INTERNET POLICY IMPLEMENTATION AND THE INTERPLAY BETWEEN GLOBAL AND REGIONAL LEVELS:

The Internet Corporation for Assigned Names and Numbers (ICANN) and the European Union (EU)

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Abstract.

By the early 1990s, a series of key technological breakthroughs had facilitated the emergence of the Internet as a sophisticated and fairly easy to use communications system whose global commercial and wider social potential became increasingly apparent to business and governmental interests. As such, the ownership and future management of the Internet's lynchpin technical resources and functions became a topic which engaged communications policymakers and firms at the international level. The result was the creation, in 1999, of a global organisation, the Internet Corporation for Assigned Names and Numbers (ICANN) for these purposes.

This paper explores the emergence and performance of ICANN as a new, global level, governance organisation for key parts of the Internet. In particular, it explores the brief history of the relationship between ICANN and the European Union with two goals in mind. First, it aims to illustrate the very limited extent to which the EU was involved in shaping the emergence of ICANN, as a consequence of a short but intense period of negotiations which took place between a quite diverse range of technical, commercial and governmental stakeholders in the latter part of the 1990s. Second, it illustrates the extent to which ICANN's governance agenda and policy-making "mechanics" have been accepted and implemented by the EU. To assist in these tasks, the paper employs a theoretical framework based on the literature on 'norms', drawing on, in particular, the work of Sikkink and Finnemore (1998) and Checkel (1997, 2001).

Internet Policy Implementation and the Interplay between Global and Regional Levels - The Internet Corporation for Assigned Names and Numbers (ICANN) and the European Union (EU)[1].

Introduction

As is by now widely documented, the Internet emerged from US Federal government funded research of the 1960s and 1970s, one of whose goals was the creation of remote interactive computing. The result was a technically robust system which, through the development and deployment of common technical protocols, known as Transmission Control Protocol/Internet Protocol (TCP/IP), allowed computers and computer networks operating at a distance from one another and according to different technical specifications, to communicate. Through its formative years, this operationally decentralised system was utilised primarily by academics and government employees and was managed by a small number of US computer science experts. At this stage, the management of this system, - ironically, hierarchically ordered despite the Internet's highly dispersed character (see below) - was largely a US-centred technical matter since the Internet had not yet developed the user-friendliness that would endow it with widespread (international) political-economic salience (see Yu, 2003).

However, by the early 1990s, a series of key technological breakthroughs had facilitated the emergence of the Internet as a sophisticated and fairly easy to use communications system whose global commercial - and wider social - potential became increasingly apparent to business and governmental interests. In particular, as the Internet expanded, the effective management of its system of addressing became an issue of paramount technical, economic and political significance. At a *technical* level, a series of key computing resources were required to underpin the storage of identificatory information about all the computers connected to the Internet and their location. Put very simply, the technical structure of Internet's system of communication is significant in that it is pyramidal in nature, where ultimate control is held at its pinnacle by a series of 13 "server" computers. Since the Internet's operation is crucially reliant on these technical resources, they have been referred to as its "root" (Mueller, 2002). Ten of these servers are located in the USA, seven of which are owned by the US government. The other three are located in London, Stockholm and Tokyo respectively.

The Internet's addressing system is also noteworthy in *organisational* terms for the fact that it employs a series of user friendly, mnemonic labels to allow computer owners to communicate with each other. During the process of Internet communication, these labels are "translated" into numerical equivalents, called IP addresses, which are "recognisable" by the computers attached to the Internet, including those at its "root". The system according to which these mnemonic addresses were allocated and managed became known as the Domain Name System (DNS) and, like its underpinning technical resources, it too is hierarchically ordered with its Top Level Domains (TLDs), as they are known, playing the most crucial role at the "root" of Internet addressing.

As the Internet has expanded, particularly into a commercial scenario, domain names have taken on increasing significance as global economic resources since they can provide a recognisable presence on the Internet for those possessing them (and have

thus become valuable). Consequently, control over the system for allocating domain names became an issue of global political-economic significance in the latter half of the 1990s. As such, the ownership and future management of the Internet's lynchpin technical resources and functions became a topic which engaged communications policymakers and firms at the international level. The result was the creation, in 1999, of a global organisation, the Internet Corporation for Assigned Names and Numbers (ICANN) for these purposes. Since then, ICANN has played an important role in the still emerging pattern of global governance of the Internet.

This paper explores the emergence and performance of ICANN as a new, global level, governance organisation for key parts of the Internet. In particular, we examine the brief history of the relationship between ICANN and the European Union with two goals in mind. First, we aim to illustrate the very limited extent to which the EU was involved in shaping the emergence of ICANN, as a consequence of a short but intense period of negotiations which took place between a quite diverse range of technical, commercial and governmental stakeholders in the latter part of the 1990s. Second, we aim to determine the extent to which ICANN's governance agenda and policy-making "mechanics" have been accepted and implemented by the EU.

To assist us in these tasks, we employ a theoretical framework based on the existing literature on 'norms', drawing on, in particular, the work of Sikkink and Finnemore (1998) and Checkel (1997, 2001). Our specific utilisation of this framework is explored in the following section. The third part of our paper proceeds to analyse the emergence of 'norms' for Internet governance through an analysis of ICANN's establishment; the construction of 'frames' in this norm emergence process; the roles of the actors involved (in particular the EU), and their motivations; and the central mechanisms deployed to ensure the acceptance of certain norms over other possibilities. The fourth part of the paper focuses on the cascade and diffusion stages of ICANN norms for Internet governance, with a specific focus on the EU-ICANN relationship. Here, we explore two key elements: first, the nature of ICANN's Governmental Advisory Committee (GAC), the role it exercises in ICANN affairs and where and how the EU is situated in this process. Second, we examine the politics of the initiative, launched by the EU shortly after ICANN's inception, to create a .EU Top Level Domain. Our concluding section considers both the explanatory utility of our theoretical framework, and the nature and appropriateness of the evolving 'norms' for Internet governance developed through ICANN.

Theory: Norm Emergence, Cascade and Diffusion

To shed light on ICANN and the implementation to date of its policies, we utilise the burgeoning literature on 'norm'[2] compliance and diffusion that has emerged in the field of International Relations (IR) over the last decade (Checkel 1997, 2001; Finnemore 1996, Finnemore and Sikkink 1998; Katzenstein 1993, 1996; Klotz 1995a, 1995b; Risse, Ropp and Sikkink 1999, Schimmelfennig 2000). Debates on the nature and impact of international norms have been dichotomised - between those that wish to pursue a rationalist research agenda, with an emphasis on coercion, cost/benefit analyses and material factors, and those that wish to pursue a constructivist agenda with an emphasis on socialization, communicative action and identity transformation (Checkel 2001: 553). There are those, of course, that have attempted to build bridges between these two schools of thought, in order to create more constructive foci for

empirical research, arguing that the fault line between the two is untenable, theoretically and empirically, and that in reality there is an intimate relationship between rationality and norms (Checkel 1997, 2001; Finnemore and Sikkink 1998).

Our task here is not to engage explicitly with the ontological and epistemological debates surrounding the possibilities of bridging the rationalist-constructivist debate. Our aim is to outline and operationalise a framework drawn from the literature on 'norms', which will implicitly acknowledge the rationalist-constructivist relationship. Such a framework will allow us to explain how norms that govern the operation of the Internet evolved within ICANN and how successful ICANN as a new global institution has been in diffusing its 'norms', in this case, with a specific focus on the ICANN-EU relationship.

To assist in this task, it is important both to distinguish between the different types of norms in existence and to recognise that, within any given institution, various categories of norms may exist stemming from the distinct and interrelated elements of that institution. A distinction that has been made by IR scholars is that between regulative (which order behaviour), constitutive (which create new actors, interests) (Katzenstein 1996: 5), and prescriptive norms (involving standards of appropriate behaviour and principles that underpin such behaviour). We distinguish between the 'technical' (regulatory) norms formulated by ICANN at the outset to govern and manage the DNS, and the prescriptive (policy) norms that are evolving alongside ICANN's own development as an institution (these are not mutually exclusive but mutually constitutive as already suggested).

