

Options for and Effectiveness of Internet Self- and Co-Regulation

Phase 2: Case Study Report

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Preface

This Phase 2 Report is a deliverable element of the study being conducted by a team led by RAND Europe into 'Options for and Effectiveness of Internet Self- and Co-Regulation'. The main objective of the study is to assist the Commission in development of a coherent and effective approach to future self- and co-regulation initiatives in the Information Society beyond 2007. In this report, we detail the Phase 2 work.

In Phase 2, we assess 21 case studies, and in our further analysis in Phase 3 we will synthesise these findings with other approaches designed to provide gap analysis and reveal emerging and developing areas of regulatory concern. In Phase 1 we mapped existing regulatory and co- and self-regulatory institutions, against a series of case studies and other approaches designed to reveal emerging and developing areas of regulatory concern. There is substantial state of the art in this area and our aim was limited to reviewing, updating and amending where necessary this 'state of the art'.

This report consists of six chapters. Chapter 1 explains the choice of specific SROs for the Phase 2 focussed evaluations, and the methodology we adopt (as in the Inception Report). We set the examples against a common set of criteria, and selected and tabulated against these criteria. The substantive Chapters 2-5 contain case studies arranged by four categories: infrastructure and critical resources (Chapter 2); issues affecting content rating (Chapter 3), Internet filtering and reporting of illegal content (Chapter 4); issues that are emerging (Chapter 5). This provides the basis for examination of standards, infrastructure, ISP self-regulation, mass media content, and user-derived content. It also provides the framework to examine personal Internet security, DRM and e-commerce standards. Finally, Chapter 6 details the comparative analysis across case studies, in order to develop patterns, especially with regard to the dynamic evolution of case studies identified in the study period June-September 2007. Further gap analysis bridges the Phase 1 mapping exercise, and Phase 2 detailed examination of a representative and strategically chosen universe of case studies, is to identify the continually emerging environment for new topics and/or sectoral areas of regulatory and/or legislative interest. This concise gap analysis provides the background for the final report explanation of potential areas for further research. In the final section, we detail the work to be undertaken subsequently to complete the study. Appendix 1 details the schedule of interviews and other discussions conducted with stakeholders and experts. Appendix 2 details web survey responses.

This study is being undertaken with the support of a Steering Committee appointed by DG INFSO; this Phase 2 Report accordingly complies with a general plan in which we will report at each Steering Committee meeting on what has been done and on what is about to be done (i.e. in the period prior to the next meeting).

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Summary

The report details the results of short case studies of 21 Information Society Self Regulatory Organisations (SROs) using a common template and methodology. The case study methodology was based on a resource per case study of 2.5 days including reporting. It encompasses:

- A brief literature review (including previous evaluations – though note much of this was undertaken in case study selection in the Inception and Phase 1 reports);
- Two expert interviews per case study, with a representative of the SRO and a stakeholder (from industry, government, academic expert, or civil society);
- A particular focus on transparency, independence, consultation and reform of the SRO;
- An Internet survey was kept online until 31 October, resulting in a total of 316 replies across all 21 case studies.

Therefore, this Phase 2 report comprises a series of ‘snapshots’ indicating applicability of a common methodology and tracing options for evaluation. These will be further developed in the concluding Phase 3 and Final Report.

The following case studies were examined. We summarize each case study briefly.

Table 1: Grouping Case Studies by Chapter According to Scope and Interconnectedness

2: Internet Infrastructure and Standards	3: Internet Self- and Co-Regulation	4: Content and Filtering/Rating Case Studies	5: Emerging Self-Regulation Areas
ICANN Nominet IETF W3C ICRA	IWF INHOPE EuroISPA KJM FSM	ICSTIS IMCB NICAM PEGI ATVOD	<i>SecondLife</i> Creative Commons Social Network: <i>Bebo</i> Trustmarks London Action Plan IGF

Internet Corporation for Assigned Names and Numbers: ICANN

Researcher: Adam Peake

ICANN was founded in 1998 as a California corporation: this unique arrangement was supervised in a co-regulatory arrangement by the Department of Commerce. Its Directors have legal status based on their private law obligations as corporate managers, not as regulators. It has a Government Advisory Council, with differing opinions as to its influence on the board’s decisions. ICANN has invested substantial resources in attempts to achieve broad inclusion and transparency with its international stakeholders, including elections to the Board which were carried out in 2000 and then abandoned as an experiment. Evaluations have been carried out by OneWorldTrust, LSE, and College d’Europe. In 2007, major governance reforms were undertaken.

