

# **Interest Groups and the Public Interest: Civil Society Action and the Globalization of Communications Policy.**

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This paper examines two episodes of public interest activism in communications policy. It compares and contrasts the rise of the “citizens movement” in broadcasting in the 1960s and ‘70s with the attempt by civil society advocacy groups to shape the policies and governance structure of the Internet Corporation for Assigned Names and Numbers (ICANN) from 1997 to 2002.

The comparison is nothing more than a first step in the pursuit of a much larger research agenda.<sup>1</sup> It is used as a way to probe the implications of globalization for communications policy, and in particular the degree to which a global communications infrastructure both enables, and is affected by, the growth of a transnational “civil society.” The purpose of the research is to develop a deeper, more general understanding of public interest-oriented collective action as a socio-economic and political phenomenon, focusing particularly on the interplay between the domestic and international arenas of action. Thus, lurking in the shadows of our seemingly innocent and straightforward comparative study are a number of theoretical demons, which can leap out and confront us at any moment: theories of civil society, collective action, social movements and interest groups; concepts of international regimes and governance structures and their relationship to domestic government; concepts of institutions and institutional change.

This paper is a very rough and tentative beginning (the project started only in June 2002). All positions taken and assertions made are intended to be debatable and to lead to commentary and discussion that will advance the research agenda.

## **Naming the Demons**

An important discourse has developed in the political science literature about the role of “civil society” and “nongovernmental organizations” (NGOs) in international policy making. (Boli & Thomas, 1997) (Falk & Strauss, 2001) (Reimann, 2002) (Spiro, 1996) In the past, international policies and rules emerged from a very small world of formal treaty negotiations and intergovernmental organizations. (Drake, 2001) Transnational civil society activism, on the other hand, represents a relatively new force. (Florini, 2000) (Spiro, 1995) As economic interdependence increases and the costs of communication and transportation decline, more people can participate, and are participating, in the shaping of international policy and institutions. Whether these movements are

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“representative” or not is an entirely different question and forms one of the key points of contention regarding transnational activism. The anti-globalization backlash against the World Trade Organization is just one of the most obvious examples of a social movement intervening in global policy formation. (Editorial, 2000) Among the issue areas in which campaigns are underway are:

- Human rights for individuals, women, indigenous peoples;
- Environmental issues, including climate, biodiversity, genetic engineering, toxic substances, food;
- Health, including AIDS and tobacco;
- Land mines, small arms, child soldiers;
- Anti-free trade;
- Anti-big dams;
- Labor in the apparel and sports equipment industry (the so-called “anti-sweatshop” movement).

While organized public interest activism at the international level is perceived as a new phenomenon that requires analysis and debate, we take its existence at the national level for granted. But when one puts the academic scholarship about these two phenomena side by side one discovers few linkages. At the national level, we refer not to “civil society activism” or “NGOs” but to “collective action,” “interest groups,” and, before 1970, “pressure groups.” There is a vast literature on this topic, most of it in political science, some of it in economics and derivative applications such as public choice theory. (Berry, 1977; Cole & Oettinger, 1978; Goldstein, 1999; Guimery, 1975; Ornstein & Elder, 1978; Petracca, 1992; Walker, 1991; Wilson, 1974) There are formalized theoretical models that have, particularly in the case of Mancur Olson, profoundly shaped the debate. (Becker, 1983; Becker, 1985; Olson, 1971; Peltzman, 1998) But these models assume a homogeneous national political and institutional structure, based on the US or some hypothetical Western liberal democracy rather than the global arena.

If we had a theoretically grounded understanding of institutions and collective action, then the concept of a transnational civil society that gives rise to advocacy and interest groups competing to affect rules and policies ought to be consistent with our notions of how interest groups affect policies and institutions at the national level. Indeed, the most interesting and insightful analyses of interest groups and citizens movements at the national level reveal that the prevalence, impact and form of collective action are profoundly affected by the structure of its political institutions. For example, Vogel (1989) attributes part of the impact of the consumer and environmental movements to reforms in the US Congress that decentralized decision making among committee chairs, and to the fact that they raised policy issues that did not fit neatly into the old, established “iron triangles” of industry groups, bureaucracies and Congressional committees. Drawing on the newer literature on “social movements,” Tarrow (1996) and Amenta and Young (1999) also argue that the capacity for mobilization is highly dependent on the specific political institutions, democratic processes, bureaucracies, and policies of a government. Tarrow lists four “signals” of political opportunity: 1) a change in conditions of political access that opens up access; 2) unstable alignments of dominant political coalitions; 3) the appearance of influential allies in a ruling elite; and 4) the

emergence of conflicts within and among political elites. If this is true, then any understanding of transnational collective action must be able to characterize both national and international institutional structures as well as theorizing about how they are related.

Some recent and suggestive work by Clifford Bob (2002) does begin to attack this problem. Bob observes that many worthy international causes and movements never achieve the popularity and status of, e.g., Tibetan autonomy. He concludes that indigenous movements must “market” themselves to an international audience and “frame” their movements in terms that are appealing and comprehensible to Western “civil society” if they are to receive the media attention and funding they need.

There seem to be two distinct gaps in our knowledge. First, we do not have a very good understanding of how institutions are shaped or changed by transnational civil society collective action. That is, while most analyses of interest groups recognize that the institutional structure profoundly affects its form, prevalence and influence, the reverse relationship is not explored. How do institutions respond to and how are they changed by civil society collective action? The research is not integrated with theories of institutions or institutional change. The problem of how or whether public interest advocacy produces institutional change is especially important now, as new international institutions and regulatory regimes are being formed in communications and information.

