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The Internet and Public–Private Governance in the European Union¹

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ABSTRACT

The EU plays a significant role in public policy aspects of Internet governance, having created in the late 1990s the dot eu Internet Top Level Domain (TLD). This enables users to register names under a European online address label. This paper explores key public policy issues in the emergent governance system for dot eu, because it provides an interesting case of new European transnational private governance. Specifically, dot eu governance is a reconciliation resulting from a governance cultural clash between the European regulatory state and what can be described broadly as the Internet community. The EU has customised the governance of dot eu towards a public–private dispersed agencification model. The paper extends the evidence base on agencification within trans-European regulatory networks and the emergence of private transnational network governance characterised by self-regulation.

The task of creating a global governance system for the Internet has exercised the minds of governmental, commercial and civil society interests since the mid 1990s (see Mueller 2002). The Internet is significant, and possibly unique, in having been considered from the outset of its relatively short commercial life to be most usefully developed and exploited as a global medium. In particular, the Internet's potential as a global economic resource, as well as a global electronic marketplace, placed a high value on securing a stake in new structures and processes for its governance, as well as the values and norms underpinning them (see Christou and Simpson 2004). Many of the features of the current phase of economic globalisation (Dicken 2003) are recognisable in the policy discourses and practices of governance of the Internet economy.

The emergence of transnational private Internet governance is strongly evident in the system designed for naming and addressing on the Internet, which has been at times controversial and hotly contested given its strategic economic importance. The paper focuses on the emerging international political economy of the governance of this Domain Name System (DNS) and the particular policy activity of the European Union (EU). Given the historical origins of the Internet in the technical and academic communities of the United States, the EU was not a forerunner in earliest moves to create a governance system for the Internet as it became increasingly commercialised. Nonetheless, the political-economic and social significance of the Internet having been realised, as the 1990s progressed the EU developed a series of policy positions on the future course of development which the Internet should take and a set of strategic actions stemming from these. For the EU, Internet policy has become a vital if not yet the central plank of its policy for the Information and Communications Technologies (ICT) sector, taking on in the process important domestic (that is intra-EU) and international (that is inter-state and global institutional) dimensions.

In the important policy area of the Internet DNS, the EU launched a policy initiative, in the late 1990s, seeking the creation of the dot eu Internet Top Level Domain (TLD). Dot eu provides a means for Internet users to register their names under a European label, thereby giving them a European address and identity on the Internet.

This paper explores the key features and implications of the process of policy design that have produced the still emerging governance system for dot eu, which provides an interesting case of new European transnational private governance. In particular, the system has drawn upon and will comply with when fully implemented a number of core practices for the governance of Internet domain names developed globally, most outstandingly, private interest self-regulation and alternative dispute resolution (ADR). Nevertheless, the governance of dot eu has also been customised in a European way – a form of European domestication – by the EU. When fully operational, the dot eu governance system will involve a trans-European regulatory network whose central, and arguably most important, node will be the European Registry for Internet Domains (Eurid), a private, transnational, not-for-profit, company responsible, *inter alia*, for the dot eu registry. The other private actors in the network are ADR providers, registrar companies, validation agents² and, finally, registrants under dot eu.³ However, the network will also contain a crucial and influential public dimension in the shape of the European Commission, acting as the agent of its Member States, responsible for ensuring the implementation of, and compliance with, the series of recently agreed public policy rules (PPR) to govern dot eu.

In theoretical terms, we account for the *structure* of the EU's governance system for dot eu through application and extension of work on the regulatory state (Moran 2002, 2003) in an era of globalisation. Our specific proposition is that the design of the dot eu system represents a significant, though only partial, movement towards post-regulatory state governance (Scott 2004). To explicate this position, we map the likely operational mechanics of dot eu by employing a conceptual framework which extends academic analysis in two areas. First, we consider work on self-regulation (Baldwin and Cave 1999; Price and Verhulst, 2000, 2005), an important part of the policy debate on Internet governance for at least the last decade. We argue that the dot eu governance system will function as a specific kind of self-regulation, containing somewhat paradoxical elements of mandatory delegation and public sector shadowing. Second, the paper draws on work on trans-European network governance (Majone 2000), which argues for the creation of public European regulatory agencies (Majone 1997) to undertake tasks in sectors requiring economic and social regulation in the face of perceived problems with the credibility of EU regulation. We argue that dot eu will function as a specific type of trans-European network governance in which hybrid public–private dispersed agencification is evident.