NOMINET

Researcher: Chris Marsden

Nominet is the UK Top Level Domain registrar, founded in 1996 by Willie Black. It is seen as an 'exemplar' of non-profit self-regulation. It is a not for profit charity with a very large membership (3000). This creates a problem for decision-making: a largely 'inactive' membership creates problems in changing fees for domains. Nominet is growing with the market, and has a large turnover, invests in technical and other staff, and carried a £16million surplus which it proposes in part to invest in a Foundation for Internet policy research. Its current challenges include competition with profit-making and entrepreneurial TLD organisations for back-office services and the ENUM transition, as well as new market developments such as domaining. It underwent major governance reform consultations in 2007.

IETF: Internet Engineering Task Force

Researcher: Ian Brown

IETF was named in 1986, and developed from ARPANet architectural standards committees. Its design is based on extreme radical openness by standards organisation traditions – all budgets, contracts, board discussions are published; consensus decisions may only be reached on public working group mailing lists open to all. Most radically, there are no "members". The volunteer structure with no corporate entity and low costs (\$4m/annum with many thousands of participants) has continued, and it remains the unchallenged pre-eminent Internet standards body. In regulatory discussions, it considers security implications of standards, for instance, but other public policy considerations are driven on a case-by-case basis by participants (e.g. privacy, accessibility) except in extreme circumstances.

W3C: World Wide Web Consortium

Researcher: Chris Marsden

Tim Berners Lee founded the W3C in 1994. It was founded as an international standards consortium with Europe and Japanese partner institutions to the US headquarters. The membership organization and Director's powers to enforce decisions was adopted with lessons drawn from the IETF. It licences its patents royalty free to members, a decision following a complex four year negotiation to 2002 which illustrates the complex and detailed attention of the corporate members. Its relationship with regulators includes funding by the European Commission, and standards that include regulatory requirements in design, for instance the P3P (Platform for Privacy Preferences) and PICS. Evaluation has largely been by academic comparisons with other standards bodies.

Internet Content Rating Association: ICRA

Researcher: Chris Marsden

ICRA emerged from the RSAC system for computer games in the US, founded in 1994. Filtering and rating of content was seen as an 'end-to-end' solution to content concerns, giving the user control rather than allowing censorship. It developed from PICS, a W3C standard. In 1999, ICRA was named, a not for profit company that is EC-supported with

corporate members. It has a small dedicated staff. In 2007, ICRA was absorbed into a relaunched advocacy organisation for rating, the Family Online Safety Institute, and the FOSI board committed itself to the new POWDER interoperable ratings standard process within the W3C. The lack of market adoption of ICRA until now has been attributed in part to lack of incentives for websites unless rating can interoperate with other standards (for instance for trustmarks), or more radically unless rating is made mandatory. It was evaluated in 2006 by independent evaluators appointed by the European Commission.

Internet Watch Foundation: IWF

Researcher: Lorna Woods/Chris Marsden

The IWF was founded in 1998 as the UK ISP industry charitable hotline for the removal of child pornographic content. Hotlines are exemplars of user reporting and ISP removal of illegal content. It is claimed as a success in its core remit:- increased number of cases of reported illegal content; driving child pornography out of the UK; involvement in UK government and police initiatives; international support for INHOPE and coordinated police activities. Nonetheless there are serious recurring issues about freedom of expression and access to justice, with the original case-by-case take down notices replaced by the total removal of newsgroups in 2002 and the new initiative, the CAIC blocklist. The implementation of automated filtering based on this list by British Telecom and others encompasses over 90% of consumer Internet users, and the police minister has insisted that if it is not voluntarily adopted in whole, it may be made mandatory. IWF has broadened its funding base to include mobile networks and search engines, amongst others, and there is tension between supporters of its original mission, and an increasingly independent executive management. IWF has undergone a number of governance reviews during its first ten years, both internal and by government (1998).