Second, we do not have a good understanding of the relationship between national and international phenomena, or even how important and useful this distinction is. To what extent are national governments and the international organizations built around treaties and organizations of governments becoming less important in the formulation of policy, relative to new channels of influence and participation? In both domestic and international instances, issue advocacy groups raise important questions about the relationship between the public and policy making institutions and about the legitimacy and accountability of the organizations involved.

## **Definitions and (some) theory**

In this section, I want to do three things:

- Explain why concepts of transnational civil society need to be linked to the theoretical and empirical scholarship on collective action.
- Erect a distinction between economically-motivated “interest groups” and ideologically or principle-motivated “advocacy groups,” and see whether it is tenable.
- Take issue with how common usage of the term “civil society” in recent political discourse is distorting it in undesirable ways.

### *Collective action theory and transnational advocacy*

Collective action to influence public policy has permeated American society from its inception, and is beginning to be a regular feature of international society. Nevertheless, ever since Mancur Olson’s seminal work, collective action in the provision of public benefits has been problematized.

Olson's analysis assumes a self-interested, rational actor. Fundamentally, it is derived from competition theory in economics, which distinguishes between perfect competition and oligopolistic competition. In perfect competition, a supplier is unable to directly influence the selling price of a good. These "price takers" will lower a price in response to price reductions by competitors, thus sacrificing the "collective benefit" of higher profits. In an oligopoly, suppliers can affect price and thus some cooperation (collusion) to achieve higher profits is possible. In Olson's analysis large groups are analogous to perfect competition: a specific individual's participation or nonparticipation will not make a noticeable difference in the ability of a group to provide collective benefits, and hence most actors will not contribute but will "free ride." Any effective provision of collective benefits among large groups must overcome this problem somehow. Another key insight of Olson is that organization costs are an initial fixed cost required to realize collective benefits, and these costs are an increasing function of the size of the group.

Olson's work grew directly out of scholarly debate over the role of interest groups in the American polity. Olson put forward his thesis as a counter to the predominant pluralist notions of the time, which contended that organized groups reflecting any significant interest in society could be assumed to spring into being as soon as a certain number of society's members held those interests. Ever since Olson, the empirical literature on interest groups has had to contend with his thesis somehow, either contradicting it or corroborating it. Even when Olson appears to be wrong – e.g., where evidence indicates that people materially support and participate in groups when Olson's theory indicates that it would be more rational for them not to, the predictions or expectations of the theory can be quite helpful in the analysis of the problem.

It would seem that the transnational character of civil society would make the benchmark of Olson's analysis more relevant, not less. The potential size of groups has increased dramatically, but so has their heterogeneity. The costs of organizing groups that span international boundaries may be decreasing in some respects because of communication technology and particularly the Internet's radical flattening of the cost penalties associated with reproducing information and transmitting it over distance. But organization is more costly in other ways because of things like language and culture, differences in political institutions, and so on. The most critical change that transnational collective action seems to invoke is that it problematizes the question of who the "public" is in the achievement of "public goods." Prior discussions of a "general public" referred not to humanity as a whole but to national publics and assumed the national state as the institutional framework for optimizing social benefit. Transnational collective action raises the specter of a "global" public and various regional publics, but, what is more important and more complex, highly distributed publics defined by ideology, ethnicity, culture, religion as well.

#### *Interest groups and Public Interest Groups*

In standard political science discussions, interest groups are defined as any organized effort to influence the distribution of political goods. (Petraffa, 1992, p. 6) (Berry, 1977, p. 7) As politically-focused activities, interest groups are usually, though not always, engaged in a zero sum game involving rent-seeking activities, such as protectionist laws

or regulations, wealth redistribution, subsidies – or in efforts to protect themselves from regulations, subsidies and wealth redistribution efforts advocated by others. There is an important distinction between political parties and interest groups. Interest groups attempt to influence the actual decisions made by government officials, or influence who is elected; parties actually nominate candidates and seek responsibility for the control and operation of government. This distinction, and the decoupling of interest groups from party structures, occurred at a specific moment in the institutional evolution of the United States, or so Clemens (Clemens, 1997) argues. The existence of interest groups thus implies a certain level of social development that differentiates state and civil society, while maintaining a high degree of permeability across the boundary.

Any discussion of interest groups must immediately confront the question whether so-called “public interest” groups are the same as interest groups, or are qualitatively different. I will follow Berry (1977) and defend a distinction between economically-motivated interest groups, and what I will call “advocacy groups” or “public interest” groups. Berry’s distinction is based on Olson’s theory:

A public interest group is one that seeks a collective good, the achievement of which will not selectively and materially benefit the membership or activists of the organization.

Advocacy groups are animated by a belief that some state of affairs, policy prescription or principle is morally right, or in the interest of society as a whole (for some limited definition of the relevant “society”). Their true currency is ideas and public opinion rather than pure power or material self-interest. The positions and policies are promoted more for their (perceived) general welfare effects than for the exclusive benefits that would accrue to the advocates. Advocacy groups can be engaged in positive sum games as well as zero sum games. They are a crucial part of the deliberative and (in a liberal system) adversarial process through which a society transmutes contending private interests into a broadly accepted notion of the public interest.

As Berry argues, one can use the term “public interest” groups in a logically coherent way without committing oneself to the idea that any given public interest group’s goals correspond to some universally valid Public Interest, or even that there is such a thing as a “public interest.” All that matters is that the group advocates or pursues a collective good, and that if its goals are achieved the realization of the material benefits will not be selectively concentrated on its members or activists.