Our task here is to explain the influence of ICANN norms, with a specific emphasis on the ICANN-EU relationship – and why and how such norms have emerged and been diffused. In order to do this we adapt and utilise a framework outlined by Finnemore and Sikkink (1998) for understanding the norm life cycle through its various stages, from its emergence, to norm cascading and diffusion (see below). We also borrow from Checkel's work (1997, 2001) on *norm compliance* in order to enhance our understanding of why certain norms (motives and mechanisms) have been diffused and others have been more problematic. Within such a framework both rationalist and constructivist explanations for norm emergence and compliance will be considered. This is not to dichotomise the analysis into two separate and distinct camps, but rather to illustrate how these approaches can be equally fruitful and relevant and to highlight the link between rational choice and norm research. Certain caveats must be added at this stage regarding the nature of our analysis and the nature of 'norms'. First, it must be acknowledged that ICANN is still in its developmental stages as an institution – and has been subject to much reform in the last five years. Thus, whilst certain norms have clearly been established within the general ICANN structure (and diffused), there is an ongoing debate as to the form and nature of the policy norms that will underpin and determine the policy processes of the organisation (i.e. certain norms have not reached a point whereby agreement has become widespread or internalised), characterised by the debates in ICANN's Governmental Advisory Committee. The central point here is that, unlike many studies of norms that have noted instances of well developed adoption, our case is one of nascent norm construction, whereby resolution is still forthcoming in many areas. Second, we argue that ICANN's governance norms are not explicitly prescriptive, in the sense that they are "enshrined" in international laws or treaties of Internet

governance. However, our argument is that the norms created within ICANN do possess a clear element of 'oughtness' – an element that precisely sets norms apart from any other kind of rules (Finnemore and Sikkink 1998: 891). Moreover, ICANN norms define principles for regulation and governance of the Internet, in association with the most appropriate and proper behaviour for those actors operating in cyberspace. ICANN norms have a constitutive element in the sense that they have defined a given identity for actors, and a regulatory and prescriptive nature, in that they suggest 'principles' that should underpin the behaviour of those actors involved in Internet policy.

The Framework.

Before explaining our theoretical framework certain assumptions need to be detailed to advance our understanding of 'norms'. In this paper, we are concerned with the global norms that have been created and diffused for the governance and regulation of the Internet – defining not just appropriate behaviour for states, but all relevant actors within cyberspace. Many scholars have conducted research on how norms are diffused from the global and European levels to domestic contexts i.e. how and why states comply with global norms. The purpose of our paper is to identify how global norms have been created and diffused to the regional level. This, we contend, does not exclude "states" in the sense of the EU, and for our purpose we will conceptualise the EU as a political space with a multiplicity of access points for norm diffusion.

Moreover, we posit that the multi-level nature of the EU contributes to its potential for 'norm' diffusion. Its institutional context characterised by 'fluid forms of policy-making within a pluralist configuration of actors', which is inclusive of the EU institutions but also member states and other interests, 'provides multiple access points for the diffusion of norms into the policy process' (Padgett 2003: 228). Norm diffusion, we postulate, is shaped by the EU's institutional context - the European Commission, as a leader in Internet policy, will in this case be of paramount importance and is the *sine qua non* of norm cascade and diffusion (or constraint).

Finally, we do not assume any deterministic relationship between ICANN and the EU in terms of norm formulation and diffusion. Our main objective is to investigate how ICANN norms have been diffused to EU level, but we regard the relationship as somewhat dialectical, leaving open as a matter of investigation, how far the EU, as a *potential* norm entrepreneur, helped to shape the norms for the governance and regulation of the Internet at global level. What theoretical tools then, can we use to help explain where 'norms' for the Internet came from and the nature of their formulation, cascade and diffusion? Table 1 illustrates the central concepts and components of the framework that we will utilise.

The first stage of the norm life cycle is that of norm emergence, the second stage that of norm cascade, and the third stage that of norm diffusion and internalisation. Between the first and second stages exists a 'tipping point', a stage where a critical mass of actors is seen to agree with and adopt a norm. Such a process is by no means inevitable since certain norms may not reach a 'tipping point', and others even if diffused and internalised 'may eventually become the prevailing standard of appropriateness against which new norms emerge and compete for support' (Finnemore and Sikkink 1998: 895).

At the first stage of norm emergence, the role of norm entrepreneurs is to convince a critical mass of actors (norm leaders) to accept new norms. Norms do not appear automatically, but are built by agents or actors who have strong notions about the appropriate behaviour within their issue area. The role of norm entrepreneurs in norm emergence is very important; they ultimately frame[3] and give meaning to the norm creating process. Such new frames are essential components of norm entrepreneurs' political strategies – they create, when successful, new ways of interpreting and understanding issues. According to Barnett (1999), 'Constructivists look to frames to provide causal mechanisms for the influence of ideas on policy and politics'. The norm framing process is not a straightforward one and norm entrepreneurs must overcome alternative ways of thinking about an issue: already existing and embedded norms that define or frame the appropriate behaviour of actors and agents. Framing, from a constructivist perspective, is important in the nascent stage of a norm's life cycle in the sense that the challenge to create any new norms takes place in the context of 'logics of appropriateness' that exist within prior norms. Therefore to create and frame new norms, norm entrepreneurs must challenge existing logics of appropriateness, often through using "inappropriate" methods.

In many cases however, as is noted by Payne (2001: 44), 'the usefulness of a particular frame can be quite contentious even among the like-minded champions of new normative structures…in practice framing agents compete with others using counter-frames to provide singular interpretations of problems and appropriate solutions'. Given the problem of frame contestation and the challenge of explaining why some frames succeed over others, constructivists must be prepared to acknowledge (in addition to persuasion and shared understanding) that factors such as the resources or relative powers of advocates might well influence the results of a frame contest (see Payne 2001:44-45) [4].

