum on the White Paper (IFWP), all of which played major roles in ICANN’s background or creation, were civil society organizations and/or largely composed of such organizations. By relying on private sector governance and adding some democratic and representative accountability mechanisms, ICANN had the potential to constitute a revolutionary innovation in international organization. Its organizational form constituted a threat both to the hegemony of nation-states and their international intergovernmental organizations. That potential, however, was systematically undermined and eventually destroyed by the management clique that seized control of the organization at its inception. (See Mueller, 2002)

ICANN’s original organizational structure provided two formal channels for participation by individuals, civil society interests and advocacy groups:

- The Noncommercial Users Constituency (NCUC)
- The At-large membership

The Noncommercial Constituency (NCUC) is one of six constituencies that make up ICANN’s Generic Names Supporting Organization. Along with the other constituencies, it participates in the nomination and election of 3 ICANN Board members and develops policies about domain names. It was originally formed by a tense combination of the Internet Society and the Association for Computing Machinery’s Internet Governance Project and the Syracuse University Convergence Center. CDT, ACLU, the Markle Foundation, EPIC, Media Access Project, Asian NGOs such as Glocom and Networkers Against Surveillance (Japan), Peacenet and Jinbonet (Korea), various UNDP Sustainable Development Networking Program national chapters, all are or have been involved at one point or another.

Under the original plan for ICANN the At-large membership was empowered to elect 9 (just under half) of the Board members. Individuals would have the right to become members of ICANN and acquired voting rights in these elections. Just as the legal

precedent giving citizens “standing” in broadcast license renewal challenges created a political opportunity that mobilized public interest groups, so ICANN’s commitment to a democratic membership and representation led to widespread participation in ICANN in its early days. In the first, experimental at-large election, the two most powerful Internet regions – North America and Europe, which accounted for about 75 percent of the world’s internet infrastructure – elected board members who were critical of ICANN’s management. Indeed, the North American electee, Karl Auerbach, a technical veteran, was perhaps the most prominent and persistent critic of ICANN in the United States. (See NAIS, 2001, 156, for an account of the elections and a case for continued elections)

In February 2002, ICANN’s CEO, Stuart Lynn, argued that its governance model was “not working” and called for sweeping “reforms.” The reforms eventually passed represented a reversion to an insulated and self-selecting board. It completely eliminated its prior commitment to a membership and relied instead on a Nominating Committee selected by the Board and the councils of the SOs. The At-large was demoted to an Advisory Committee that appoints several people to the Nominating Committee and holds nonvoting positions on various Councils and tasks forces. It is administered by a full-time, paid staff person whose loyalties are to ICANN management rather than to public representation.

By firmly closing what had been a relatively open channel for public participation in an international organization, ICANN’s “Evolution and Reform” process led to some demobilization of public interest groups within ICANN. However, a newly revived Noncommercial Constituency is still available as an autonomous channel for civil society participation, and on the GNSO Council frequently holds the swing votes on various policy matters due to conflicts of interest among the business user constituencies and the domain name supply industry constituencies. Moreover, the decision by WSIS to create a UN Working Group on Internet governance (see below) has sparked renewed interest in civil society participation in ICANN.

### **6.5.2 World Summit on the Information Society (WSIS)**

The WSIS is a UN summit administered by the International Telecommunication Union. It consists of a series of meetings designed to produce a Draft Declaration of Principles and a Draft Plan of Action. The official goal of WSIS – to develop and implement a “worldwide vision for the information society” some 20 years after the information society has developed, under the auspices of an international organization that has no policy making authority and controls no significant taxing authority, technology or capital – may sound comical to those with a sense of how the global information economy works. However, WSIS is intensely interesting because of the civil society outreach aspect. As part of the ITU’s and UN’s attempt to make themselves more relevant, WSIS drew a significant number of civil society activists focused on CIP into its processes. Many civil society participants were disappointed with the results of Phase 1 of the Summit, which inevitably reflected the views of governments much more than their own. Nevertheless, WSIS offered a unique opportunity to assemble transnational advocacy groups involved in information and communication policy from around the

world, where they can become acquainted, develop working relationships, and perhaps come closer to an agreed-on set of principles or policies.