Overall, the creation of this novel type of governance system represents a reconciliation resulting from a governance cultural clash between the European regulatory state on the one hand and what can be described broadly as the Internet community on the other. Specifically, the EU has decided to create a system of regulatory governance for dot eu in which it has adopted and is internalising, a negotiated reading of the discourse and practices of self-regulation widely articulated in the Internet community – composed mainly of technical and commercial interests (see Mueller 2002) – and developed institutionally in well established (notably the World Intellectual Property Organisation) and new (notably the Internet Corporation for Assigned Names and Numbers) global forums (see Simpson 2004).

Agencies, trans-European networked governance and the European regulatory state

The development of a governance framework for the Internet has been inextricably linked to wider regulatory changes because of the exigencies of an increasingly globalised economy. Such changes have been characterised at domestic level by a shift to negative coordination in the regulatory state (see Jayasuriya 2001), based on economic governance through regulation (see Scharpf 1993, 1994, 1996) with an emphasis on the role of independent, though often publicly funded, agencies and institutions in ensuring credibility and a commitment to market order.

This decoupling of government from governance has, according to Tshuma (2000: 130), ‘entail[ed] the delegation of tasks by policymakers to other actors and institutions that are better able to implement global public policies . . . includ[ing] public sector agencies . . . but also business, labor and non-governmental organizations’.

Debates about the movement to a regulatory state have also taken place in the context of Europeanisation, involving in part the creation of new regulatory governance arrangements at the EU level (Green Cowles, Caporaso and Risse 2001), which have had varying degrees of impact on national Member States (Burch and Bulmer 2001). Strong claims have been made that within Europe there has been a replacement of the positive state with the regulatory state – a change from a directly interventionist approach to one which addresses market failure through rule-making using strategies of privatisation, liberalisation and re-regulation at the national level, delivered through independent public regulatory bodies and increased EU regulatory activity (Moran, 2002, 2003; Thatcher 2002a: 860; see also Seidman and Gilmore 1986; McGowan and Wallace 1996; Majone 1994, 1996, 1997). Majone (1997) has argued that the EU has played a vital role in the further development of the regulatory state in Europe shaping its own characteristic approach to core elements of the regulatory state in action, notably re-regulation and liberalisation. Here, the European Commission has emerged as a central agent of its Member States in this process.⁴

In the communications sector, the recent transformation of telecommunications provides a clear example of the growth of the European regulatory state (see Humphreys and Simpson 2005). This was deeply influenced by fundamental structural changes in the global political economy, which had important practical and ideological dimensions. The economic imperatives of globalisation were underpinned and infused by neo-liberal political ideology which advocated strongly the pursuit of nationally and internationally open and liberalised markets as the way to realise technical progress and broad economic and social welfare enhancement. A battery of new legislation has been created at EU level framing a more uniform (though by no means identical), liberalised set of telecommunications markets across the EU (Thatcher 1999). Consequently, European telecommunications has been transformed from a series of nationally compartmentalised, highly uncompetitive sectors based on public ownership into a competitive series of markets shaped and governed by a detailed regulatory framework, containing national (in the shape of a series of independent, though publicly funded, National Regulatory Authorities) and European level elements. Aside from its legislative dimension, the European Commission has played an important role in promoting the new multi-level approach

to telecommunications governance (Sandholtz 1998), as well as ensuring the implementation of the agreed framework. Throughout this process of change, the Commission has acted as a principal agent for its Member States (Thatcher 2001).

The emergence of the European regulatory state has called forth academic work on the concepts of trans-European networked governance and regulatory agencies in Europe (Majone 1997, 2000). This work has highlighted a concern over a lack of sufficient administrative resources and the increasing politicisation of the European Commission. A proposed solution is the creation of independent European regulatory agencies ‘embedded in transnational networks of national regulators and international organizations’ (Majone 2000: 274) to create subsidiarity, accountability and efficiency. The delegation of responsibilities raises issues of policy design and public accountability of the designated agencies, which are unlikely to act with complete autonomy either horizontally (in terms of being required to act in concert with others) or vertically (in terms of being subject to administrative review). An efficacious transnational regulatory network is deemed to require mutual trust and cooperation, a common regulatory philosophy and high levels of professionalisation in its regulators.