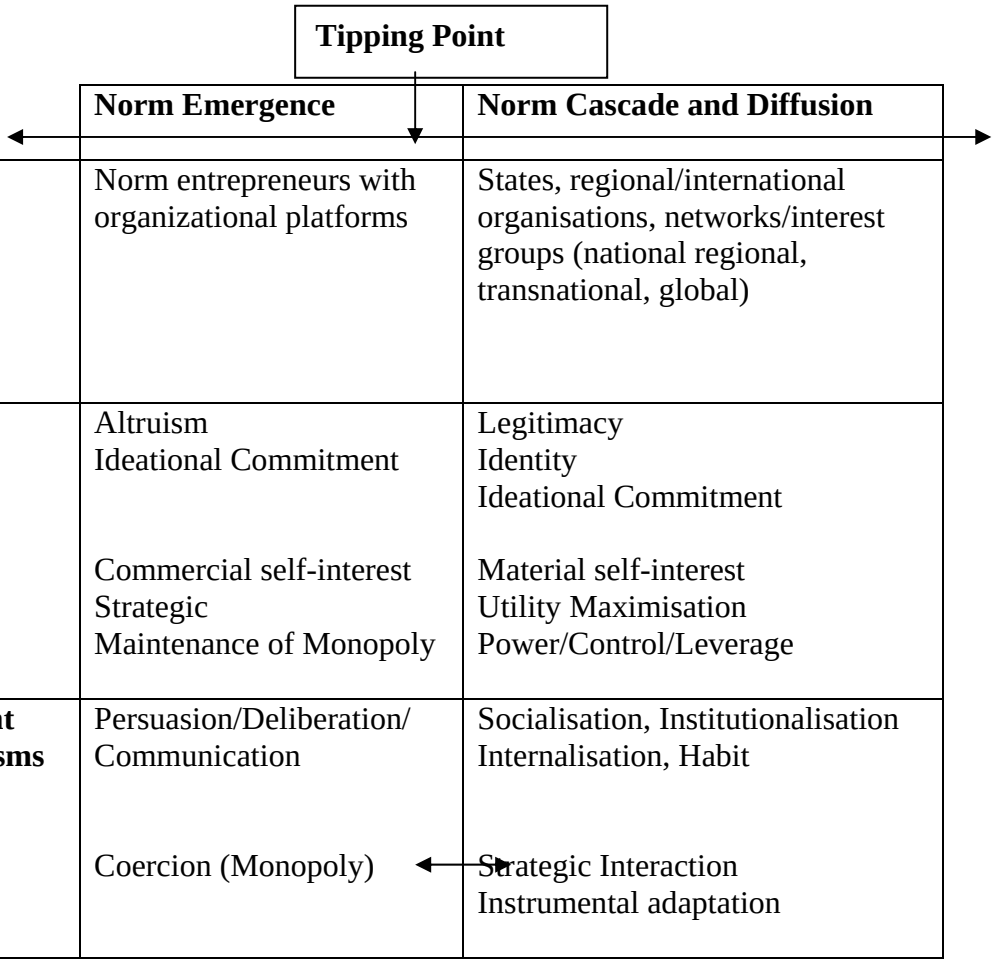
In relation to organisational contexts, norm entrepreneurs need a platform from which to promote their norms. In the case of the Internet and DNS management, no global platform existed prior to 1999, so ICANN was created and endowed with a structure capable of promoting new norms for governing the Internet's strategically important naming and numbering system. One important feature of organisational "platforms", is their use of expertise and information to change the behaviour of other actors. This is particularly important in this case of the Internet – as its history and development was in considerable part determined by computer science experts.

Whatever the nature of the platform, in order to promote and enhance norms, entrepreneurs need to persuade[5] or coerce (Payne 2001) other actors to support and endorse their norms, to socialise key actors such as states into accepting any new norm. Within any organisational platform, different methods and mechanisms exist to do this, depending on the relationship between the organisation and the actors being persuaded, and depending on the organisational structure itself and the ability of states and regional bodies, such as the EU, to influence such a structure and its policy making process.

In a situation where an organisation has the leverage, structure and resources, 'coercion' can be used to get actors to agree to a new norm (s). For example Checkel (1997: 476-7) shows in his work that norm advocates often employ material levers to mobilize and coerce decision-makers to change…policy' (see also Keck and Sikkink

1998a: 201). However, where this does not exist then persuasion, deliberation and communication are likely to be the dominant mechanisms for securing agreement (Finnemore and Sikkink 1998: 896-900). Norm entrepreneurs must convince other actors that their norms, over and above any existing norms, are the appropriate and right ones.

Table 1: Norms: Actors, Motives and Mechanisms



Source: Finnemore and Sikkink 1998, p898

Institutionalization of a specific norm or set of norms is an important step for reaching the cascading stage in the norm life cycle, although it is by no means a pre-requisite, as cascading may take place post-institutionalisation. The 'tipping point' is reached when norm entrepreneurs have persuaded or coerced a 'critical mass' of actors to become norm leaders and adopt new norms[6]. Once the tipping point has been reached, a dynamism is injected into the process of cascading in which international and transnational norm influences become important in effecting norm change (Ramirez, Soysal and Shanahan 1997, Whitehead 1996). A process of international socialisation (or bargaining and strategic interaction) occurs that involves a plethora of agents from states, to networks of norm entrepreneurs, international organisations and organised interests, who induce norm breakers to become norm followers (Finnemore and Sikkink 1998: 902). From a rationalist perspective, it might be postulated that agents

act strategically to adopt new norms following a means-ends calculation of possible failure to adopt or adhere to any new norms given their own goals.

The final stage of the norm life cycle is that of diffusion (compliance with the norm) – whereby the norm is embedded within a structure (institution) and conformance to it becomes widespread. Again how powerful a norm becomes depends on the nature of its diffusion and more specifically the nature of an agents' compliance with any new norm. From a rationalist perspective a norm is diffused and compliance occurs through coercion, bargaining, and strategic calculation – as a means to an end – instrumental adaptation takes place and no change of identity occurs. From a constructivist perspective a process of internalisation (through socialisation) occurs whereby the norm becomes taken-for-granted and compliance with it becomes automatic, following a process of persuasion and interaction whereby agents are convinced of the 'appropriateness' of the new norm (Checkel 2001: 556).

At different stages of the norm life cycle actors are motivated by different aims and objectives and the mechanisms for compliance differ, although there does exist significant overlap. At the norm emergence stage, (from a constructivist perspective), actors can be motivated by altruism, on the one hand, or ideational commitment on the other. The former indicates the promotion of a norm for the benefit of others (and not necessarily the norm entrepreneur) whilst the latter indicates the promotion of a norm because of a belief in both the ideals and values embodied in the norm (again even though a norm might have no effect on the actor's well-being). From this perspective actors construct norms not for instrumental reasons, but because they understand the behaviour to be desirable and appropriate. In terms of norm cascade and diffusion, actors might be motivated by reasons relating to identity and legitimacy. Identity is particularly important in this case as any contribution to norm emergence, and to compliance with a norm, fundamentally reinforces a sense of 'self' vis-à-vis the international community – and an institution's standing in that community as a global actor. In addition, adaptation of norms by many countries or actors and interests within a region (e.g. Europe) may occur due to "peer pressure" among actors, who might comply for reasons of legitimacy and conformity.

From a rationalist perspective norm entrepreneurs are motivated by 'strategic self-interest', and maximizing their own utilities through "changing the other players' utility function in ways that reflect the normative commitments of norm entrepreneurs" (Finnemore and Sikkink 1998: 910). Actors construct and comply with norms because norms help them get what they want – in behavioural terms it helps them maximizise their utility. At the norm cascade and diffusion stage the motivations are of materialistic self-interest, whether that be of an economic, political or strategic nature. Other motives for promoting a norm might include the maintenance of the *status quo* – in particular if this gives the norm entrepreneur leverage, control and power over others in the international arena in relation to a specific issue or channel of policy making. At the cascade and diffusion stage actors may have no choice but to comply if norm entrepreneurs hold a monopoly over a key resource and institutionalise such a resource, (and the norms stemming from that) at global level[7].

Another reason for norm compliance amongst various actors, is the current knowledge base or, or put another way, the existence (or non-existence) of prior norms in a given issue area. This is particularly important given the nature of the development of the

Internet, ICANN and Internet policy – and the late involvement of many actors, including the EU, in the formulation and promotion of norms for Internet governance and regulation. If norm entrepreneurs, through their expertise, create and institutionalise norms in an area where other actors and entrepreneurs have a limited knowledge and expertise, and where prior norms did not exist at national, regional or global level, then conformity and compliance may very well be the only option, until those very norms are collectively understood, through a process of socialisation within the new institution. Once cascaded or diffused, only then might such norms eventually become the prevailing standard of appropriateness against which new norms emerge and compete for support (Finnemore and Sikkink 1998: 895).

In summary, our framework provides a lens through which we can explain the emergence, development and diffusion of norms for Internet governance at the global level, contextualised in the evolving ICANN-EU relationship. Tracing the emergence of such norms through their norm life cycle, and analysing the main motives of the actors involved, alongside the dominant mechanisms for diffusion, will allow us to explain how knowledge has been generated, preferences formed and decisions taken. On a theoretical level, our approach attempts to incorporate the 'strategic' nature of social construction to illustrate the connection between rationality and norms, through an empirical investigation of norms in the area of Internet governance.