More interesting yet, the international legitimacy controversies swirling around ICANN provoked the Summit into authorizing the UN Secretary-General to create a working group on Internet governance. The UN Working Group creates a new arena for transnational advocacy, and provides a forum for airing fundamental issues about global governance related to CIP.

## **6.6 Media Concentration**

A widespread campaign against media concentration by citizens groups and industry interests in 2003 succeeded in blocking changes in FCC ownership rules proposed by the FCC Chair.

Late in 2002 the Federal Communications Commission undertook a comprehensive review of its broadcast ownership rules. Ownership limits applied to broadcasting stations had been progressively liberalized since the 1980s, but took their most dramatic steps in 1991, and in 1996 with the passage of the new Telecommunications Act. The primary purpose of the 2002 proceeding was to respond to court decisions that the ownership limits already in place were arbitrary and had not been justified by the record. The FCC proposed new rules in 2003 that took incremental steps toward further relaxation of the broadcast ownership limits, allowing more stations to be owned by the same company and more cross ownership between broadcasting and other media, subject to the calculations of a “diversity index.”

A good summary of public opposition to the FCC proposal can be found in *The Media Policy Action Directory*.<sup>64</sup> The opposition was greatly strengthened by the role of local activists and the ability of the movement to move beyond DC-based advocacy. Democratic FCC Commissioners who opposed the rule changes (Coppo and Adelstein) got the FCC to hold regional public hearings on media concentration. The hearings created a political opportunity for public mobilization which was seized upon by local groups such as Media Tank and Prometheus Radio in Philadelphia, Media Alliance in San Francisco and CMA in Seattle. Hearings were held in New York, Seattle, Austin, Durham, Phoenix, Chicago, Burlington, San Francisco, Los Angeles, Philadelphia, Marin County, Detroit and Atlanta. The events attracted around 600 people in San Francisco, 300 in Seattle, 600 in Atlanta. There were large crowds in most of the other locales, sometimes standing room only, with people standing outside for hours waiting to get in or participate.

National advocacy groups also played a role. Media Access Project, which had been researching, agitating, and developing policy proposals around media ownership since the 1970s, joined with Prometheus Radio in a legal challenge to the ruling. The Center for

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<sup>64</sup> Center for International Media Action, *The Media Policy Action Directory: A Resource for Advocates and Organizers*. First Edition – Organizations Urging FCC Limits on Media Ownership. [http://www.mediaactioncenter.org/directory\\_onscreen.pdf](http://www.mediaactioncenter.org/directory_onscreen.pdf)

Digital Democracy distributed funds received from a foundation to local organizations at the site of the hearings.<sup>65</sup> Support for the anti-FCC campaign also included conservative groups such as the National Rifle Association and Parents Television Council. In the end, the FCC received tens of thousands of letters opposing the rule changes and the advocates succeeded, via demonstrations, petitions, and vocal participation in the hearings, in pushing the issue into the public agenda for a sustained period of time. Although the FCC voted to adopt the rule changes in June 2003, the campaign against them was so effective that the Congress quickly and overwhelmingly voted to block them.

The coalition assembled by the anti-media concentration forces in many ways reproduces the one that succeeded in briefly re-regulating cable television in the early 1990s. It combines liberal consumer groups and media activists with strategically placed industry groups (advertisers, content producers and some smaller broadcasters) that have strong economic interests in continued media ownership limits. It was also able to draw on conservative groups' dissatisfaction with the media.