The relationship between interests and ideas is a subtle and slippery one. Marxists and Neo-Marxists, as well as some economists, have spilled a lot of ink attempting to show how ideas “reflect” or can be reduced to material interests. That issue is far too philosophical to handle in this paper, but we need to address the relationship in passing.

It is, of course, true that many groups that claim to be advocacy groups are just fronts for interest groups. It is also true that the policies promoted by advocacy groups may gain the support of interest groups because they are congruent with the latter’s self-interest,

narrowly conceived. And it is true that some individuals in a privileged or favorable position in a given social system are likely to try to develop and support ideas and organizations that rationalize their position (although there are numerous examples of the opposite – e.g., rich or affluent people supporting revolutionaries and communists). None of these qualifications refute the existence of a logically coherent and empirically useful distinction between advocacy groups and interest groups; in fact, they call attention to the need for it. If the difference did not exist we would be unable in principle to distinguish between a “front for special interests” and any form of policy advocacy.

Members of advocacy groups can have a material or political interest in the success of their cause. The most dedicated human rights activist in a dictatorial nation, for example, recognizes that political success will make her more important, secure, powerful, and possibly even economically well-off, whereas the penalty of political failure will indeed be “selective and material;” e.g., death, imprisonment, ostracism, or impoverishment. Advocacy groups thus have a direct “interest” in the success of their causes. But this is true only because they have committed their lives and resources to it, and thus begs the question of why they chose to do so in the first place. A purely self-interested actor would never take the risk of staking their well being on social change unless the change were already well underway and success seemed highly likely. As Olson reminds us, free riding is the most rational option in such cases.

While public interest groups cannot in all instances be reduced to the same status as interest groups, it is possible, and perhaps even routine, for public interest groups to evolve into interest groups. This happens when the policies and programs they advocate are institutionalized in such a way as to give their members selective, exclusive and material benefits. In other words, advocacy groups can morph into stakeholders who stand to gain or lose material benefits from policy changes. An example would be public interest lawyers who achieved government funding for legal services, or the international NGO that becomes almost totally dependent for its financial support on contracts from UN agencies.

Some critics of 60’s and 70’s activist groups have argued that its proponents were part of a “new class” whose professional interests lay in advocating more regulation because their careers and power would be enhanced by greater government involvement. But this would not make them an “interest group” by our definition unless their advocacy could be guaranteed to deliver the enhanced status and power exclusively to the members.

#### *Distortion of the term “civil society”*

The concept of civil society is one analytical level above that of interest groups and advocacy groups. “Civil society” implies a sphere of autonomous social action wherein interest groups and advocacy groups can spontaneously form, grow, shrink, disband, coalesce, and compete. The groups that form are distinct from both governments and commercial firms, yet of course they interpenetrate state and market and profoundly affect the way both function, especially the degree to which state and market respond to the political and economic preferences of the population.

Usage of the term “civil society” that is not based on this analytical distinction can degenerate into a kind of crude class terminology. It is now not uncommon to hear references to “civil society interests” or “civil society participation” in policymaking bodies, suggesting that civil society itself is a cohesive interest group or advocacy group, or conversely that the particular set of advocacy groups involved represent civil society as a whole. As the meme of “civil society” has spread throughout the intelligentsia, it is increasingly misused in this way. Often, “civil society” becomes a code word for “liberal” or “progressive” advocacy groups (the latter itself being a weasel-word for groups that are unable to tell us whether they are socialists or not). This is a misuse of the term. Civil society does not refer to an interest or a specific ideology, but to the capacity of a social system to permit its individual members to engage in collective action based on their own formulation of their ideas and interests. Diversity is a baseline requirement of a flourishing civil society: the organizations and groups that emerge from it must be heterogeneous and willing to engage in debate rather than uniform. It is difficult to imagine any issue or policy on which all the members of a robust civil society would agree, except perhaps a response to some threat to annihilate all of them. So it is a confusion to refer to “civil society interests,” and it is a pollution of political discourse to disguise the agendas of specific advocacy groups with the cloak of civil society as a whole.

### **Public interest advocacy in broadcasting, 1960 - 1976**

The Radio Act of 1927 nationalized the radio spectrum and subjected broadcasting to a regime of licensing. Radio and, later, television licenses had to be renewed every three years. Licensees were considered “public trustees” who had been granted exclusive use of a scarce public resource and thus were obligated to submit to regulation of their conduct by a specialized agency, the Federal Communications Commission (FCC), applying a standard of “the public interest, convenience and necessity.”

Public dissatisfaction with broadcasting began to manifest itself around 1959. Two key indicators of change were the quiz show scandals of 1959 and FCC Commissioner Newton Minow’s speech describing television as a “vast wasteland” in 1961. Asked by Congress to review the performance of regulatory commissions in 1959, the Consumer’s Union singled out the FCC for some of its strongest criticism.<sup>2</sup> The report called for the creation of a Television Consumer Council with the authority to review all FCC licensing decisions, and mandatory hearings in the affected locality before a broadcaster’s license could be renewed. Neither of these proposals were adopted, however. Broadcast regulation was still controlled by an “iron triangle” of industry associations, executive branch regulatory agencies, and Congressional committee chairs favorable to the industry.<sup>3</sup>