Norm Emergence: The Creation of ICANN

As was noted in the introduction, the gradual, but steady, emergence of the Internet from the shadows of the academic and scientific communities throughout the 1980s brought to light a complex and expanding technical system as a valuable (potentially invaluable) economic, social, and political resource. The expansion of the Internet to a wider user base was still some distance off, though key requirements of such a transition, notably the creation and development of new "backbone" infrastructural resources and the provision of services related to access and content, became readily apparent to leading technical, commercial and policy-making interests in the USA (initially) and, thus, their delivery was addressed. The rapid emergence of a series of user friendly innovations in the early part of the 1990s - notably the World Wide Web, browsers, and point and click navigational technology - further set the ground for the potential adoption of the Internet by the broadest possible range of users. International expansion in the number of Internet users meant that it came to be considered as a global technical, infrastructural and economic system. In very practical terms, the growth of the Internet created several management challenges related to its innate technical and operational features. Whilst it is undoubtedly the most outstanding example of a dispersed, decentralised, communications network - suggesting the existence of possibly insurmountable barriers to its effective global management - the Internet, in respect of a number of its essential functions is hierarchically ordered, thus making the job of coordination and management of these core features not only technically possible, but essential to ensure its orderly expansion and growth. In brief, in order to be connected to the Internet every computer must be assigned a numerical identifier, known as an Internet Protocol (IP) address. Very simply, IP addresses allow computers to locate, and be located by, other users and thus communicated with across the Internet. However, given the fact that, for humans, numerical addressing is less attractive (less immediately recognisable and thus more prone to error, for example) than alphabetical addressing, a system of

mnemonic addressing (called the domain name system) for each computer, "front ends" equipment attached to the Internet. Due to the hierarchical way that the Internet is structured, both IP Addresses and the top level of the domain name system have been historically centrally controlled at its pinnacle or "root" (see Froomkin, 2000, pp 8-13; Weinberg, 2001: 3-5).

As the Internet grew, more and more users, by definition, needed to obtain (and thus desired) an IP and domain name-ordered address to facilitate connection. The more the Internet expanded and captured the imagination of a wider public, the more valuable, as resources, IP addresses and domain names became. In particular, as the potential of the Internet to become a global electronic marketplace became realised, the possession of an identity (through an easily recognisable, memorable, address) became a vital trademark issue for firms wishing to establish a presence in a burgeoning online commercial scenario which, in the latter part of the 1990s, appeared to possess unbounded potential.

In situations where assets and their associated activities grow to assume international functional and economic significance, questions inevitably arise about how they will be governed and managed at the international level and, unsurprisingly, such questions arose regarding the creation and management of IP addresses and Top Level Domains (TLDs) in the mid to late 1990s. The Internet is possibly unique in the history of the global political economy since though the key technical and human resources at its heart were originally (and still are as noted) located in the USA, to develop further strategic value, the Internet, as a communications network, needed to expand globally by definition (a network assumes greater economic and social value, in theory, the more users there are connected to it).

However, ensuring global expansion would inevitably require at least the promise of sharing, (through internationalisation) though not necessarily equally, its governance and management arrangements. Whilst this task, if pursued, would present a major international communications policy challenge, it was made even more demanding due to the management arrangements which had grown up around the Internet historically, when it was a much more exclusive, narrow (in terms of geographic and occupational user base) system. Here, the key technical functions of the domain name system, in particular the technical maintenance of the root zone file and the authorisation of new TLDs were devolved by the US government to the University of Southern California, Information Sciences Institute. From this, the Internet Assigned Numbers Authority (IANA) emerged - essentially an epistemic community of computer science experts, within which Jon Postel was a central figure (see Klein 2002: 198-99) - from the Internet's early development as a government-funded system run, in significant part, by the US computer science academic community. Three other important epistemic communities grew up in this system - the Internet Society (ISOC), the Internet Engineering Task Force (IETF) and the Internet Architecture Board (IAB)[8] - and with significant common membership were to play an important role in the subsequent evolution of governance arrangements for the Internet.

The administration of the Domain Name System (DNS), by contrast, was placed in the hands of a private US company, Network Solutions Incorporated (NSI), by dint of a contract with the US National Science Foundation (NSF) due to expire towards the

end of 1998. NSI controlled a registry containing the details of organisations and individuals which had registered a domain name in the top level of the domain name hierarchy and undertook the act of registering applicants in the (then) three most important Top Level Domains under its control: .com, .net. and .org[9]. Both functions were pursued on a commercial, profit-making basis. The generic TLD system evolved alongside, but was separate from, a system of country code top level domains in which organisations could use national identificatory mnemonic labels as the basis for their Internet presence (see Mueller, 1998).

As the 1990s unfolded, it became clear that the rapidly changing nature of the Internet required a more formal, concerted and long term set of arrangements for coordinating the essential functions around IP addresses and TLDs. There was clearly an important set of strategic interests to be pursued and secured through having a role in determining the initial shape and functions of such a new governance structure. The process by which a new organisation was created for this purpose - eventually, in 1999, to be named the Internet Corporation for Assigned Names and Numbers (ICANN) - and the subsequent period of operation of the Corporation provides an interesting case of how norms have been framed, developed and diffused in new global level governance bodies. From a European perspective, the development and functioning of ICANN provides important evidence of the relationship between new global international organisations and well-established ones, notably the EU. In particular, applying our theoretical model contributes to an illustration of the extent to which the norms of ICANN have been accepted and diffused to the EU level, as are attempts made by the EU to shape ICANN policy norm development in its own interest.

As might be expected, the early part of the framing process of norm formation for ICANN was dominated by US parties. However, rather than the US Federal government or Internet business interests assuming the role of norm entrepreneurs, it was the well-established and powerful technical community which led the way. The Internet Society instigated a process of networking which culminated in the agglomeration of a diverse, international group of policy elites with the job of developing a putative system for the global governance of the Internet domain name system. This group contained, *inter alia*, representatives from the technical community (the IETF, ISOC), multinational business, the US National Science Foundation, and established global governance organisations in telecommunications policy (The International Telecommunications Union (ITU)) and intellectual property development (the World Intellectual Property Organisation (WIPO)). It was given the name the International Ad Hoc Committee (IAHC) (Mueller, 2002: 142-43). The deliberations and negotiations which took place in the IAHC forged a coalition of interests which eventually produced a global Top Level Domain Name Memo of Understanding (gTLD-MOU) detailing how Internet governance would be developed. The plan reflected a compromise between the different parties to the negotiations and was notable for exhibiting traits attributable to the well-established regime of telecommunications governance. As Mueller (2002: 144) points out, its “language attempted to situate the Internet’s name and number resources within the normative principles used by the ITU”. The gTLD-MOU proposed that the domain name registry should be an internationally shared resource, that the process of registering top level domain names should be an internationally competitive, commercial activity; and that there should be a strong trademark protection mechanism embedded

in the new system. The accompanying governance structure was to be international in nature, with the competing domain name registrars incorporated by a non-profit Council of Registrars under Swiss law and the gTLD-MoU itself hosted in the ITU, also in Switzerland. The governing board of the new organisation was to be dominated by the interests which would set it up (IAHC Memo of Understanding, 1997).

The launch of the gTLD-MOU marked a period of more notably politicised norm framing and norm entrepreneurship in Internet governance. The Memo had no internationally binding legal status and it soon become clear that its proposed core regulative and prescriptive elements were the subject of forthright contestation (see Weinberg, 2000: 7-8). At a very practical level, the IAHC had deliberately excluded NSI from the negotiations on the future structure and governance of the domain name system. However, NSI had established a powerful and strategic position in an activity whose present, and more importantly, future economic value was very clear, and it was consequently intent in securing as lucrative a stake as possible for itself in any newly structured top level domain market. In fact, its de facto control over the three TLDs - .com, .net and org - motivated it to assert property rights over them. The confrontational politics of the situation were highlighted by the fact that its contract with the NSF was due to expire around a year after the signing of the gTLD-MOU.