The key weakness of the media concentration opponents is that they have not articulated an alternative economic structure or set of regulations, institutions and policies capable of addressing what they see as the problem. The campaign was waged largely as a defense of existing ownership restrictions. For many grass-roots activists, opposition to the ownership changes was rooted in an anti-capitalist critique of "big corporations" that provided little substantive policy guidance. As of now, there is no theoretical bridge linking concepts of "diversity" or opposition to media consolidation to specific legal and regulatory prescriptions shaping industry structure. Opponents of further concentration, for example, have difficulty explaining why 45% of the national market is "too much" and 35% is acceptable. In the absence of theoretically-grounded ideas and specific proposals for institutional change, further relaxation of broadcast ownership limits (and the further integration of broadcasting businesses into the wider digital media marketplace) is likely to continue as public mobilization, always ephemeral and difficult to sustain, dies down.

Moreover, despite the temporary alliance of convenience, the right wingers who sent letters to the FCC asking it to oppose "big media" because they think it has a liberal bias are hardly compatible with the long term agenda of liberal groups, who believe that big media are harbingers of corporate capitalism. Indeed, one negative side effect of the media concentration battle has been a new "decency" campaign by regulators that has cast a chill on broadcast expression. In 2003-4, the FCC received 350,000 complaints about "indecent" in programming, hundreds of times more than its norm. Michael Copps, the FCC Commissioner who led the charge against the proposed ownership rules, has explicitly linked his support for stringent "decency" regulation to the anti-concentration campaign, noting that competition for ratings is what drives the trend toward edgy content.

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<sup>65</sup> B. Butler, S. Matani, L. Nutter, G. Spilka, C. Borgman-Arboleda, A. Dichter. "Strengths, Challenges, and Collaboration: Advocacy groups organizing together on media ownership and beyond." Report and Reflections from the Fall, 2003 Media Diversity Convening, Philadelphia, PA. February 18, 2004.



Another recent policy issue, unlicensed spectrum, is too current to cover adequately in this report, but needs to be connected to the narrative because of its importance. Policy developments around radio spectrum have failed to attract the same level of public interest and engagement but have, paradoxically, had more positive results. The difference, we think, is that in spectrum policy advocates have had something concrete to advocate. Armed with notions of an unlicensed spectrum “commons,”<sup>66</sup> and specific technical and legal concepts of how to create such a commons (e.g., Werbach, 2004), advocates have in the past two years pushed for opening up more spectrum for unlicensed public use, and for re-allocations of spectrum away from the control of traditional broadcasters (where much of it lies fallow).

### **6.7 Postscript on New Organizational Forms**

At the convening held to discuss the first draft of this report, some participants objected to the report’s initial conclusion that “net activism has not yet developed its own distinctive organizational form for political activism.” Their objections, however, may have been based on a misunderstanding of what was being asserted. The email listservs and slashdot-style interactive web sites are most definitely new forms of *communication* and *community-building*. And there is no doubt that online activists are using the tools of the Internet with skill and creativity. But we still do not see a new kind of institutionalized interface with the political, governmental, or legal structures that would give these tools traction in creating institutional change. Or to put it more precisely, the political structure has not adjusted to online interaction in a way that creates new political opportunities. There are no structural changes analogous to those that gave rise to the public interest organization in the 1960s and ‘70s. What we see now are hybrids of new technology and old organizational forms. Web sites and the Internet are used to raise money to support traditional electoral campaigns, for example; or traditional public interest groups use the Internet to generate activity and mobilize their membership. But we do not see a new form interaction between citizen groups and their government. The ability to testify and lobby in person in Washington is still far more important than anything that happens online, and the online activity must still be converted into traditional modes of activity. Of course, to say that existing public interest organizations organized around digital issues do not yet constitute a new organizational form does not detract from their importance and value at all. It is simply to state a sociological and political fact.