Public interest activism did not start to impact broadcast regulation until broader social movements gained influence and organization during the second half of the 1960s, most notably civil rights and later consumerism. In the book Fluctuating Fortunes, David Vogel (1989) documented the rise of consumerism and environmentalism in the second

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<sup>2</sup> Quote and cite 1959 CU report

<sup>3</sup> See Walker, 1991, Chapter 7 for a good discussion of iron triangles.

half of the 1960s, noting that from 1966 to 1968 there was a tremendous outpouring of regulatory legislation from Congress in response to these constituencies.<sup>4</sup> During this period, too, the FCC agreed to apply the Fairness Doctrine to cigarette advertising and the Federal Trade Commission issued a report proposing to ban cigarette advertising on television.<sup>5</sup> One of Vogel's astute observations is that environmentalism and consumerism (and, we must add, civil rights) shattered the old iron triangles by raising issues that cut across nearly all industries. This gave pro-regulation politicians and consumer advocates an advantage in the intermediate term, because business interests were organized for and accustomed to *sector-specific* programs and lobbying. They were not unified as "business interests" and tactically were not prepared to counter public interest advocacy in the wider political arena.

Vogel identifies a number of other historically specific conditions that led to the rise of public interest movements and a decline in the relative strength of business interest groups during this period. Most critical in his opinion is that post-World War II economic growth had been robust for many years and was largely taken for granted; this bolstered public confidence that government could redistribute wealth or impose costs on business to improve social conditions with little pain. The "citizens movement" also was able to identify and mobilize a new constituency, consisting of educated, upper middle class baby boomers. Changes in the political structure also created a temporary advantage for citizens groups. Less centralized control of Congress by the party system, changes in campaign financing methods, the rise of national television and of direct mail marketing all changed the rules of lobbying in ways favorable to the Ralph Naders and Martin Luther Kings, and made it possible for individual legislators to gain popularity and win re-election by taking on consumerist, environmental, or civil rights issues, whereas before they were more subordinated to the party system.

From 1966 to 1976, the heyday of public interest activism in the United States, media policy was the tail, not the dog. That is, advocacy in media policy was completely subordinate to, and reflective of, the agenda of broader social movements regarding civil rights, environmentalism and consumerism. Citizen activism in media policy focused on broadcast license renewals. There were a few, mostly unsuccessful attempts to promote new kinds of substantive regulation of the media, especially in the realm of children's television (to be discussed later). But for the most part, the point of leverage for citizens' collective action was the license renewal process and the petition to deny, with occasional forays into applications of the fairness and equal time rules (efforts to influence content that were themselves driven by civil rights, anti-war, health or environmental motives). License challenges were used to bring norms of equal opportunity and racial and gender equality into the hiring practices and programming decisions of the station. During this period the number of petitions to deny grew by several orders of magnitude. Seventy five

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<sup>4</sup> The National Traffic and Motor Vehicle Act, the Fair Packaging and Labeling Act, the Federal Hazardous Substance Act, the Federal Meat Inspection Act, the National Gas Pipeline Safety Act, the Truth in Lending Act, the Flammable Fabrics Act, and the Child Protection Act. For some reason Vogel does not track the civil rights movement as carefully as consumerism and environmentalism, but if the period is extended to 1964 – 1968 it includes passage of the Civil Rights Act of 1964, which created the Equal Employment Opportunity Commission, and the Voting Rights Act of 1965.

<sup>5</sup> The ban on cigarette advertising was implemented in 1970.

percent (75%) of license renewal challenges in this period were based on alleged failures to ascertain the programming needs of minority viewers or employment discrimination issues. (Guimary, 1975, 48) Cole and Oettinger relate vivid anecdotes about the cultural and communicative confrontations that took place between FCC Commissioners and representatives of minority and women's advocacy groups during this period. (1978, 92-100)

A watershed event in this approach to broadcast reform was the WLBT case, which started in March 1964. WLBT was a Jackson, Mississippi broadcaster; as stated by Mark Lloyd, a public interest lawyer active in broadcast cases,

Though blacks comprised 45 percent of the audience, the stations ignored them. The white citizens council could get on the air to express its opinions, but the local black ministers couldn't buy time. What local news there was either ignored or insulted the black community. When the networks ran a documentary about the civil rights movement, or an interview with Thurgood Marshall or Martin Luther King the network transmission was replaced by a sign that said "network signal problems."<sup>6</sup>

This conduct was clearly inconsistent with the public trustee mandate of the law. It attracted the attention of Everett Parker of the United Church of Christ Office of Communications (UCC). Based in New York, Parker joined with the local NAACP chapter and a local viewer to challenge the station's license before the FCC at renewal time. His conscious purpose was not only to overturn the offending conduct of the station, but also to give minorities and citizens' groups legal standing in FCC proceedings.

The FCC, however, reflecting its status as a regulator deeply enmeshed in a don't-rock-the-boat equilibrium with the regulated industry, refused to grant Parker and his compatriots standing. The UCC appealed the denial of standing in federal court, and in 1969 won a resounding victory upholding their right to participate in license renewal proceedings.<sup>7</sup> Even after granting UCC standing, however, the FCC still refused to deny WLBT renewal of its license. On appeal, the U.S. Appeals court overturned that decision as well.<sup>8</sup>

Legal victory led to massive growth in the number of advocacy groups focused on broadcasting. (Cole et al., 1978, 68-69) From 1969 to 1974, a large number of national organizations and local coalitions of ethnic and minority groups arose to focus on license renewals. The major liberal philanthropic foundations (Ford, Markle, Rockefeller) donated millions of dollars to the support of these efforts. The national organizations

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<sup>6</sup> Remarks by Mark Lloyd, Executive Director of the Civil Rights Telecommunications Forum, to the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters December 5, 1997, Washington, D.C.