Whilst work on trans-European networked governance and agencies emphasises their public nature, we argue that this model can be instructive for explaining the public–private dispersed agencification of Internet governance which the EU has set up for dot eu. The agencification of dot eu has placed a key role in the hands of Eurid, which is private and thus legally separate from the EU. Its organisational relationships with other actors, most particularly the European Commission, are clearly mapped out in the set of public policy rules for dot eu, an example of European regulatory state activity. Our analysis modifies the idea that an agency must be *de facto* in complete charge of a programme. The agencification we witness involves a significant dispersal of responsibility across a trans-European regulatory network, which has also important global links. The dot eu case provides more evidence of exactly how agencification within a trans-European regulatory network can take shape. However, an equally important aspect of the dot eu governance system, uncharacteristic of the European regulatory state, is self-regulation.

Self-regulation, public policy and ideas of the post-regulatory state

In economic terms, the concept of self-regulation, in its purest form, suggests that players in any market have the freedom, but also the responsibility, to set rules for their own behaviour. A market governed by

self-regulation is thus, in theory, the most liberally ordered commercial construct in the capitalist system. However, in practice, as Price and Verhulst (2005: 3) point out, self-regulation ‘is almost a misnomer . . . [which] . . . rarely exists without some relationship between industry and the state’. Given the history and complexity of state-industry relations, it follows that self-regulation is by no means practised uniformly across sectors and states. The essential element in the variety of self-regulatory forms is the extent to which the state is detached from or involved in the regulatory process. This has generally been described as ‘regulated self-regulation’ in the academic literature (see Price and Verhulst 2005) or in public policymaking circles as ‘co-regulation’ (European Commission 2002a). However, the exact nature of self-regulation is an empirical question in the first instance and leaves scope for a series of possibilities.

Price and Verhulst (2005) have defined four possible types of self-regulation. The mandated variety occurs where the state sets out in detail a regulatory framework and industry players are required to define and agree to patterns of behaviour underpinned by norms in line with this framework. Less hands on is a second situation of coerced self-regulation, where the state makes clear its intention to intervene unless industry devises and enforces collectively a self-regulatory system satisfactory to government. By contrast self-regulation can thirdly occur where industry players take the initiative in formulating a self-regulatory package which is then subjected to state scrutiny. Finally, and rarely observed, self-regulation can occur in a purely voluntary way with no direct state stimulus or intervention.

The conceptualisation and practices of self-regulation have recently been linked to work on the post-regulatory state in Europe, though self-regulation existed well before the emergence of ideas of the regulatory state. It has been suggested that the EU has sought recently to consider new structural and procedural forms of governance (Ronit 2005: 8) in which delegation to regulatees and the use of soft law mechanisms, such as codes of conduct, have become more important. This movement away from traditional hierarchical, command and control governance approaches has led to the proposition that a post-regulatory state may be in the process of developing nationally and internationally (Scott 2004: 54–60). Alternative, de-centralized forms of governance are considered, notably responsive regulation, in which persuasion rather than traditional forms of regulatory coercion is the dominant regulatory mechanism. However, responsive regulation has a coercive backdrop of ‘default’ government intervention. In this respect, the post-regulatory state is only a modification, albeit a significant one, rather than qualitative transformation, of the regulatory state, given the state-shadowed nature of the self-regulation characterising it.

The core ideas of the post-regulatory state have resonated in debates on the governance of the Internet and feature in the design of the dot eu governance system. The Internet developed originally outside European national and supranational governance tradition and practices. Indeed, to many, in particular those pioneers from the computer science and academic communities who used it before its popularisation and commercialisation, the idea of having any form of governance for the Internet was alien. There was particular concern from libertarian quarters about the need to maintain the Internet free from interference by the state, many conflating the notions of governance with restriction and censorship. Nonetheless, its rapid rise as a communications tool of potential global reach, as well as a virtual marketplace, meant that the desire to gain a stake in the emerging Internet economy placed governance issues centre stage in global policy deliberations on its future, in which the world's most powerful political and economic actors have played the key roles (Dresner 2004).

Throughout these deliberations, self-regulation has figured prominently, for at least three reasons. First, Internet regulation is highly complex, covering a whole raft of often overlapping commercial, political, social and technical issues related to its infrastructure and the content posted and exchanged across it. In situations of such complexity, for government officials with a political remit it is often alluring and convenient to extol the virtues of self-management. Second, the Internet, though initially funded by the American government, developed largely in the private and non-commercial (the computer science and academic community) context. Given the more sceptical American view of the utility of government intervention than is found in Europe, there was thus a strong reluctance to develop top down command and control regulatory structures. This was particularly evident in discussions on the governance of the DNS. Third, the global and highly decentralized nature of the Internet's architecture militated against the easy creation of state led governance systems at either the national or global levels. If, as Lessig (1999) famously argued, 'code is law', then the functional nature of the Internet seemed to possess an inherent logic of some kind of self-regulation.