In order to qualify as a new organizational form, the political structure would have to change itself in ways that open new channels of influence for virtual communities and online activists. Those new channels would have to *alter the status* of online communication and communicators vis-à-vis the political system; giving them, for example, a status comparable to DC-based lobbyists or voters. But in many ways, we see the opposite occurring. For a brief period politicians opened themselves up to email from their constituents. As a result, they were inundated with an unmanageable torrent of

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<sup>66</sup> See <http://cyberlaw.stanford.edu/spectrum/>

messages. They have responded by closing that channel or radically discounting it.<sup>67</sup> This does not mean that the Internet and online activism won't eventually produce institutional changes comparable to the structural changes of the 1960s; it simply means that those changes haven't occurred yet. We do not know what form they will take when they do occur. Indeed, the lack of wholesale institutional adjustment at this point is not surprising. Digital communications and the Internet really are radical technologies, and radical changes don't happen easily. Computer communications can generate so much information and so much communicative activity that traditional political institutions will take a long time to adjust to them. To incorporate the full potential of online activism would require structural changes in political organization, changes that would threaten existing political equilibria. Even liberal groups, for example, are leery of attempts to computerize voting machines. The idea of "e-government," at the current time, is just a pallid concept that refers to the implementation of information systems by governmental agencies to increase the speed and efficiency of their *existing* processes. Full integration of Internet and telecommunication into the governance structure will mean much more than that; it will change the processes to take full advantage of online capabilities.

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<sup>67</sup> See the revealing report by Kathy Goldschmidt, "Email Overload in Congress: Managing a Communications Crisis," Online Issue Brief, Congress Online Project. Washington, DC: Congressional Management Foundation. (2004). <http://www.congressonlineproject.org/email.html> "Growing numbers of citizens are frustrated by what they perceive to be Congress' lack of responsiveness to e-mail. At the same time, Congress is frustrated by what it perceives to be e-citizens' lack of understanding of how Congress works and the constraints under which it must operate. ...Until now, rather than enhancing democracy - as so many hoped - e-mail has heightened tensions and public disgruntlement with Congress."

Table 6.1 Advocacy Groups Formed, 1990-2002

Foundings	Deaths
1990-91	
Anti-Censorship and Deception Union	First Amendment Research Institute
Association for Progressive Communications	Concerned Citizens for Universal Service
Center for the Study of Commercialism	
Electronic Frontier Foundation	
National Anxiety Center	
National Campaign for Freedom of Expression	
Rock the Vote	
American Satellite Television Alliance	
Center for Media Education	
Computer Users for Social Responsibility	
National Association to Protect Individual Rights	
1992-93	
Center for Civic Networking	Council for Children's Television and Media
Gap Media Project	Action for Children's Television
United States Privacy Council	Crusade for Decency
People Against Telephone Terrorism and Harassment	Women Against Violence Against Women
Progress and Freedom Foundation	Media Action Coalition
	Telecommunications Consumer Coalition
	World Institute of Black Communications
	Public Interest Video Network
	Women's Media Project
	Media Forum
	Citizen's Against Pornography
1994-95	
Electronic Privacy Information Center	Alliance to End Repression
Voters Telecomm Watch	Scholars and Citizens for Freedom of Information
Center for Democracy and Technology	First Amendment Press
Consumer Project on Technology	Fairness in Media
Families Against Internet Censorship	Committee on Israeli Censorship
Feminists for Free Expression	
Mainstream Media Project	
National Public Radio Election Project	
Privacy Global Resource Center	
VTW Center for Internet Education	
About Face	
Digital Future Coalition	
CryptoRights Foundation	
1996-97	
U.S. Internet Council	National Association for Better Broadcasting
Peacefire	Americans of Italian Descent
NetAction	National Friends of Public Broadcasting
Domain Name Rights Coalition	Black Citizens for a Fair Media
CypherNet	Synanon Committee for a Responsible American Press
Global Internet Liberty Campaign	Media Action Research Center
Internet Free Expression Alliance	First Amendment Congress
National Organization for Non-Enumeration	Media Network
Coalition Against Unsolicited Email (CAUCE)	Women Against Pornography
The Censorware Project	American Israeli Civil Liberties Coalition
	First Amendment Consumer and Trade Society
	Feminists Fighting Pornography
	Institute for Media Analysis
	Reference Point Foundation
	Center for the Study of Commercialism