<sup>7</sup> WLBT case 1

<sup>8</sup> WLBT case 2

served as centers of legal expertise or coordinating committees for the smaller, more numerous and less well-organized and -funded local groups. (Table 1)

#### National Media Activism Groups

<i>Name</i>	<i>Date Founded</i>
Citizens Communication Center	1969
Black Efforts for Soul in Television	1970
Nat'l Black Media Coalition	1973
Media Access Project	1974
Nat's Citizens Committee for Broadcasting	1967; 1974
National Organization for Women	1966
Gay Media Task Force	1972
Action for Children's Television	1968 (local) 1970 (national)

This pattern corroborates an important conclusion from the scholarly literature on social movements. Rather than viewing citizens' collective action as a purely bottom-up phenomenon, we see that the government, or the institutional structure as a whole, plays an important role in fostering and maintaining activism. Vogel (1989, p. 38-39) shows that formal organization of most consumer advocacy groups took place *after*, not before, the rush of consumerist regulatory legislation enacted between 1966 and 1968. Vogel explains the origin of this legislation by invoking the concept of "political entrepreneurship." Politicians were attuned to the overall climate of opinion, specifically the popularity of consumerist and environmental causes, and could advance their political careers by taking the lead in these areas. Likewise, Walker (1991, p. ) documents the role of government agencies in encouraging and subsidizing various forms of interest group collective action. The same observation is applied to transnational civil society activism ("International NGOs" or INGOs) by Reimann (2002), where the role of international governmental agencies and national governments in funding and fostering the growth of INGOs is documented in some detail. In this positive feedback cycle, early political entrepreneurs engage the institutional system in some way; if the system rewards them by opening up channels for influence and producing positive results, more collective action follows. Once an activated interest group or advocacy group has been formally incorporated into an institutional structure, it is not unusual to see the institutional structure subsidizing the groups directly.

Studies of citizen activism in the broadcast arena are fully consistent with these observations. The efflorescence of citizen groups aimed at broadcast licensing took place after 1969, following on the success of the WLBT cases. These legal victories not only gave members of the public legal standing in license renewal cases before the FCC, they also signaled that licensees who violated civil rights norms were vulnerable to such challenges. UCC's success not only led to an increase in the *amount* of activism, but also heavily influenced its form, as most citizen collective action focused on license renewals. The tremendous economic value of license renewal to broadcasters, and the costs of

defending themselves in renewal proceedings, gave the challengers considerable leverage. Some groups that challenged license renewals found that broadcasters were sometimes willing to “buy them off” by hiring specific people or retaining consulting firms suggested by the challengers. There were also efforts to provide government support for citizen participation in regulatory processes. (need cite)

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

The public interest movement was successful and influential insofar as it infused the consciousness of the civil rights, women’s, consumerist and environmental issues into the management and programming of the media. But its almost total lack of success in challenging or transforming the economic basis of the industry is noteworthy. Even compared to other aspects of the advocacy movements of the late 1960s and 1970s the changes achieved in the media sphere seem temporary and minor. In the areas of health, safety, and the environment, major new institutions were created: the Environmental Protection Agency, the Occupational Health and Safety Administration, the Equal Employment Opportunity Commission. These agencies had sweeping powers to regulate industry and issued a massive amount of new regulations. Although industry opposition eventually reined in OSHA, the EPA and EEOC are still major factors in American society.

By way of contrast, the influence of advocacy groups over the mass media has been almost totally eclipsed by technological change and by subsequent regulatory changes emphasizing competition and deregulation. The key point of leverage for media activists in the 1960s and 1970s was the broadcast license. By 1974, in reaction to the instability fomented by renewal challenges broadcasters had successfully prodded Congress to produce legislation extending the term of the license from 3 years to 5 years. A few years later, the Reagan Administration FCC instituted “postcard” renewal and abolished the need for community ascertainment of programming needs, making the broadcast license a much more secure property right and the paradigm of supply more commercial. The fairness doctrine and equal time doctrines are virtually gone, except insofar as they meet the needs of politicians (a powerful interest group in and of themselves, in this context)

for access in electoral campaigns. Commercialization of the media is globally triumphant. Even public broadcasting's special status has been weakened. While this was going on the telecommunications industry was thoroughly transformed according to the market paradigm. In cable television, public access channels did not prove to be revolutionary openings to a mobilized public, but mostly trivial supplements attended to by tiny minorities. More content diversity has been created by lower costs of production and the proliferation of distribution channels than by regulation or legislation. The lesson I glean from this episode is that public interest media-oriented activism as constituted in the 60s and 70s was focused on redistribution of benefits rather than production; as such it was unable to transform the fundamental economic institutions (property rights) underlying the media industries. Only stakeholder groups – i.e., economic interest groups – can have that kind of an impact.

### **ICANN: Institutional Innovation Foreclosed**

The Internet Corporation for Assigned Names and Numbers (ICANN) was incorporated in 1998. Ostensibly a private corporation, it was invoked by a U.S. Department of Commerce White Paper as part of an attempt to “privatize” the administration of the Internet's name and address infrastructure. The decision to outsource the policy development and rulemaking functions to a private sector organization was made for three reasons: 1) to allow the elite cadre of Internet technologists who had managed the Internet's standard-setting and name/address spaces to retain as much control as possible; 2) to avoid subjecting the Internet to conflicting and overlapping territorial jurisdictions of nation-states; and 2) to avoid giving existing international intergovernmental organizations such as the ITU any authority over the Internet.