The US government became aware of the controversy surrounding the process of norm framing and norm contestation related to the future governance of the Internet and entered the policy fray, becoming, in the process, a powerful and, ultimately, the most decisive and influential norm entrepreneur. This heavyweight political intervention arose from the concern with which the US government began to view the ongoing deliberations. On the one hand, it was alarmed at the influence which the old telecommunications order, in the shape of the ITU, was apparently exerting on process. For most of the 1990s, it had been an open critic of what it saw as the ITU's unwillingness to reform the international telephone accounting rate system and regarded the ITU as a significant structural impediment to the liberalisation of the global telecommunications sector (see Cowhey, 1998). In this, it was supported by large, pro-liberalisation, US multinational business interests in ICT, many of which initially did not consider the Internet of strategic commercial importance, but gradually became aware of its commercial potential and, simultaneously, its possible threat to their well established intellectual property and trademark interests. The US government also noted the growing unease of the NSF at being placed at the centre of an increasingly acrimonious struggle between the gTLD-MOU constituency and NSI. It is also important to note that a range of commercial interests in the shape of alternative domain name registries and smaller Internet Service Providers from the US and beyond, also opposed the Memo (Mueller, 2002). As a consequence of these factors, it decided to directly and decisively intervene in the formative process of Internet governance.

In 1997, the US government publicly declared its opposition to the gTLD-MOU and charged the Department of Commerce (specifically its National Telecommunications and Information Administration) with the task of providing an alternative set of proposals. This norm framing exercise had a very practical manifestation in the shape of, in the first instance, a discussion Green Paper (US Department of Commerce 1998a) and subsequently, a non-binding White Paper statement of policy (US

Department of Commerce 1998b). The White and Green Papers generated a short period of intense and complex deliberations and negotiations as a result of which a set of 'logics of appropriateness' eventually emerged to underpin the creation of a new global organisation for Internet governance in the shape of ICANN. This period of norm framing was clearly driven by the *coercive* norm entrepreneurship of the US government whose actions served to secure enough agreement for the formation of (what became) ICANN to occur. First, in the Green Paper, the US unambiguously declared its ultimate ownership of and authority over, the facilities which underpin the IP address and TLD name system (i.e. the 'A root server') (Froomkin, 2000, pp18-19). Second, it stated its intention to hand over to the international private sector the functional management of this system in the shape of an unspecified not-for-profit company. Within this regulatory system, the Green Paper proposed to create competing registries, as well as competing registrars[10]. The paper was outstanding in its lack of recognition of the IAHC and its gTLD-MOU.

Aside from the assertiveness of the US government, the Green Paper provoked a debate in which it became clear that the norm framing of the US government was open to serious contestation. In particular, there was concern, on the one hand from the technical community, about the new degree of government influence in evolving Internet governance, to the extent that the original policy frame of private sector leadership and self-governance was in danger of being abandoned. On the other, non-US governmental (notably the EU) and business interests feared that the original international policy norm frame of Internet governance was also being, de facto, forsaken as part of a US-centred fait accompli. However, very importantly, the Green Paper's proposals were supported by a small, but very powerful, group of elite ICT business interests dominated by IBM and MCI. As Mueller (2002: 168-172) clearly illustrates, these companies formed a close, mutually supportive, relationship with the US Clinton administration and used their influence within a lobbying group formed in 1996 called the Global Internet Project (GIP)[11] to propound the Green Paper's agenda. A vital part of this was the process of personal negotiation which took place between the US Federal government representative Ira Magaziner, key members of the GIP and elites within the technical community. This process of negotiation gradually won acceptance by the technical community of a set of norms for ICANN focused on it being a continuation of IANA; it being incorporated in US law; its management being internationally constituted and representative; it operating through self-regulation where government would remain outside the organisation and its processes.

Further concessions were afforded to trademark interests and the European Union (see below). Throughout, the promulgation of norms was platformed on the presentation and (re)consideration of material self interests by the parties involved. By the time the US government followed up the Green Paper with a White Paper, it was clear that a tipping point in norm creation for Internet governance had been reached. A critical mass of interests - business, governmental and technical - broadly accepted the above series of principles upon which ICANN would be based. However, in its White Paper, the US government, recognising the problem of appearing excessively unilateralist (see Leib, 2002: 166) threw the process of finalising the details of an additional number of (what became) ICANN's regulative and prescriptive norms open to debate and resolution by what was described at the time as "the Internet community" meaning, broadly, anyone or any organisation with an interest in its evolution. In particular, a call was made for a consensual decision to be reached on issues of the

structure and composition of the (unnamed) new organisation (Froomkin and Lemley, 2001: 6), notably its governing board and modus operandum. Thus, simultaneous to the cascading of a new set of norms embodying Internet governance, another short, deliberative, non-government organised, phase in the process ensued which was given the name the International Forum on the White Paper (IFWP). Whilst there were undoubtedly "constructivist" elements to the IFWP, these were soon consumed by more rationalist concerns which ultimately determined the course of events here.

The Forum was time constrained, in that it had less than a year to come to an agreement before the point of termination in 1998 of the contract related to the management of the IP address and TLD name system between the US NSF and NSI. A series of meetings of the IFWP occurred at which a norm framing process developed through the exchange of views between different interest groups from business, technical and civil society quarters on how (a putative) ICANN should be constructed. However, the process soon gained notoriety for the conflicts it generated and the alterative agendas (or frames) which were being simultaneously pursued. As Mueller (2002: 176-79) clearly shows, a policy axis emerged between the GIP business grouping and the IANA-led technical community to design the management board of (what became) ICANN according to a structure which would see their interests maximised ahead of those of a broader range of commercial and civil society ones. Their generally powerful position in this "pathological" move for control of ICANN's management structure was further assisted by the fact that they were able to deliberately infiltrate, undermine, destabilise and, ultimately, scupper the IFWP process (see also Von Bernstorff, 2003: 517).

The final major negotiating hurdle to be overcome was to reach agreement with NSI, which viewed the process to this point with concern, fearing a diminution of its dominant position in the TLD name registration business. However, as a powerful company in its own right, with an established position in the existing TLDs and a close association with the US government, NSI was able to secure a lucrative material stake for itself in the governance pattern which evolved. In a final agreement with the US government, it acquiesced to facilitate competition in the TLD registrar market; to separate its registrar and registry business; and to recognise and sign a contract with ICANN (Mueller, 2002: 183). In return, NSI was aware that its dominant, well established, presence in the domain name registration market would allow it to maintain a secure future commercial position.

The creation of ICANN in February 1999 provided an institutional platform for the cascading and diffusion of the key regulative and prescriptive norms for Internet governance, which had been framed and developed over a short but intense period of persuasion and negotiations in the latter half of the 1990s. ICANN was established as an international, not-for-profit organisation under Californian law with responsibility for the global management of IP address space allocation and protocol parameter assignment; Internet domain name system management; and Internet root server system management. Whilst keen to stress initially that it was an organisation whose remit lay in technical coordination and management, it was clear that its role went beyond this to cover issues linked to the broader governance of the Internet's key resources, including public policy (Klein, 2001: 338).

The Process of ICANN's formation and the EU

The process leading to the emergence of ICANN as a new international organisation for Internet governance was one with which the EU had considerable involvement. The way events unfolded provides a useful illustration of how the process of norm emergence and cascading in new global policy contexts affects regional international organisations, such as the EU. Whilst Europe had developed a relatively strong position in telecommunications historically, the early significance and emergence of the Internet went largely unnoticed (authors' interview). Through much of the 1980s and 1990s, EU member states had undertaken a process of steady liberalisation and Europeanisation of their telecommunications sectors and, as a consequence, the EU level assumed a position of some significance.