Foundings	Deaths
1996-97, continued	
	American Satellite Television Alliance People Against Telephone Terrorism and Harassment National Public Radio Election Project Privacy Global Resource Center
1998-99	
Mediachannel.org Commercial Alert Citizens for Independent Public Broadcasting People for Better TV Prometheus Radio Project	Telecommunications and Telephone Association American-Arab Relations Committee Americans for Decency Free Press Association Citizens for Media Responsibility Without Law Radio Association Defending Airwave Rights Strategies for Media Literacy Always Causing Legal Unrest National Campaign for Freedom of Expression Digital Future Coalition
2000-01	
Online Policy Group Creative Commons Chilling Effects Center for Digital Democracy SpamCon Foundation	Polish-American Guardian Society Foundation to Improve Television National Black Media Coalition DC Feminists Against Pornography American-Arab Anti-Discrimination Committee Alternative to the New York Times Committee Foundation for Moral Restoration National Coalition Against Pornography Coalition on Government Information Parents Music Resource Center Americans for Constitutional Freedom Alliance Against Fraud in Telemarketing Domain Name Rights Coalition Internet Free Expression Alliance
2002	
ACME Coalition Public Knowledge	Voters Telecommunication Watch

## 7. Reinventing Media Activism

During the late 1990s and early 2000s, communication-information policy (CIP) replaced the environment as the policy domain of greatest congressional activity. From 1997 to 2001, the annual number of Congressional hearings devoted to CIP topics surged to approximately 100 per year.

Previously, CIP issues were segregated across different media and industries and different legal regimes, and were mostly handled in a national institutional framework. Policy ideas about them were not closely related. Now they have come together into a unified policy domain and have become global in scope. The convergence of the media on digital technology has made issues such as privacy, infrastructure regulation, censorship, open source, intellectual property, digital identity and government information policy related, interdependent, and central to social and economic life. The complex of communication-information policy issues can now stand on its own. CIP engages directly with core problems of a post-industrial society and need not be subordinate to other social movements; it can mobilize new constituencies and generate major institutional changes.

The public interest advocacy group was an organizational innovation dating to the second half of the 1960s. Most of the growth in the organizational population took place in the 1970s, as the organizational form was being developed and legitimated. The number of public interest advocacy organizations focused on CIP grew rapidly from 1966 to 1981, and then stabilized at around 100 organizations. It is now a routine part of the policy making environment, in CIP as well as other areas. While that form of advocacy is still vibrant and effective and its continued presence is required to maintain a public interest voice in DC policy making, it is unlikely to catalyze major institutional changes. A major revival of public interest activity around CIP is more likely to come from a) new ideas about institutional arrangements and b) structural changes in political institutions that open up new kinds of access to members of the public. The global mobilization of civil society groups around the World Summit on the Information Society provides only a whiff of the sort of public mobilization that can happen when institutions change to open up new kinds of access to policy making processes. We believe that while activists and advocates are using information and communication technologies in creative ways, political institutions have hardly begun to make adjustments to the potentialities of information and communication technologies. True online activism, in the sense of an interface between the public and the government that gives online communications the same status as face-to-face lobbying, is a matter for the future. Today, we see only use of online tools to enhance and support traditional forms of citizen-government interactions.

Although the number of advocacy organizations has not changed much in the last twenty years, the rise of the Internet in the 1990s is associated with a major change in the *composition* of the advocacy organization population – a change, we believe, for the better. Many organizations focused on criticizing or regulating mass media content died off, although content-oriented advocacy remains a vital part of the total picture. The new organizations formed in the 1990s and 2000s tend to be focused on rights-oriented

advocacy related to digital technology, such as privacy rights, first amendment rights, and rights to fair use of intellectual property. There is also a growing recognition that how the communications infrastructure is regulated affects the preservation or protection of individual rights. Thus, rights-oriented advocacy begins to merge with economic modes of advocacy, further underscoring the need for an intellectually grounded, institutional approach to social change.