What this meant for the EU's approach to the governance of the dot eu TLD is a strategy with an uneasy juxtaposition of the liberal imperatives of the Internet with the more paternalistic patterns of EU regulatory state governance exemplified in telecommunications (see Table 1). The result is a partial post-regulatory state system of self-regulation in the shadow of public hierarchy. Thus, for example, the EU has argued that 'Internet management has generally been based on the principles of non-interference, self-management and self-regulation. To

the extent that this is possible and without prejudice to Community law, these principles should also apply to the dot eu ccTLD' (European Parliament and Council 2002: 2). However, it also declared that 'the Commission shall adopt public policy rules concerning the implementation and functions of the dot eu TLD and the public policy rules on registration' (European Parliament and Council 2002: 4).

The emergence of the dot eu top level domain

The emergence of the dot eu TLD must be seen in the context of the increasing commercialisation of the Internet and its importance as an economic resource (Waesche 2003). As Internet activity expanded, so too did the political economic and strategic significance of the management of its technical and organisational resources, an important element of which was the hierarchically ordered DNS, with TLDs, as they are known, playing the most crucial role at the root of Internet addresses.⁵ Domain names, which developed historically along the two lines of generic (e.g. dot com) and country code names (e.g. dot de, dot uk) respectively, allowed visibility for business and governments in an emerging global marketplace. This in turn had a significant effect on the demand for TLDs, as they provide a presence and identity on the Internet for those possessing them (see Froomkin 2000, Weinburg 2001, Froomkin and Lemley 2001).

In the 1990s, the global political and economic significance of domain name allocation led to efforts by policy makers, governments and the private Internet community to attempt to create a governance system for these lynchpin resources. As a result in 1999, the Internet Corporation for Assigned Names and Numbers (ICANN) was formed. Since then ICANN has played an important role in the management of TLDs and the still evolving framework of global governance for the Internet.

The EU's role in ICANN's initial structural development was marginal. The popularisation of the Internet in the mid 1990s led European

TABLE I *European regulatory state and internet community governance compared.*

	European Regulatory State	Internet Community
Governance Form	Public	Private
Parameters of Behaviour	Legislation (Regulations and Directives)	Voluntary Codes of Conduct
Regulatory Style	Command and Control	Self Management
Enforcement Mechanism	Public National and European Regulatory Authority Adjudication	Private Alternative Dispute Resolution

policymakers to consider its evolution more closely. Christopher Wilkinson, an official in the European Commission's DG Information Society (DGIS) personally followed developments in America and was concerned to ensure that any evolving governance model for the Internet should be truly global in nature. The recommendation for the creation of a dot eu TLD followed the European Commission's initial involvement in the discussions on creating ICANN. The Commission's policy objective was overwhelmingly practical. It wished to take advantage of business interest in the years of the dot com boom and to exploit the limited choice within the generic TLD industry (dot com, dot net and dot org). The EU intended to provide business interests with a European trademark for operating in cyberspace by creating a European territory in the global Internet market. The Regulation which the EU eventually produced argued that dot eu would raise the profile of the Single European Market and would act as an effective complement to existing national TLDs (European Parliament and European Council of Ministers, 2002). There was also a wider implication in the creation of dot eu, namely, a Europeanised response to new global Internet governance phenomena (Andersen 2003).

Despite the EU's ambitions for an early launch of dot eu, there were procedural obstacles that constrained any hope of swift progress. The proposal for dot eu initially received a negative reaction from the ICANN Board, being viewed as an initiative from a regional organisation dominated by governmental interests, anathema to many in the Corporation at the time. The EU's astute response was to emphasise and play to the fundamental beliefs and founding principles of ICANN in order to overcome its scepticism and limit the ICANN Board's room for manoeuvre. In doing so, the EU showed considerable political skill. ICANN was established, amongst other things, to operate as a private entity for the benefit of the Internet community as a whole. The European Commission therefore, consulted widely amongst these very interests, through a collective grouping known as European Community Panel of Participants in Internet Organisation and Management (EC-POP). By securing the support of the European Internet community it became very difficult for the ICANN Board not to accept dot eu, despite any reservations about governmental interference.