INHOPE

Researcher: Chris Marsden

INHOPE is the pan-European hotline association, formed in 1999, based in Dublin and most recently expanding rapidly to 28 members across Europe and worldwide. It has never represented hotlines from all European Union member states. Its primary role is in training and coordination, and the majority of its funding is guaranteed by the Safer Internet Action Plan, as well as Microsoft. It has 5 full time staff and a budget of under 1 million€ per annum. Recently, members and governments have proposed a pan-European coordinated blocklist similar to the UK CAIC list discussed in the IWF example. This would expand and change the organisation's remit. It is evaluated by the SIAP.

EuroISPA

Researcher: Chris Marsden

EuroISPA is the pan-European ISP association, formed in 1999, and based in Brussels. It is a very small (3 person) organisation, has fewer members than INHOPE, and is funded by those members. It opposes any pan-European blocklist, and encourages pan-European ISP cooperation, to which end it signed a memorandum of Understanding with INHOPE in 2004. Several member associations have adopted filtering as a self-initiative (larger UK ISPs) or under co-regulation (France, Germany, Scandinavia). Nevertheless, with varying

technical flaws in filtering, EuroISPA's position is to oppose such ISP-based censorship on principle.

KJM: Kommission für Jugendmedienschutz

Researcher: Lisa Klautzer

Founded 2003, KJM's was creation motivated by the 2002 Erfurt shooting and the perceived failure of self-regulation. There was a strong political sense that 'something must be done'. It works according to the German principles of regulated self-regulation: 'Prinzip der regulierten Selbstregulierung'. Its technical expertise has been found particularly useful by some ISPs, as well as its media literacy knowledge. It is a large, well-resourced and politically powerful co-regulator. It has been evaluated in October 2007 by Hans Bredow Institut/JMM.

FSM: Verein Freiwillige Selbstkontrolle Multimedia-Dienstanbieter e.V.

Researcher: Lisa Klautzer

FSM was founded in 1997 but co-regulated from 2003 by KJM. However, in the specific subject of search engine self-regulation, it continues a self-regulatory model. This novel self-regulatory approach started in 2005. It was designed to address specific German constitutional content issues, especially neo-Nazi concerns. Note the 2004 Protocol to the Council of Europe Cybercrime Convention requires governments to find solutions to preventing hate speech online. The self-regulatory solution has also been suggested in Netherlands and elsewhere (notably by Professor van Eijk). The filtering solution raises the question of inclusion of search engines in the Electronic Commerce Directive (EC/2000/31) – as different states choose to include or exclude search providers. A wider research question is the fairness of search results in countries without explicit filtering. We note chilling effects.org and associated research. FSM was evaluated as part of the Hans Bredow/JMM study.

ICSTIS

Researcher: Chris Marsden

ICSTIS (renamed in October 2007 as PhonePayPlus) was founded in 1986 as the co-regulator of premium telephony services in the UK, recognised by then-regulator Oftel. It commits members to its Code of Practice which is now in its 11th Edition. It is the paradigmatic regulator of the world's largest premium services market, of about £1.2 billion per annum. In 2007, with its new co-regulatory partner Ofcom (since 2004) a strategic review was put underway, with particular attention to the governance structure and regulating the new markets for mobile, broadcast quiz shows and national-local rate (0871) numbers (from 2008). It co-founded the international coordination mechanism: IARN. It is funded by a levy on service providers which is collected by network operators. There are fines and administrative charges collected from service providers who breach the Code of Practice, of up to £250,000 or disqualification from providing services. Its budget and strategy is ultimately approved by Ofcom which evaluates the organisation annually.

IMCB: Independent Mobile Classification Board

Researcher: Chris Marsden

With the growth of the Internet market accessed by mobile devices, the UK mobile network operators announced a Code of Conduct in February 2004. The Code committed them to rating adult (18+) content, backed by a rating body. A tender resulted in the appointment of a subsidiary of ICSTIS established for the purpose, the IMCB. After prolonged legal negotiation it began operation in 2005. It is a self-regulatory body which for administrative purposes is set up as a subsidiary of ICSTIS (which has a Golden Share). It has no formal relationship with Ofcom. IMCB follows the NICAM/British Board of Film Classification model. Further European self-regulatory models have been rolled out in other jurisdictions (co-regulation in Germany). An agreement for a Pan-European Framework was announced 2007. The Codes in place cover adult content providers contracted to the network operators. No formal independent evaluation has taken place.