Property rights to information are already emerging as the key area of contention, replacing mass media content as the focal point of activism. As production and distribution costs fall, channels proliferate, powerful information processing tools diffuse and the cultural stock of stored content grows exponentially, the problem of “what program do we see on TV” becomes less interesting, and old concepts of public trustee regulation less defensible. More interesting and important are the underlying property rights of the information economy: who owns the information and for how long, who owns the network that gets it to you, what rights do you have to use that network or to reuse or share the content, how much are vendors allowed to know about your selections, how much surveillance are users subjected to, and so on. Copyright, software patents, open source, trademark, exclusive or nonexclusive use of the radio spectrum – all deal more or less directly with property rights as they are understood by institutional economics. Even the privacy issue deals with who owns and has access to personal data. Who owns and has access to infrastructure and how those ownership rights are related to First Amendment norms and values is also a critical issue.

In its measurement of testimony by public interest groups, the study found that during the 1960s, 1970s and 1980s, the American Civil Liberties Union dominated representation of public interest perspectives in Congressional testimony, accounting for 20% of all testimony by public interest groups of all ideologies on CIP topics. In the second half of the 1990s, however, the population of advocacy groups with a major voice in Washington diversified, and ACLU lost its dominance to organizations such as Center for Democracy and Technology (CDT), Electronic Privacy Information Center (EPIC), and the Consumers Union. The top ten advocacy organizations account for about 50% of all testimony by public interest groups in the CIP policy domain.

The population of public interest advocacy organizations focused on CIP is overwhelmingly liberal in ideological orientation. Conservative organizations as a percentage of the total population temporarily increased (from 15% to 21%) only in the 1980s, when liberal organizations’ share declined from 54% to 48%. Since the 1980s, however, liberal organizations’ share of the population has increased steadily, reaching 68% of all observations in the current decade. However, the meaning of “liberal” and “conservative” is shifting in the CIP domain, as ideological and cultural conservatives embrace “big government” in the form of pre-emptive wars, enormous budget deficits, pervasive surveillance, curtailment of civil liberties, and regulation of information technology to strengthen the interests of incumbent intellectual property holders.

While left-liberal advocacy groups have had a tremendous impact on the social norms applied to the media, they have had only a marginal impact on *economic* institutions.

Whether it is the financial problems of public television, the marginal status of public access channels on cable, the absence of principled guidelines for media ownership restrictions, or the ambiguous legacy of broadcast license challenges, on economic issues left-liberal public interest groups have often been reactive or ineffective. There are various reasons for this. Some ultra-leftists are deeply wedded to fairy tales about pre-capitalist utopias. Others are so fixated on the cultural aspects of communication that they fail to take any serious account of the contribution of the ICT sector to jobs, development and growth. Others simply react to problems and abuses in the market system without appreciating the pitfalls of government regulation or thinking through the problem of institutionalizing better, economically sustainable alternatives. Despite the rejection of the economic structure of media that is implicit in much left-liberal media activism, advocacy groups still lack a coherent, theoretically grounded alternative to the critique of regulation and the norms of efficiency, growth and technical innovation advanced by the advocates of market liberalization. Any critique of the status quo capable of leading to lasting institutional change must be grounded in economic theory and not detached from the realities of economic behavior; i.e., wealth needs to be preserved and accumulated not dissipated, and people who invest time, energy and capital to create value deserve to be rewarded in some way, otherwise they will curtail their effort and investment.

A reinvented communication-information activism needs to develop an analytical framework that deeply comprehends the relationships between free expression, privacy, infrastructure regulation, intellectual property, digital identity and government information policy and relates social norms to them in ways that produce viable and effective policies. That rethinking has already begun, spearheaded by interdisciplinary legal thinkers such as Lessig, but much work remains to be done.

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