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

#### *ICANN's Structure and Political Opportunity*

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

- The Domain Name Supporting Organization (DNSO)
- The At-large membership

The DNSO was one of three “Supporting Organizations” (SOs); the other two were devoted to Protocols and IP Addresses. Each SO appointed three members to the ICANN Board, and was also charged with the development, in a “bottom up” fashion, of policies

pertaining to their specific areas. In actual practice, only the DNSO had any significant policy problems to solve (and some suspected that the other SOs were put there simply to give the Internet technical community a countervailing voice on the Board). The DNSO consisted of seven “constituencies” representing different “stakeholders” (interest groups?) in Internet governance. It was presided over by a “Names Council” composed of three members elected from each constituency. Six of these constituencies consisted of components of the domain supply industry, business users, and intellectual property interests. One constituency was assigned to “noncommercial” domain name holders. As the structure of the DNSO was first being settled, Christopher Wilkinson of the European Commission referred to the Noncommercial Constituency as the place for “NGOs.”

ICANN’s individual membership was supposed to elect the other 9 “At-Large” board members. The board structure, in which supporting organizations based on functional constituencies elected half the board and the other half was elected on an at-large basis, was supposed to maintain a balance between the special forms of technical expertise and economic interest represented in the SOs, and the generalized interests of Internet users and the public. The idea of basing the at-large board selection upon a *membership* structure was an 11<sup>th</sup>-hour compromise imposed upon ICANN’s management by its critics in civil society and the U.S. government. ICANN’s incorporators had originally proposed to make the At-Large board members be self-selected by existing Board members, which had themselves been selected by the initial management clique. This insular form of organization attracted criticism from many independent commentators during the Commerce Department’s proceedings. In October 1998, Presidential advisor Ira Magaziner and Commerce Department official J. Beckwith Burr sent a letter advising the ICANN incorporators to amend their proposal to improve accountability by incorporating a membership.

#### *Management resistance*

For a variety of reasons, ICANN management resisted implementation of the membership requirement. The new organization had little financial support and viewed membership and elections as a luxury it could not afford. Worse, from management’s perspective, under California law membership in a nonprofit public benefit corporation such as ICANN confers certain privileges, such as the right to file lawsuits against the organization at the corporation’s expense. This, management feared, might be used to undermine its control and impose unsustainable expenses. At the philosophical level, management also rejected the basic rationale behind representation, insisting (rather disingenuously, given its actual practices) that the organization was focused on a narrow “technical coordination” mission and has no legislative or regulatory powers. Last, but not least, management and its supporters feared that their own control of the Board and the organization itself could not be maintained if a significant number of the Board members were elected by an open membership. To put it bluntly, it was very clear to them that their critics and opponents were more numerous than their supporters. The code word for this concern was “capture,” but this rhetoric deliberately obfuscated the fact that ICANN was already captured by its self-appointed management group and their hand-picked, passive, volunteer board, and that public elections might create an opportunity for others to “capture” the organization.

### *Advocacy groups mobilize*

Civil society participation in ICANN was (as the theoretical discussion earlier suggests) not unified behind a common agenda. There were, in fact, three distinct camps.

- One consisted of advocacy groups and academic policy/law activists focused on civil liberties, privacy, and intellectual property policy issues, as well as issues of fair representation. Most of these organizations were based in North America and Europe, although there were Korean, Japanese, and East and Central European organizations and activists as well. These were “pure” advocacy forms of collective action. Organizations involved included US ACM (a policy advocacy group associated with the Association for Computing Machinery), Computer Professionals for Social Responsibility, the American Civil Liberties Union, Center for Democracy and Technology, EPIC, Nader’s Consumer Project on Technology, Media Access Project, Peacenet and Jinbonet of Korea, and Internews. These groups tended to focus on substantive policy issues, particularly how the powers of ICANN to regulate the domain name industry might affect the rights and liberties of domain name registrants or how ICANN might be abused to affect the freedom of the Internet as a whole.
- The second camp consisted of more technically focused NGOs, such as the Internet Society, or operators of education and research networks such as Educause in the United States, Renater in France, or GARR in Italy. Some of these groups were also operators of, or organizationally associated with, the management of country code top-level domain name registries. The allegiances of this camp were based not so much on substantive analysis of policy issues but on personal and professional relationships formed years before. These groups were the ones who built and/or operated the Internet, and as stakeholders with something to lose were much more conservative and clubby than the advocacy groups. In their strong support for private sector governance arrangements, they saw *both* governments and civil society advocacy groups as a threat to their hegemony. They were, however, willing to accommodate business and intellectual property interests. The Internet Society in particular occupied a unique role. Its leadership responded strongly to the rhetoric that ICANN was primarily a technical coordination body and resisted what they saw as attempts to politicize it by the advocacy groups – even as their leadership cut deals with international organizations, intellectual property holders, and major telecom firms designed to preserve or formalize its control over the Internet’s name and address spaces. ISOC leadership enjoyed privileged access to ICANN management, and had two times before the formation of ICANN attempted to take over the functions performed by ICANN and use them as a basis for funding itself.
- The third camp consisted of the Internet elites from developing countries. These activists tended to be associated either with the country code registries or with Sustainable Development Networking Projects funded by the United Nations. Because of the fairly thin layer of development and of available expertise in developing countries, these actors tended to wear a variety of hats. For example, in Malaysia the organization that runs the .my country code registry is associated with a government ministry, but also considered itself a nonprofit organization

eligible for membership in the noncommercial constituency of the DNSO. The same organization owned one of the dominant Internet service providers in the country. For these participants, representation and “gaining a seat at the table” was the most important consideration. They tended, for example, to be more concerned with geographical representation on the Board or a policymaking council than with the substantive policy per se.