Netherlands Instituut voor de Classificatie van Audiovisuele Media: NICAM

Researcher: Stijn Hoorens

NICAM grew from the 1990s concern with satellite/cable TV growth, leading to a consensus decision on a pan-media system of self-regulation to replace the state regulation model in place. It is mandated by Parliament, and reports to Parliament. It has been widely praised as an entirely transparent and widely adopted system. The training system is also widely praised, for its ongoing attention to audit of company classifiers. The consensus and industry/political buy-in to the NICAM system is the result of a long negotiated outcome typical of Dutch politics. This is not necessarily replicable but the system is used elsewhere and NICAM assisted in the creation of pan-European games rating system PEGI. It is evaluated periodically by law.

Pan European Game Information : PEGI

Researcher: Chris Marsden

The PEGI system is a pan-European video game classification scheme funded by fees for game classification. It emerged from previous UK and US schemes. It merges the Netherlands NICAM system and UK Video Standards Council capabilities in training industry to rate its own content for distributors. Note that legal ratings and decisions not to rate (i.e. refuse licences for distribution) to games also exist, and PEGI has no legal force. It does have very broad industry buy-in, including mobile and online game publishers. The latter inspired the recent initiative PEGI Online, which responds to growth of interactive games and was co-funded by the EC Safer Internet Action Plan and evaluated by SIAP in 2007. PEGI Online was launched by Commissioner Reding in June 2007. Its coordination can be seen as a type of 'co-regulatory policy making with self-regulatory implementation'. Note there is a government advisory board.

Association of TV On Demand : ATVOD

Researcher: Lorna Woods

ATVOD is a nascent regulator of Video on Demand, with six members. Membership is voluntary. It has limited resources and has no legal requirement for its foundation, simply corporate responsibility on the part of large communications companies. It has a virtual presence. Note a governance review was underway in 2007, and a new Code will be launched by the Minister for Culture on 12 December. It emphasises the need to consider

member and direct resources, in the same manner as fellow ratings self-regulator IMCB. It has an extremely low profile thus far. ATVOD has been praised as an initiative by Commissioner Reding. It was formerly evaluated by Woods (2006) for the Hans Bredow study of media self-regulation for DG INFSO.

SecondLife

Researcher: Eddy Nason/Chris Marsden

SecondLife is a virtual world established by LindenLabs from San Francisco, operating since 2003 (as a beta). It claims 9 million residents with about 30,000 concurrent users. There are now many more non-US than US users, who only comprise 25% of the total. Its regulatory system works via Terms of Service and resident self-regulation. Content controversies include the behaviour of avatar personalities: virtual rapes and paedophilia. Economic controversies concern fraud and misuses of the virtual currency – Linden dollar. Bank crashes have resulted, and gambling has been banned from the world. The servers are all US-based, but LindenLabs in 2006 opened offices in the UK. They anticipate strategies to head off future regulatory challenges. Evaluation is thus far mainly academic, where a flourishing industry is developing examining all aspects of *SecondLife* including regulatory options.

Bebo

Researcher: Eddy Nason/Chris Marsden

Bebo is the largest social network in Ireland, and No.3 worldwide. It was formed in California in 2005 with European owners, and its core market is European teens. In response to regulatory concerns, especially with regard to child abuse possibilities, a Chief Safety Officer was appointed in 2006. All staff are trained on safety issues. There is a dedicated human interface for profile photos to prevent abuse. As a successful hybrid European/US social network, its pre-emptive regulatory model raises issues: of entry barriers to European (especially youth) markets, of a 'Bill of Rights' for users, and as to whether such safety policies are replicable. It is too recent a phenomenon to have been evaluated externally, though as with *SecondLife* academic and regulatory interest is growing.