In terms of the broader "leading edge" developments in Information and Communications Technologies, the EU commenced a debate on the Information Society in 1994 with the release of the Bangemann Report, soon followed by the launch of the first phase of an Action Plan for the Information Society (European Commission, 1994). Neither of these developments showed any great recognition of the burgeoning presence of the Internet. In technological terms, Werle (2002: 146) argues that around this time, the European Commission, member state governments and the European computer industry were concentrating their efforts around the Open Systems Interconnect (OSI) standards suite for, in considerable part, industrial policy reasons and thereby neglected developments in the Internet's key technical protocols, TCP/IP. At the national level in the EU, around the mid-1990s, levels of Internet penetration were comparatively low, as was general awareness of the Internet's significance in policy-making circles.

Thus, it was with some surprise, interest and, eventually alarm, that European communications policymakers learned of the significance of the events unfolding in US policy circles. In this respect, the entry of the EU into the norm formation process of ICANN was in the first instance a reactive one. Equally important was the policy entrepreneurship (Cram, 1994) shown by the EU, through the European Commission, in this policy area. Since the Internet did not possess any historical technical, economic or institutional roots in Europe's national contexts, it was comparatively easy for the Commission to adopt a helmsmanship role. Equally, the global nature of the Internet suggested that the European Commission's designated function as a representative of its member states in international negotiating fora could be deployed to fruitful effect. The EU, through the Commission, was possibly the best way of securing Europe's interests in this important scenario of globalisation, as well as acting as a shield against its most undesirable effects. However, the extent to which the EU would be able to participate as a norm entrepreneur in the framing of ICANN was open to considerable doubt, given its limited knowledge of the policy area.

The European Commission reacted to the emergence of the IAHC with some concern and key members of its Information Society Directorate attempted to mobilise an EU response. As has happened many times in EU ICT policy-making, the Commission liaised closely with, and drew on, the expertise of business interests (Simpson, 2000) - in this case, those involved in the European country code domain name industry and European Internet Service Providers primarily (authors' interview). As a result, the Commission commenced its norm entrepreneurship by directly lobbying the US government in order to express opposition to the IAHC and to bemoan the lack of European involvement in the evolution of the process. The reaction to the Green

Paper was equally negative, the Commission declaring it a clear attempt by the US to unilaterally impose policy authority over the Internet (European Commission, 1998a).

Key differences between EU and US approaches to the regulation of ICT also became apparent at this juncture, as the Commission worked to introduce a different policy frame into the evolving process of norm contestation. Whilst the EU has developed a broadly neo-liberal policy outlook and series of practices in the ICT area, the EU neo-liberal policy model is distinctly different from other regions, including the US (see Venturelli, 2002). These differences of approach have been noted to resonate, even, in international business fora, such as the Global Business Electronic Dialogue (GBDe) (see Green-Cowles, 2001). Newman and Bach (2001: 3), with regard to self-regulation, note a dichotomy between "*legalistic self-regulation* in the US and *coordinated self-regulation* in Europe". In our case, the creation of a new organisation for global Internet governance which would operate outside the influence of governments went against the grain of EU thinking (EU internalized norms) on the need to have regulation not only to protect, but to *promote*, the public interest. However, the EU was to achieve only limited success in promulgating this policy frame in the post Green Paper deliberations since the White Paper made it clear that governments would only be able to participate in ICANN's processes in an advisory capacity. This became manifest with the creation, in 1999, of the Governmental Advisory Committee (GAC), whose role in the diffusion and implementation of ICANN norms is discussed below.

The White Paper provided other indications of how the EU had been able to exert some leverage in the norm framing process leading to the creation of ICANN. The decision of the US government to leave to further deliberation by the international community the details of ICANN's structure and functions (not least the creation of new TLDs) suggested something of a "tactical withdrawal", on the surface at least. Similarly, the declaration that the new organisation's dispute settlement procedure would be overseen by the World Intellectual Property Organisation (WIPO) was part of the norm frames promoted by the EU. Nonetheless, in a response to the White Paper, whilst the Commission acknowledged progress on the recognition by the US of the Internet as a global resource it cautioned that more progress on this matter was necessary (European Commission, 1998b).

As the previous section has indicated, the international deliberative nature of the final stage of the norm formation process of ICANN, manifest in the IFWP, was undermined and superseded by the exertion of their material interests by the IANA-GIP policy axis. Within this process, the EU played a relatively minor, though significant, role. By this stage, Mueller (2002: 180) argues that the EU had become part of a coalition which (in the language of our theoretical model) broadly accepted the IANA-GIP norm frame. However, as part of this, the European Commission was able to successfully exert its own material interests to gain three seats on the Interim Board of ICANN in return for its support (authors' interviews[12]). Overall, nonetheless, the EU, whilst exerting some influence on the norm framing process of ICANN's conception, played a minor role. In particular, ICANN was established on US territory in US law. The US government illustrated its ultimate control over the Internet's key resources and its power in shifting the course of policy events related to their governance terms. Most importantly, the EU had to accept the launch of governance, in the form of self-regulation, with which it was both unfamiliar and

uneasy. The relegation of its possible influence in the day-to-day affairs of ICANN to a mere advisory capacity was a directly related and equally significant cause for concern.

ICANN in Operation: Norm Cascading and Diffusion and the EU.

This section examines the extent to which ICANN norms have cascaded and diffused through an examination of its relationship with the EU. Using ICANN's GAC, on the one hand, and the proposal by the EU of a .EU TLD on the other, we argue that there is evidence of the EU having both accepted the regulative and technical norms of ICANN and, equally, having contested certain of its prescriptive norms, with varying degrees of success.

Since the inception of ICANN, the EU has monitored its performance closely and has been overtly critical of the Corporation on numerous occasions. The European Commission expressed concern that ICANN's staff base was dominated by North American personnel. It was also critical of ICANN's slow progress in expanding the number of new generic TLDs (European Commission, 2000). The EU Council of Ministers went as far as to admit, in 2000, that the EU's policy goals in the area of domain name management had not been met (European Council of Ministers, 2000).

The GAC

The GAC was created with the remit to "provide advice on the activities of ICANN as they relate to concerns of governments, multinational governmental organisations and treaty organisations, and distinct economies as recognised in international fora, including matters where there may be an interaction between ICANN's policies and various laws and international agreements and public policy objectives" (ICANN 1999: 2). The advisory nature of the GAC was novel in terms of the public policy traditions of the EU, though its existence might be regarded as something of a compromise which, from the EU's perspective, gave it a policy foothold in ICANN's affairs which could be exploited, if required. There is evidence that the EU, through the Commission, has played a prominent role in the evolution of the ongoing norm framing of the Committee from the outset. At its inaugural meeting, the EU put forward a paper which significantly influenced subsequent draft operating principles which were agreed for the GAC (GAC, 1999:3). The EU has, when deemed necessary, indicated to ICANN that it does not have a remit to act unilaterally (in reference to concerns raised in the GAC over the under-representation of significant parts of the world in the Corporation) (GAC 2001: 7). It has called for more deliberation and interactivity between GAC members in the interim between ICANN board meetings suggesting the need for a more pro-active monitoring norm to be developed (GAC 2001a: 18). On another occasion, the EU suggested directly to the ICANN President the need to "better mesh its advisory function with the Board's decision making function" (GAC, 2001b :7).

The first three years of ICANN highlighted a series of problems with both the structure of the Corporation and its methods of operation and like many new experiments in global governance it has been the subject of significant criticisms. Whilst these largely go beyond the confines of this paper, as regards issues such as representativeness, the process of creating new generic TLDs and its relationship with

country code TLD administrators in particular, there is evidence of an ongoing contestation of several of ICANN's key regulative and prescriptive norms. As a consequence, the ICANN Board itself launched a major review of its structures and procedures in 2002 which, in part, addressed its relationship with governments through the GAC. The GAC at this point declared that "three and a half years after its establishment there is a need to specify ICANN's mandate and review and clarify its mission and the specific functions for which it is responsible" (GAC 2002a: 1).