At EU institutional level, its legal requirements determined dot eu's progress. Advocates of the swiftest possible implementation argued that dot eu should be dealt with as a technical matter and launched as an EU project. This would have taken a matter of months and represented the best scenario for business and industry and the product champions of dot eu in the Commission. However, after consultation with the Commission's legal services division, it became clear that that this proposed

method was not viable and that an appropriate legal process had to be undertaken. The rationale here was that dot eu raised issues of public policy and, therefore, a legal Community text was required to provide a framework establishing the EU's regulatory role and the dot eu Registry's responsibilities, management functions, and obligations. The decision was thus taken that a Regulation was needed to provide a broad legal and policy framework to define the responsibilities of the actors involved in administering and managing the dot eu TLD.

A public consultation on the possible creation of a dot eu in February 2000⁶ confirmed strong support for the proposal to create a new Internet TLD for the EU. Although a European Commission working paper (February 2000) considered an array of options in relation to the types of model for regulating dot eu, the not-for-profit, cooperative (public-private hybrid) model, with the EU as ultimate controllee was seen as the most appropriate for meeting the requirements of industry consensus, neutral administration, protection from anti-competitive behaviour and the respect for applicable laws. There was agreement that any framework for dot eu, to be acceptable and legitimate, would have to 'fit' with the wider legal and institutional requirements of the EU and incorporate values and traditions with which the EU was at ease (Commission Working Paper 2000: 8).

The report produced by the Commission (July 2000)⁷ reflected similar conclusions, but also the desire for consultation with relevant stakeholders to define a suitable structure for the operationalisation of dot eu (www.ec-pop.org/1009prop/:2). The deliberations that followed, conducted in an interim steering group (ISG) created under the auspices of EC-POP and containing European Commission officials recognised that in putting forth a framework for governing dot eu the Registry model should reflect the basis of best practice, and the commercial objectives of a Registry operating in an international electronic commerce environment. However, the group also argued that dot eu had institutional and territorial implications for the EU which would necessitate a policy role for both the European Commission *and* the Internet community.⁸ Both EU Member States and the Commission were in favour of a governance model that included an 'effective forum and mechanism for public policy oversight on the operations of the dot EU Registry' (www.ec-pop.org/1009prop/:5).

By incorporating its own form of regulatory tradition within the governance framework for dot eu, the EU sought to reinforce its *self-regulatory* style through global protocol established within ICANN's Governmental Advisory Committee (GAC). The GAC considered that TLD Registries were ultimately subject to the jurisdiction of the relevant public authority or government and the EU, in this instance, was

perceived to be the competent authority for the dot eu TLD. For its part, the EU was aware of the need to limit intervention to a minimum, given the highly decentralised structure of the Internet and the private statute of ICANN. Despite this, however, it did reserve the right to exercise ultimate oversight and supervision of the dot eu domain (Commission Working Paper 2000: 5).

The framework outlined in the dot eu Regulation (European Parliament and Council 2002) eventually agreed by Member States provided a hands-on role for the Commission in the formative stages of its development, with a primary facilitative role for the Telecommunications Committee initially, and its successor Communications Committee. Although the organisation, administration and management of dot eu would be delegated to a Registry, indicating an element of self-regulation, contractual obligations and conditions would limit such self-management under a time-limited and renewable agreement. In addition, the inclusion of the PPR within the policy framework would provide the Commission with the opportunity to protect EU interests and ensure that the Registry's actions were compliant with established public policy and legal norms. The dot eu Regulation framing the initiative ensured that the shadow of hierarchy loomed large over dot eu by stipulating clearly that 'The Community shall retain all rights relating to the dot eu TLD including, in particular, intellectual property rights and other rights to Registry databases required to ensure the implementation of [the] Regulation and the right to re-designate the Registry' (European Parliament and Council 2002).

The European Commission launched a Call for Expressions of Interest in becoming the Registry in August 2002. The European Registry for Internet Domains (Eurid) consortium, a collaboration between the Belgian, Italian and Swedish country code TLD registries, was chosen on the 22 May 2003 to run the dot eu TLD.⁹ After considerable delay, the public policy rules to govern dot eu were agreed in April 2004. Eurid concluded a 'Service Concession Contract' with the Commission (12 October 2004) to operate the dot eu Registry and at the global level negotiated with ICANN to have dot eu put 'in the root' (March 2005). It also appointed the Czech Arbitration Court to provide ADR for dot eu disputes and Price-Waterhouse-Coopers as a dot eu sunrise validation agent (see <http://www.eurid.eu/en/euDomainNames/timetableLaunch>).