Creative Commons: CC

Researcher: Chris Marsden

CC was founded in 2002 as a non-profit based at Stanford, California. It drafts licences for individual content creators to licence content on non-commercial terms. It now has over 60 other national CC licences. Lawrence Lessig is its founder Chief Executive, as well as its intellectual leader, in much the same respect as Tim Berners Lee for the W3C. Early board member and Free Software Foundation head Richard Stallman quit in 2004, criticising CC for its lack of radical mission. Lessig stepped back in 2007, though continuing as CEO and leading a major fundraising drive to raise \$500,000 to put the organisation on a more secure footing than its largely volunteer/academic beginnings. CC licences used on the photo sharing site Flickr means over 150million 'artworks' are licensed. The growth of the CC 'movement' includes iCommons and ccSalon to showcase CC licence use, and CC International (South Africa) and the Creative Commons summit to encourage sharing of

best practice. Licence enforcement is controversial as an emerging legal issue for CC in various jurisdictions, as is the relationship between non-commercial content in the public sector and CC licensed content.

Trustmarks: TRUSTe and Confianza Online

Researcher: Neil Robinson

The context for trustmarks is a lack of trust in consumer contracting on the Internet, outside trusted brand names such as eBay. The late 1990s saw the foundation of several trustmarks in the US and internationally, with TRUSTe and others a way to demonstrate good faith. More recently, a dynamic trustmark system that removes trustmarks automatically where merchants fail to maintain standards has been developed: Squaretrade targets most problems that reduce trust. Spain has developed a new and well-supported trustmark aiming to build on best practice: Confianza Online.

London Action Plan Against Spam: LAP

Researchers: Ian Brown/Chris Marsden

LAP was founded in 2004, with leadership by the UK Department for Trade, OECD Anti-Spam Toolkit, and US Federal Trade Commission. 27 countries joined initially, and membership also includes corporations and intergovernmental bodies. It works as a legally extremely informal mechanism that focuses on building trust between enforcers – data protection and other anti-spam consumer agencies. Government agencies contribute (small amounts of) resource in kind to fund the ‘virtual’ secretariat and website. Companies are encouraged to sponsor events but have so far refused to provide any larger resource. The overall lack of resource means even basic metrics are not monitored or evaluated. It has led to greater enforcement interest in a multi-stakeholder holistic approach, and broader forms of malware, including Denial of Service ‘zombies’. As much enforcement activity is confidential and/or in progress prior to conviction, evaluation should focus on the public network of enforcement agencies and private partners, and the extent to which LAP can be seen to have aided development of best practice for national and international jurisdictions and regulators to adopt.

Internet Governance Forum

Researcher: Adam Peake

The Internet Governance Forum is an annual United Nations-convened multi-stakeholder summit, with no members, and no formal decision making. There is much cynicism as to its real political impact. Its mandate grew out of the World Summits of 2003 and 2005, and a five year mandate from the Secretary General for 2006-2010: Athens, Rio, New Delhi, Egypt, and Eastern Europe. The funding is by corporate and state (Swiss, UK, hosts) supporters, but the secretariat is severely under-funded. It has been described as an ‘exemplar’ of multistakeholder representation in the presence of the Congress of Non-Governmental Organisations (CONGO) despite these shortcomings. The role of experts is increasingly reflected in new Dynamic Coalitions. With the second IGF just completed, evaluation is on an event-by-event basis.

Gap Analysis and Remaining Work

The analysis of the case studies has shown that the lack of compulsion or state involvement has led to significant private or non-profit innovation in several sectors: trustmarks; SNS; virtual worlds; copyright. Sharing of global best practice between governments and other stakeholders has been seen from both top-down and more heterarchical initiatives. The problems of illegal and inappropriate content have led to significant private sector initiative on both individual company and more sectoral levels. Significant gaps appear to exist in public knowledge of even the best-resourced and most well-known examples of Information Society self-regulation, and many case studies illustrate attempts at outreach and media literacy. The now long-established standards and technical infrastructure bodies are accused by critics of being captured by their industry supporters, but can claim significant mandates from industry, government and users, acclaim for their technical expertise and widespread market adoption of their interoperable standards. Labelling and rating schemes continue to show innovation but are not well-known by the public or widely adopted by industry.