The degree of specialization and fragmentation of advocacy groups made it difficult for them to act in concert. Foundation funding: Ford, Markle, Salzburg

*Advocacy groups demonstrate potential*

ICANN’s management tried to back away from the membership commitment in early 2000. It proposed instead to create an at-large nominating committee that would elect the 9 board members. Strong criticism and resistance from US based civil liberties groups forced management to back down, however, and a compromise was reached. An open membership would be created, but it would elect only 5 of the at-large directors. As the cost of elections was one of the primary concerns of management, funding from the Ford and Markle Foundations was secured to finance the initial membership definition and verification process, and the initial election. The result was that the two most powerful Internet regions – North America and Europe, which account for about 75 percent of the world’s internet infrastructure – elected board members who were critical of ICANN. Indeed, the North American electee, Karl Auerbach, a technical veteran, was perhaps the most prominent and persistent critic of ICANN in the United States.

In the DNSO as well, resistance to autonomous civil society input was encountered, but overcome. At the formative stage of the Noncommercial Constituency (NCC) in Berlin in 1999, the Internet Society (ISOC) put itself forward as the exclusive organizer and leader of the constituency. ISOC however was considered untrustworthy and tarnished in the view of many advocacy groups because of its willingness to give trademark holders sweeping powers over domain name assignments, its close financial and professional ties to major e-commerce and Internet firms such as IBM and MCI, and its links to businesses that wanted to enter the market for domain name registration (registrars).

Confirming the advocacy groups’ worst fears, ISOC put forward a trademark lawyer as a candidate for the Names Council representative for the Noncommercial constituency, and insisted that trade associations of domain name registrars be allowed to join the Noncommercial constituency because they were incorporated as nonprofits. To make matters worse, many country code registry organizations also insisted on their right to join the NCC because they were state-owned corporations or nonprofits. The problem with these proposals was that there were already separate and exclusive DNSO constituencies for trademark holders, registrars, and country code registries. It became clear that the NCC was viewed by many of these groups as way to expand their influence within the DNSO. By gaining representation in the NCC as well as the other constituencies, interest groups might gain additional seats on the Names Council and thus more votes on policy matters. And it was clear that an NCC led by the Internet Society

would aid and abet this practice, and that ICANN's management and Board would also prefer a NCC dominated by its old friends in the Internet Society.

In Berlin, an alternative constituency organization plan was put forward by representatives of a policy advocacy organization of the Association for Computing Machinery (ACM Internet Governance Committee). The ACM representatives and their supporters fought for the principle that membership should be limited to noncommercial organizations that did not already hold a membership in some other DNSO constituency. This led to a factional fight that delayed the recognition and formalization of the Noncommercial Constituency for three months. In the end, after an 18-month struggle marked by constant conflict on the email list that was the constituency's primary method of maintaining contact with its members, the NCC established itself as an autonomous force within ICANN and developed its own voice on policy issues. Its representatives went on to play major roles in definition of the Uniform Domain Name Dispute Resolution Policy and the reassignment of the .org top-level domain. The costs of the initial conflict were great, however, as some mainstream noncommercial organizations were driven away by the conflicts. Also, once the NCC gained its voice and began to produce policy recommendations on matters such as new top-level domains, at-large representation, domain name – trademark disputes that were not in accord with what ICANN management or the business interests who dominated the DNSO wanted, they quickly learned that the political structure of the DNSO marginalized their efforts. Not only could they easily be outvoted, but the Board could easily ignore a DNSO recommendation if it wanted to.

In addition to marginalization, the NCC encountered the problem of economic sustainability. In ICANN's "self-regulatory" regime, the DNSO was self-funded and each constituency was expected to pay dues amounting to tens of thousands of dollars simply to participate in the organization. For the registrar and registry constituencies, organizational dues of a few hundred US dollars were trivial relative to the economic stakes. For noncommercial organizations however, their economic stake in a \$30 per year domain name might not justify much of an investment.

*ICANN management declares the structure "unworkable."*

After the shock of the at-large board elections, relations between ICANN's management and its purported constituency deteriorated. ICANN commissioned an expensive "At Large Study Committee" (ALSC) headed by former Swedish Prime Minister Carl Bildt to reassess whether public membership should exist at all, and if so, how many seats on the Board it should elect. The ALSC disappointed Internet "democrats" by proposing that only 6 at-large members should be publicly elected and speculated that membership/voting should be restricted to domain name holders and funded via registrars. The Markle Foundation funded its own study of the experimental elections (the NGO and Academic ICANN Study, or NAIS), and produced a report defending lighter eligibility requirements and a stronger public voice in board selection. Later, however, the Markle Foundation's mercurial leader changed her mind and decided that elections (after spending millions of dollars on processes and studies to support them) were not

such a good idea after all. Ultimately, the Board ignored both its own At Large Study Committee and NAIS and decided to eliminate the at large altogether.