Given the historic origins of the GAC, this could have been expected to trigger a period in which the norms underpinning ICANN were opened to a new phase of deliberation in which the EU, as a norm entrepreneur, strove to frame agendas to result in a more interventionist role for government in ICANN. However, whilst this process is still evolving it appears, interestingly, that this has not been the case. Whilst the GAC itself has begun to speak of the need to create a public sector-private sector *partnership* relationship signalling a possible norm shift, this merely echoed the view put forward by the ICANN President in a recent Report, suggesting that ICANN's early scepticism of government involvement (authors' interviews) has given way to a more realistic vision of how the Corporation should evolve. In terms of norm framing, it is interesting to note that, as early as 2000, the EU's principal negotiator with ICANN, Christopher Wilkinson, described the ICANN-GAC relationship as "the first example of a public-private partnership....sometimes referred to as "Co-Regulation" where the scope of industry self-regulation is guided and constrained by a parallel input from the public authorities" (Wilkinson, 2000: 6), a view which was contested at the time by ICANN. Whilst the European Commission, in the early days of ICANN, cautioned that its performance (in particular the appearance of any disagreements with the GAC) might require a re-examination of the GAC-ICANN relationship, a Commission official has recently declared that any divergence of opinion is best tackled by *further dialogue* (deliberation) rather than the creation of a right of veto for the GAC (strategic/rational) (GAC 2002b: 11). This would suggest that the "advisory norm" framed at the inception of the GAC has, over a relatively short period of time, been assimilated by the EU.

By contrast, other members, notably Canada, appeared to advocate a more hands on approach in the form of a so-called ICANN Council which would emanate from the GAC and "act in instances of ICANN failure or where there was an obvious need for government intervention" (GAC 2002b: 14). In a statement on ICANN reform in 2002, in response to ICANN's own Evolution and Reform Committee paper on the same subject, a majority of GAC members, including the EU, expressed support for the GAC Chair to sit on the ICANN Board in an ex-officio capacity. Notably, this proposal was opposed by France, Spain and Germany, which along with other EU member states, sit on the GAC. France and Germany also explicitly dissociated themselves from other elements of this GAC response. In particular, they insisted on the inclusion of a counter declaration, placed in an annex to the response document, that, "Due to the evolutionary nature of ICANN's mission, a different organisation of government participation, on a different legal basis, may be contemplated in the future". Alongside this they noted that other international organisations - not just ICANN (here the ITU, OECD and WIPO were specifically mentioned) - have a right to operate in ICANN's sphere of competence (GAC 2002b: annex 1). This suggests that the cascading and diffusion of the prescriptive norms which frame ICANN as *the* central Internet governance organisation have only been diffused in an instrumental

sense to two of the EU's most powerful member states. The EU attempts to secure a common position among its members states in a group known as the "Internet Informal Group" (authors' interviews), though this it has not always been able to secure, clearly. The fact that the EU sits alongside many of its member states in the GAC has thus illuminated the scope for policy divergence in this instance and, norm diffusion aside, may present a significant problem of policy coordination in the future.

The GAC has expressed the view that it should maintain a distanced, advisory, role and that in instances of disagreement with the ICANN Board a (somewhat constructivist) process of negotiation and deliberation should occur which if unsuccessful would still place ultimate self-regulatory decision-taking authority with ICANN. The caveat here, however, was the assertion that, in such instances, national governments would be able to take decisions in line with their national laws to protect the public interest, suggesting, that (in somewhat rationalist fashion) ICANN might well be sidelined and ignored should any issue prove controversial enough (GAC 2002b pp29-33; see also Wilkinson, 2002: 3). As part of current ICANN-GAC reforms aimed at the creation of the aforementioned public-private partnership, a series of GAC-ICANN liaisons were created to facilitate two-way communication between the relevant ICANN constituency on policy matters[13]. The GAC also created a series of working groups to engage with the appropriate ICANN Supporting Organisations and Committees (GAC 2003: 3)[14]. All of this suggests a much closer and probably, de facto, influential role for government in the affairs of ICANN, given ICANN's, at times, much criticised performance to date. Consequently, new functional norms to this effect may well be framed, cascaded and diffused, an outcome likely to sit well with the European governmental interests which have expressed support for co-regulatory methods in the recent past, notably in telecommunications regulation. However, doubt has been cast over governments' willingness to devote the necessary resources to the GAC which this would require, at present at least (authors' interview).

The .EU Top Level Domain

As already noted, the TLD has historically developed along the two lines of generic and country code names, respectively. The creation of ICANN and the emerging new sphere of Internet commerce presented, for the EU, an uncertain environment in a number of respects. The electronic commercial landscape was unusual since there was uncertainty about the extent to which the traditional pattern of state and regional international governance could be transposed and replicated in cyberspace. The new regulative and prescriptive norms ensconced in ICANN and the rather marginal role played in the process by the EU motivated it, after the Corporation's creation, to attempt to assert European interests in a number of ways, one of the most outstanding of which has been the creation of a European Union TLD, known as .EU. The initial move by the EU to create .EU was viewed with caution by ICANN, soon allayed by the strong support which the initiative received from European Internet business interests - through a collective grouping known as EC-POP - which interacted closely with the European Commission on the matter (authors' interview). An important question soon arose over where this unprecedented international regional domain name would be accredited since it did not appear to fit with the norms of the existing bi-dimensional domain naming system. However, the .EU domain was justified by drawing on the International Standards Organisation (ISO) whose Maintenance Agency had reserved "EU" as a code which could be employed to represent the

territory in any suitable instance. The European Commission, on this basis requested ICANN to delegate a .EU TLD (confirmed by authors' interviews). As things transpired, the process of ICANN's validation of .EU, though potentially complicated (since the EU is not a country per se), turned out to be relatively straightforward. After studying the matter and undertaking some discussions with the European Commission, the ICANN board passed a resolution agreeing to the delegation (authors' email[15]). As a result of this, the EU was able to frame a new norm into the TLD naming system.

Equally interesting here was the EU's motivation for creating the .EU TLD. The process not only required interaction with ICANN but also needed legislation-making within the EU itself. The Regulation eventually produced on the matter argued that .EU would raise the profile of the Single European Market and would act as an effective complement to existing national ccTLDs (European Parliament and European Council of Ministers, 2002). The rising importance of TLDs as trademarks might also be attractive to companies wishing to trade in cyberspace with an EU label. The .EU initiative can be viewed as an attempt by the EU to establish and assert a European Union "territory" and "identity" in the electronic marketplace (see Halpin and Simpson, 2001) in response to its retarded realisation of the importance of the Internet and its minor policy role in ICANN's formation

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Whilst in terms of our model the policy initiative, on the surface, appears to provide evidence of an attempt to assert a new policy frame in international Internet governance, an examination of the process of establishment of .EU to date reveals a more complex picture. In particular, the EU in its pursuit of .EU adhered to newly established international norms since ICANN was accepted as the only organisation through which the new TLD would be able to achieve status internationally. The EU regularly liaised with ICANN and updated its GAC on the progress of the .EU regulation through the EU policy-making process (GAC 2000a: 5; GAC 2002a: 6). The specifics of the .EU Regulation indicate that ICANN-developed norms of governance are likely to characterise the management of the .EU TLD since the EU has asserted that "Internet management has generally been based on the principles of non-interference, self management and self-regulation...these principles should also apply to the .eu ccTLD" (European Parliament and European Council of Ministers, 2002: paragraph 9). The EU has awarded a contract to a not-for-profit registry (EURID) selected by a process of competitive tender and the registering of names in .EU by accredited registrars will take place competitively. At the time of writing, a set of public policy rules for the operation of the registry have been approved in draft format by the Communications Committee of the EU member states (10 March 2004), and it would be of surprise, given the compliance with ICANN norms witnessed so far, if the rules signalled any sort of significant departure[16]. EURID has yet to complete negotiations with ICANN for recognition of .EU (to put .EU on the "root") but this should follow once the Commission adopts the Regulation and the public policy rules are in place. The European Commission can be regarded as having played a significant role of norm entrepreneurship in the norm diffusion process of .EU and ICANN norms for ccTLDs in general. For example, it agreed a Resolution encouraging its member states to implement the GAC devised principles on the management of these ccTLDs (GAC, 2000b: 7). Nonetheless, at a practical level, whilst the late 1990s .com euphoria suggested that there would be considerable commercial value in TLDs, the subsequent downturn casts a doubt over how popular

.EU will be in practice and how it will fare in respect of firms' ability to choose to adopt a national ccTLD or even to select a generic TLD option instead of .EU.