The primary substantive concerns that arise from the regulation perspective remain those of the balancing of interests, a primarily political equation. These include the rights of intellectual property holders and the interest in innovation, and the right balance to strike for copyright in an evolving and more user-centred and generated innovative environment. The second such trade-off is between the public interests in unfettered freedom of expression for Internet users, versus the various public safety concerns including inappropriate and harmful content and ‘malware’ (spam, viruses etc.) as well as criminal content or that promoting criminal activity. Further concerns arise in regards to entrepreneurial attempts to adapt their services to new commercial opportunities versus the interests of many users in maintaining a privacy opt-out from exposure of their personal information to either strangers or commercial presence. IPR, freedom of expression, crime fighting and privacy are all policy fields in which government has substantial interest in maintaining sound policies for public benefit, and none of these fields can be left to self-regulation without continually refreshed impact assessment and review of the public interest.

In regard to impact assessment, we can state – subject to our further analysis of cross-cutting issues and relevance to i2010 and competitiveness agendas – that the model used appears to produce the well-known dilemma to policymakers in this field: there are several successful private organisations and firm-level governance arrangements which do not suit the classic model of an independent SRO. The questions asked of SROs and experts appear to reveal significant and often constructive tensions in the role and reform of the SROs, and the proper role for both SRO and government intervention. The lack of individual resource per case study means that results are of necessity interim and cautious conclusions only can be drawn. It is clear that the necessity for impact assessment of SROs in the Information Society must include the interaction between national, European and global initiatives, and respondents welcomed the ambitious multi-sectoral and inter-disciplinary approach taken in this survey.

Glossary

ABA	Australian Broadcasting Authority (statutory regulator)
ATVOD	Association of Television On Demand – UK self-regulatory body
DG INFSO	Directorate General Information Society and Media. One of 25 Directorate Generals of the European Commission, established by the merger of DG INFOSOC (Information Society) and the Media Directorate of DG Culture in 2004
DRM	Digital Rights Management – method of embedding content standards and policy into computer-readable form, used to enforce copyright conditions
EC	European Commission; executive body of the EU, responsible for developing and implementing the <i>acquis communautaire</i> , the body of EU law.
ECD	Electronic Commerce Directive, Directive 2000/31/EC
EU	European Union, as established in the Treaty of Maastricht 1992. Formerly the European Economic Community (EEC)
EU-15	Fifteen pre-existing Member States at 31 December 2003, prior to the new Member States' joining the EU
European Council	Council of Ministers of EU Member States, responsible for proposing legislation to the European Parliament
GPL	General Public Licence established by Free Software Foundation, now in version 2.0 of 1990, with version 3.0 under discussion
GSM	Global System for Mobile Communication also known as 2G, second-generation mobile telephony.
HDTV	High Definition Television
ICANN	Internet Corporation for Assigned Names and Numbers, California incorporated not-for-profit organization established in 1998
ICRA	Internet Content Rating Association (ICRA) is an international, non-profit organization of internet leaders working to develop a safer internet
ICT	Information Communication Technology
IETF	Internet Engineering Task Force – technical standards body
IGF	Internet Governance Forum – United Nations multistakeholder discussion forum initially held in Athens 2006, and to be held annually for at least four years thereafter
IP	Internet Protocol
IPR	Intellectual property rights
IPTV	Internet Protocol Television; video programming delivered over IP networks rather than broadcast (cable, terrestrial and satellite) networks
ISFE	Interactive Software Federation of Europe, European association of publishers of video and computer games, reference and educational works

ISOC	Internet Society – coordinating mechanism for Internet standards and policy
ISP	Internet Service Provider; company providing access to the Internet for consumers and businesses. The largest ISP in most Member States is provided by the incumbent telco. ISPs often provide content, have ‘portal’ pages which offer news, weather and video reports, dating, chat, search and other functions. Mobile networks are also ISPs
ITU	International Telecommunication Union
IWF	Internet Watch Foundation – UK ‘hotline’ for illegal content reporting
KJM	Kommission für Jugendmedienschutz- co-regulatory body for media content
MS	Member State of the EU; 25 in total with 10 new members ratifying membership to join on 1 January 2004
NICAM	Netherlands Institute for the Classification of Audiovisual Media
OECD	Organization for Economic Cooperation and Development. ‘Think-tank’ for developed nations: 30 national members; membership is limited by commitment to a market economy and a pluralistic democracy. Formed in 1961 and grew out of the Organization for European Economic Co-operation (OEEC), established in 1947
PEGI	Pan-European Game Information (PEGI) age rating system
SRO	Self Regulatory Organization – institution designed to provide guidance and/or enforcement of conduct or content standards, in our case including a broad spectrum from ‘self-organized’ to co-regulatory forms
Telco	Telecommunications provider; term normally used for incumbent former national monopoly provider. There are also ‘competitive telcos’ – all other providers of switched telecommunications services except the national incumbent
VOD	Video on Demand; provision of video programming at individual demand rather than by an editorial controller in a scheduled sequence
VoIP	Voice over Internet Protocol: technology to digitize sound in packets sent over the Internet. Its primary advantage is that distance does not affect the cost of the call between two VoIP enabled phones (or PCs attached to the phone or a data system)
WGIG	Working Group on Internet Governance – expert group established in 2005 to report on Internet policy to the United Nations Secretary General
WSIS	World Summit on the Information Society – United Nations summits formally held in Geneva (2003) and Tunis (2005)