The trans-European regulatory network for dot EU

The emergence of the dot eu TLD illustrates how the EU was able to operate with considerable delicacy and astuteness in its discussions with the global Internet community, in the shape of ICANN, as well as its own

European communications business sector to secure agreement on this unique internationalised TLD. The fact that the primary actors in the process were the European Commission and private sector interests ensured that the EU was able to lead on dot eu's development, thereby eliminating the potential for the kind of regulatory competition witnessed in other parts of the communications sector, notably telecommunications, over the specific approaches to be adopted in areas such as universal service and local loop unbundling (see Humphreys and Simpson 2005). The result was the design of a partial post-regulatory state system of self-regulation in the shadow of public hierarchy in which a trans-European regulatory network characterised by dispersed agencification is in the process of being established. Figure 1 provides an overview of the shape of this trans-European regulatory network for dot eu. Here, the bi-directional relationship between the European Commission and the dot EU registry, Eurid, is already exhibiting some evidence of the tensions between public and private modes of governance.

The public dimension to the 'dispersed agencification' of dot eu governance centres on the role which the European Commission will play in enforcing the series of PPR which form a crucial backdrop to the

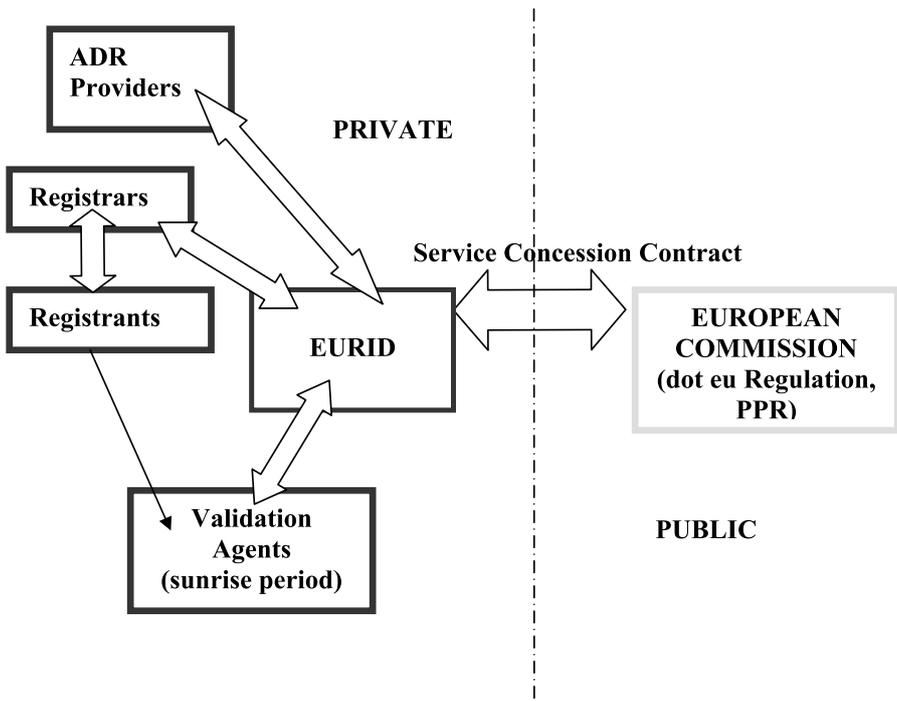


FIGURE 1 Relationships in the Trans-European Regulatory Network for Dot EU

functioning of dot eu and which mark out the key policy ‘ground’ on which the Commission-Eurid relationship is developing. The PPR provide detailed guidance to Eurid regarding how it should carry out its role as a private, not-for-profit registry for the dot eu TLD. In the early formative stages of the PPR, the European Commission and the Member States determined their substance through discussion in the aforementioned Communications Committee, which excluded any Eurid representatives despite the latter having been selected by that stage as the dot eu registry (authors’ interview, 2004). This led to concerns about protracted EU proceduralism and over-regulation (authors’ interview, 2004), highlighting cultural differences between the European regulatory state and the Internet community.

In its bid to become the dot eu registry, Eurid had proposed a liberal regulatory model based on classic Internet industry self-regulation, characterised by voluntary codes of conduct and a representative panel of stakeholders within the Registry to monitor its development. However, the finalised PPRs were much more interventionist than Eurid envisaged, despite it having eventually become involved in deliberations subsequent to signing a contract with the Commission. The main reason was the level of formal legal detail required by the Commission’s legal services division (authors’ interview, 2004) reflective of European regulatory state practices.