At the same time as ICANN management was rejecting accountability through membership and elections, it was rejecting the DNSO's bottom up policymaking processes. The DNSO came to be viewed as unreliable or unnecessary by the Board. In some cases, policies were made up and promulgated by management without even consulting the DNSO. In others, carefully prepared DNSO policy positions were passed up to the Board and modified unilaterally and whimsically on the fly. In still other cases, the DNSO was unable to act in a timely manner. To compound these problems, ICANN was unable to fulfill critical parts of its original deal with the U.S. government. It was unable to develop obligatory contractual agreements with the operators of country code registries and the root server operators.

In February 2002, ICANN's CEO, Stuart Lynn, explicitly admitted that its governance model was not working and called for sweeping "reforms." The reforms Lynn proposed represented in essence a reversion to management's original concept of an insulated and self-selecting board. It completely eliminated its prior commitment to a membership and relied instead on a Nominating Committee selected by the Board and the councils of the SOs.

By firmly closing what had been a relatively open channel for public mobilization, ICANN's "Evolution and Reform" process led to some demobilization of public interest groups within ICANN. But, interestingly, the result was to shift the focus of lobbying back to national governments. As disgust with ICANN mounted, U.S.-based NGOs concentrated on lobbying the US Commerce Department or Congress. Many of them publicly called for a complete rebid of the ICANN contract. European-based NGO's focused their attention more on the European Commission. The reversion to nationally-focused influence, however, created tensions between US NGOs, who were calling for US government remedial action, and Europeans NGOs, who chafed at any notion of intervention by the US government. Moreover, the International Telecommunication Union began to assiduously court support among governments and ICANN critics. The ITU is now positioning itself to inherit control of various parts of ICANN. Thus, as ICANN loses legitimacy and shuts off political opportunities for external groups, the advocacy groups involved revert to more traditional political structures.

## **Comparative Analysis**

As this research progresses a more theoretically grounded basis for comparing incidents of advocacy and their impact will be developed. For now, a casual comparison reveals the following similarities and differences.

- One key difference between this period and the earlier period of activism thirty years earlier is the greater ability of information and communication policy issues to attract attention and commitment on their own. Of course, ICANN and related politics have never achieved the prominence of WTO protests or environmental activism. Nevertheless, Internet-related civil society activism was not an

extension of another movement such as civil rights or environmentalism. ICANN politics was an incorporated into larger battles over the proper scope of intellectual property rights, privacy rights in electronic environments, and censorship-related struggles, but all those issues are information and communication policy issues.

- The description above indicates one critical difference between domestic and transnational advocacy. In any truly international institution, the interests and advocacy principles one encounters are likely to be far more heterogeneous than in the domestic sphere. Moreover, any attempt to set aside a pure and simple category of NGOs or “civil society” interests clearly fails, especially in the developing world. Linkages between economically motivated interest groups, advocacy groups, and government agencies are fluid and manifold. The same person may straddle all three categories. Facile notions of “transnational civil society” should not obscure the extreme heterogeneity of the world as a whole and become a code word for English-speaking, Western progressives, or (worse) “English-speaking, Western progressives who believe they are helping the developing world.”
- In both cases, the positive feedback between institutional openings and public mobilization is apparent. The successful legal challenges to the FCC and the WLBT licensee attracted the attention and commitment of many additional groups, leading in turn to larger amounts of foundation funding. In the ICANN case, the Clinton administration’s promise that ICANN would be open to civil society influence via a membership and board elections encouraged widespread mobilization of advocacy groups and led to foundation funding of special efforts to promote “Internet democracy.” In ICANN’s case, however, the potential for a major mobilization of advocacy groups was shut off so quickly that the positive feedback cycle never had a chance to fully develop. And one reason why the institutional innovation failed was that civil society groups were themselves divided, with key civil society actors (e.g., the Internet Society) being stakeholders with a vested interest, and therefore co-opted and unwilling to work with the advocacy groups.
- Foundation support played a major role in overcoming the “collective action problem” of advocacy groups in both cases. In the early stages of ICANN’s existence the Markle Foundation acted almost as a partner in building the new regime, supporting studies, financing the election and funding a travel support program for the DNSO’s Noncommercial Constituency. However, when a key figure at Markle left (Andrew Shapiro) its focus blurred and its role became unpredictable and inconsistent. Dependency on external philanthropic funding was a mixed blessing.
- In both cases, the legitimacy and “representativeness” of activist groups was called into question as soon as they began to mount a credible challenge. In both cases, of course, advocacy groups were composed of self-selected minorities – but then, so were their opponents. This issue is far more serious at the transnational level than domestically. At the national level questions about legitimacy and representation can be answered through elections. At the international level how are they answered? This leads to the question whether advocacy groups at the

international level should seek formal incorporation into institutional structures, or remain outside them and attempt to influence decision makers via persuasion, expertise, public opinion, and so on.

- On the critical issue of institutional change, both cases reveal that the basic property structures get forged through bargaining among key economic stakeholders, not by intellectuals and advocacy groups. In media in the 1970s, it was the broadcasters who succeeded in stabilizing and eventually strengthening the status of their property right and the freedom to use it. They won out over the long term because they controlled the key revenue-producing resource at issue, the broadcast license. In ICANN's case, the contested property rights were domain name registries and registrar businesses, as well as trademark rights. Each of these property-based stakeholders wielded more clout in the new regime than advocacy groups, which suffered from a lack of resources capable of sustaining their activity, a lack of motivation stemming from their absence of a major stake, and the difficulties of forging unity under such conditions. Pure advocacy can affect distributions at the margins and in some rare instances advocacy groups may hold a balance of power, but to be consistently influential in the process one must be a stakeholder.

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