Conclusion

In this paper we have shown, using as examples ICANN's GAC, on the one hand, and the proposal by the EU of a .EU TLD on the other, that the EU has both accepted the regulative and technical norms of ICANN and, equally, that it has contested certain of its prescriptive norms, with varying degrees of success. The EU gradually, after a somewhat delayed entry to the norm emergence process, began to influence and assert alternative frames for the governance of the Internet at ICANN level, whilst also diffusing key policy norms (such as self-regulation), albeit in an *instrumental* fashion – as policy-makers within the Commission still view self-regulation as something of an *experiment* rather than a taken for granted logic for governing the Internet (authors' interview).

Having charted the emergence of norms which eventually became incorporated in ICANN, it is clear that each stage in the process was influenced by a variety of actors, motivations, and in terms of acceptance and diffusion of such norms, by both strategic and deliberative mechanisms. At the norm emergence stage (framing) there was clear contestation between the various epistemic communities and interests attempting to assert their 'logic' as the most appropriate for governing the Internet. Motives also varied – on a general level there was the technical and academic community with their more ideational (nonetheless strategic) led motives for 'framing' a governance structure for the Internet. By contrast, commercial interests exhibited more material reasons and motives for proposing alternative 'logics of appropriateness' for Internet governance. The controversy that surrounded the framing process led the US government to intervene – for *strategic* reasons – becoming, in the process the most decisive and influential norm entrepreneur. The US with the support of key domestic multinational business interests in ICT, dominated the norm framing process and was able to *coerce* agreement through its monopolisation and control over the Internet's key technical resources which, ultimately, after deliberations on the Green and White Papers, resulted in the formation of ICANN.

Within this formative process, the EU played a relatively minor role. It had aligned itself with the broadly accepted IANA-GIP norm frame, and as part of this, was able to successfully exert its own material interests to gain three seats on the Interim Board of ICANN in return for its support. Overall, however, whilst exerting some influence on the norm framing process of ICANN's conception, it played a peripheral role and was uneasy (and still is) about certain policy (self-regulation) and organisational norms (lack of governmental involvement) that had emerged to manage the internet. The EU was, however, forced to accept such norms, given the authoritative position of the US and its delayed entry in to the deliberative framing process. After the establishment of ICANN, and a somewhat turbulent period in which the Corporation has been subject to criticism, the EU has been able to develop a more effective and successful entrepreneurial role in the 'contestation' of certain organisational norms – and the proposals for alternative frames for Internet governance. The forum in which this has been achieved is the GAC, where it appears that the EU, through a process of "socialisation", has complied with the advisory function (norm) of governments, having achieved partial success in *persuading* the ICANN Board of the merits of a

public-private partnership 'frame' for the future governance of the Internet. The extent to which this will cascade and diffuse remains a matter of further deliberation within the GAC and investigation in the future.

In terms of the .EU TLD, the EU has accepted and internalised ICANN regulatory 'norms' as a matter of process and appropriateness (the fact that no realistic alternative exists to get a domain name on the "root", and thus operational and commercially viable, is significant). After its limited influence on the norm emergence process, the .EU initiative was launched for both 'strategic' and 'identity' reasons. Strategically, the EU wished to provide business interests with a European trademark for operating in cyberspace in order to carve out a territory for itself in the global internet market. In terms of identity, after the EU's minimal role in the norm emergence stage of ICANN, .EU could have created a feeling of 'self' vis-à-vis the international community with regard to the Internet – the Electronic European market – and an institution's standing in that community as a global actor.

A process of socialisation has occurred since ICANN's establishment, whereby norms have now been collectively understood and become the prevailing standard of appropriateness. Such a prevailing standard, however, is one against which new norms have emerged and compete for support – some of which, through persuasion, deliberation and communication have resulted in substantial reform of ICANN. Overall, ICANN, as an organisational platform, is still an institution where norms, though established and accepted on the 'regulatory front', are evolving and being contested with regard to policy and organisational form. It seems that given the advisory role of the GAC, any contestation and conflict between actors on its future form – will be resolved and diffused through dialogue and persuasion – not straightforward cost/benefit and lowest common denominator calculations (a characteristic of institutional contexts such as the Council of Ministers whereby governments have the power of veto).

On a theoretical level our study of ICANN and the EU in the emergence of norms for the Internet has demonstrated how the 'ought' has become the 'is' (Finnemore and Sikkink 1998: 916) – through a process of 'strategic social construction'. It has shown that at the different stages of the norm life cycle, 'norms' for the Internet have emerged through strategic and coercive mechanisms, and that actors have been motivated at each stage by a variety of what might be termed 'rational' and 'constructivist' reasons. Key elements in norm emergence, conformance and diffusion were, however, in this case, dominated by material, coercive and strategic interests in the final analysis, despite evidence of deliberation, persuasion and contestation between actors and entrepreneurs proposing alternative frames. The coercive mechanism was particularly important in the formation of ICANN – and initial cascade of norms for the Internet - although once institutionalised and collectively understood, this opened up a new space for contestation and change through *dialogue* – a process which is, at the time of writing, still ongoing, and likely to result in the proposition of alternative frames and logics for the governance of the internet, at the global level, in the future.

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ENDNOTES

[1] The research for this paper was undertaken as part of the UK Economic and Social Research Council-funded European Regulation of Internet Commerce (ERIC) project (Grant number RES-000-22-0356).

[2] A norm here is used to describe the 'collective expectations for the proper behaviour of actors within a given identity' (Katzenstein 1996: 5).

[3] A frame is a persuasive device used to 'fix meanings, organize experience, alert others that their interests and possibly their identities are at stake, and propose solutions to ongoing problems' (Barnett, 1999: 25 cited by Payne 2001: 39).
[4] Indeed Payne highlights a potential second weakness of the constructivist treatment of frames in that he argues that 'deceptive, domineering, secretive or powerful advocates might manipulate frames' (2001: 45)
[5] Here we adapt a non-linear, iterative and more explicitly social view of persuasive processes to give us a broader explanatory tool for understanding how actor preferences can be formed and framed i.e. Message senders can also be receivers, and vice versa (see Payne 2001: 42). This is more helpful to us in exploring the relationship between ICANN and the EU in norm formation, cascade and diffusion.
[6] For a discussion of what might constitute a 'critical mass' see Finnemore and Sikkink 2001: 901
[7] Conversely it might be seen as the only choice, albeit a constrained choice.
[8] ISOC is home to the IETF and the IAB
[9] There were five other TLDs
[10] NSI would be required to separate its registry and registrar functions.
[11] The GIP was made up of elites from 16 Internet, telecommunications and e-commerce firms.
[12] The authors conducted a series semi-structured interviews with Internet policy experts from the European Commission and European Parliament between January and March 2004.
[13] There are nine such liaisons with parts of ICANN such as its ccTLD Names Supporting Organisation, its Generic Names Supporting Organisation; Root Server Advisory Committee and At Large Advisory Committee.
[14] There are six working groups on issues such as internationalised domain names; gTLDs; ccTLDs and IP versions 6 (IPv6)
[15] email exchange with a former ICANN director (29.1.04) and a former ICANN CEO (29.1.04)
[16] An interviewee at the Commission has noted that "in the public policy rules, we have largely reflected the WIPO, ICANN rules"