For example, the sunrise period for dot eu was ‘EU-ised’ by an unconventional prioritisation, by Internet community standards, of public bodies’ rights to register their domain names under dot eu. A second classic example of EU proceduralism and formality concerned registration of names in the official languages of the EU. Eurid’s original proposal had stipulated a voluntary system to provide registration services in all community languages, to be determined by available resources and market demand once dot eu was operationalised. However, the Commission argued that registration had to be provided in all EU languages per se, the perils of which were illustrated by the Maltese language example. Registration services for dot eu had to be made available in Maltese, even though it was not possible to register a domain name in this language under its own national country code domain name system, something viewed by one source as ‘political correctness gone mad’ (authors’ interview, 2004).

Further indication of the influence of the European regulatory state on dot eu governance is to be found in the detailed relationships and procedures specified by the Commission to be developed by Eurid in relation to the day to day process of registering names under dot eu. Here, Eurid’s responsibilities for appointing and managing a series of private profit making registrar companies were set out in almost arcane

detail. For example, it was stated that a ‘registrar who receives more than one registration request for the same name shall forward those requests to the Registry in chronological order in which they are received’ (European Commission 2004: article 5). It was also stipulated that registrars must require applicants to submit contact details of a person responsible for the technical management of the domain name to be registered. This is arguably something that any good private professional organisation would have done as a matter of course.

Similar interventionist tendencies are evident in the post-regulatory state elements of the dot eu governance system. Regarding codes of conduct for registrars, whilst Eurid was given responsibility for their creation,¹⁰ at the behest of its legal services division, the European Commission is required to ensure that the codes comply with the PPR (authors’ interview, 2004). The double oversight appears contradictory to the idea of this classic element of self-regulation. On Alternative Dispute Resolution procedures, the PPR, whilst reflecting compliance with, and adaptation of, norms created at the global organisational level in ICANN and WIPO, also add procedural detail allowing the EU scope for customisation to its own self-regulatory style. Illustrative of this are specifications defining the circumstances in which ADR could take place. This can occur either where a plaintiff alleges speculative or abusive registration of a domain name or where it is alleged that a decision taken by Eurid contravenes the PPR or the specifications of the EU Regulation on the implementation of dot eu.

Although such detailed rule making and delegated proceduralism across public and private ‘agents’ in theory facilitates the development of more accountable and transparent regulation, it is in diametric contrast to the liberal practices of governing the Internet at global level in organisations such as ICANN. In this respect, the EU proved adept at customising the governance model for dot eu away from that initially proposed by Eurid, which has ‘gradually been dragged towards more regulation’ (authors’ interview, 2004).

Nonetheless and by contrast, it is also important to emphasise that the private dimension in the design of the dot eu trans-European regulatory network vividly reflects key operational aspects of the kind of private self-regulation that has come to be associated with the Internet community and, more widely, with ideas of the post-regulatory state. In this, Eurid’s role will also be vital, since it holds a range of responsibilities which are germane both to self-regulatory forms of business practice in the management of TLDs as well as the guardianship and promotion of the dot eu system. The work which it delegates to validation agents, ADR providers and registrants – evidence of private dispersed agencification in our terms – will have to meet criteria established by ICANN’s

Governmental Advisory Committee regarding the delegation and administration of country code TLDs, with dot eu regarded as a special case (European Parliament and Council, annex 4, article 8).

The culture of the Internet community shows up in Eurid's management. First, the eclectically composed management Board will contain representatives from the Eurid consortium, European industry, European Internet Service providers, the dot eu registrar companies, the Internet technical community and the academic and research community. Second, Eurid's Policy Council will contain as many as 25 representatives from across the European Internet community and must be consulted by the Eurid Board regarding any decision taken regarding registration policy. Finally, Eurid's relationship with ICANN will be significant as the former is likely to assume the role of a country code TLD registry in this global forum, though it is difficult to predict its exact form. Given the rather more hands on regulatory system which Eurid will be intimately involved with in the domestic (that is EU) context, it may find itself more closely attuned to ICANN's culture and practices. If so, this could have an impact on the way the governance of dot eu evolves in the future, especially given the tensions between the public and the private in the pivotal position which Eurid occupies in the trans-European regulatory network for dot eu.

Conclusion

This paper has argued that the case of the dot eu TLD provides evidence of the creation of public–private transnational governance in the European Internet economy. The EU's choice of governance system and regulatory methods reflects a significant, though only partial, movement towards post-regulatory state governance in which the practices of the European regulatory state, on the one hand, and the Internet community, on the other, sit together in what is potentially an uneasy conjunction. Thus, the regulation of dot eu will take place across a hybrid public–private trans-European regulatory network across with dispersed agencification of the governance of dot eu.

The EU's domestication of the developing modalities of Internet TLD governance at the global level illustrates how it has become a major actor in global communications policymaking. Elsewhere in the communications sector, a useful comparison can be made with its role in the negotiation of the World Trade Organisation's 1997 Agreement on Basic Telecommunications (ABT), where the EU was similarly successful in securing its interests, though in a different way and for different reasons. In the negotiations, the EU was able to 'upload', that is ensure the acceptance of, its preferences for trade liberalisation to such an extent

that the ABT bore uncanny similarities to the EU's own telecommunications liberalising package developed over the previous decade (see Young 2002).

The dual-phase sunrise period for dot eu was launched on 7 December 2005 and is due to run to the 7 April 2006, when registration will then be opened up to the general public on a first-come first-serve basis. Whether or not this experimental form of governance for the EU proves successful once fully operational and embedded will depend on the extent to which self-regulation can be married with EU public policy interventionism. Whilst the Internet has by now become an established part of European economy and society (see Rose 2005), the private interest government advocated by the Internet community and underpinned by self-regulation has yet to prove its superiority to other more public forms of governance. Certainly self-regulation has the potential to deliver a range of benefits in terms of financial cost and time saved by reducing bureaucracy. The fact that it involves regulatees becoming their own regulators provides the opportunity for market players to gain an awareness of the broader context and consequences of their actions beyond profit. It is arguably the case that market participants are best placed to know precisely the kind of regulatory measures which should be deployed in their market, and which should be avoided.

However, the opportunities for firms to act as free-riders in a market governed by pure self-regulation and the fact that market players are unlikely to consider the broad, longer term interests of consumers and users in their market means that governments have tended to assume that backstop interventionary powers are essential to stimulate optimal self-regulatory behaviour.

The trans-European regulatory network for dot eu can be seen as the structural embodiment of an attempt to resolve the contradictions of self-regulation. EU member states have taken the decision to share governance responsibility between public and private agents. Tensions have arisen from the different cultural outlook and practices of both the European Commission and Eurid when they have approached regulatory tasks. However, the public-private design of dot eu could also prove to be a highly skilful political construct in practice. On the one hand, Eurid may be well placed to develop the high levels of professionalism, mutual trust, and cooperation necessary to make dot eu in practice appealing to Internet users. On the other, the European Commission, may be able to resolve value conflicts and interest-balancing dilemmas that Eurid, with its more technical remit, is arguably ill-equipped to deal with.

More broadly, core lessons emerge about why transnational private governance can occur in the European political economy. First, despite other parts of the communications sector having developed historically in

Europe within strong state led traditions, the Internet originated in America outside mainstream communications, albeit with government funding. Its novelty and its internationality made it amenable to transnational private governance. Second, after many years of technical development and usage by the computer science and academic communities, the Internet became commercialised and popularised at a time when the discourse of neo-liberal globalisation was paramount, undoubtedly reinforced by its origins in the American political economy (see Schiller 1999). Finally, since the EU can resist and ‘domesticate’ transnational private governance agendas developed at the global level, this raises the question of the extent to which this activity is developing in other sectors of the international political economy.

NOTES

1. Research for this paper was undertaken as part of the UK ESRC European Regulation of Internet Commerce project (Grant number RES-000-22-0356).
2. Agents will be temporary members of the network during a four month phased registration period.
3. Public organisations are also likely to register a name under dot eu.
4. However, the EU Treaties limit Member States’ ability to additional bodies with formal legal powers to undertake regulation.
5. Ultimate control of the DNS is held at a pyramidal pinnacle by a series of 13 ‘server’ computers – which have been referred to as the ‘root’ (Mueller 2002).
6. See <http://europa.eu.int/ISPO/eif/InternetPoliciesSite/DotEU/WorkDocEN.html> and <http://europa.eu.int/ISPO/eif/InternetPoliciesSite/DotEU/WorkDocEN.html>
7. See <http://europa.eu.int/ISPO/eif/InternetPoliciesSite/DotEMay2000/EN.html> and <http://europa.eu.int/ISPO/eif/InternetPoliciesSite/DotEMay2000/EN.html>
8. One might argue that this fits well with the notion that industry’s self-image of self-regulation in Europe has a corporatist twist, in that the public sector is accepted as a *participant* in the self-regulatory process, in a catalytic or facilitative role.
9. The Belgian partner in Eurid is DNS BE; the Italian partner IIT-CNR and the Swedish partner NIC-SE. Eurid is in the process of setting up offices in those countries. Eurid headquarters are located in Brussels. See <http://www.eurid.eu/en/about>
10. For progress on this see <http://www.eurid.eu/en/euDomainNames/codeOfConduct.html>

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