CHAPTER 1 **Introduction: Case Study Methodology and Classification**

In the spirit of an empirical research background paper, the substantive Chapters 2-5 analyze the issues and opinions of experts on the twenty-one case studies, and provide evidence for individual evaluations where appropriate for the case studies. Cross-cutting analysis is reserved for the final Chapter 6, and the Phase 3 final report.

1.1 **Phase 2 Case Studies**

We analyse our list of Phase II case studies against a common set of criteria. The tender invited the consultants to propose twenty or more specific case studies for selection. Selection of the case studies was made on the basis of:

- prior studies identified in the literature, including especially those in previous EC studies identified in the Terms of Reference; and
- areas where gaps exist identified in the expert interview process from Phase 1.

We set out the criteria by which to select case studies, before tabulating and analyzing those selected. We note that relations between co-regulatory fora such as the German KJM and FSM, Dutch NICAM¹, Internet filtering bodies such as ICRA and the global (but US-based) ICANN have been investigated at length in previous Commission and independent studies, including Oxford and Hans Bredow reports. It was necessary to update these studies in the literature, but as there is limited or no significant structural change to the bodies in the period since the analyses listed below (as with the ICANN governance changes), full case studies were unnecessary, as the resource per case study was less than 3 days.

The issues we raise can be categorised differently than in the order we raise them, nor is the listing intended to be absolute and exclusive. For instance, we do not consider advertising or newspaper content self-regulation, as these are fully empirically investigated elsewhere and do not appear to be dynamically changing in the period since previous studies.

Two clear and apparent criteria for selection of case studies were to ensure a wide variety by geography and type of regulatory scheme. **Choice focussed on a broad spectrum of**

¹ See Bekkers (2005) Child Safety and Mobile Phones, at http://ec.europa.eu/information_society/activities/sip/docs/mobile_2005/wim_bekkers.ppt#300,1, Child Safety and Mobile Phones

individual countries and more international schemes, and on schemes that are of various types in terms of the spectrum of choice between co-regulation and self-regulation. The institutions encompass aspects of:

- national, European, other regional and global self- and co-regulation; and
- varieties of co- and self-regulation from schema considered closest to government control to those most representative of ‘pure’ self-regulation, including novel, archetypal or only partially evolved initiatives.

This spectrum from co-regulation closest to government supervision, to more clearly self-regulated forms, is of greatest interest where similar industries and/or nations adopt significantly differing regimes, or where particular countries adopt recognised offline schemes. Where this occurs, its importance extends beyond novelty into competitiveness, legitimacy and implications for innovation, particularly in view of the Lisbon agenda and completion of the Internal Market.

Our selection of case studies reflects the following:

1. The strategic importance of the sector to European development of the Information Society content/applications/services under the Lisbon agenda;
2. Any divergence in approach between schemes:
 - a. With apparently similar national, market or constitutional environments (which could include either differences in national markets or sectors within a national market);
3. The strategic importance of these schemes to other countries/sectors: notably in market actors and language/format²;
4. The possibility for adoption of pan-European schemes;
5. The availability of, and access to, key stakeholder and SRO interviewees;
6. The previous selection of the case study indicating enduring interest;
7. The changing nature of the SRO over time, indicating whether new findings are likely.

We can represent these common selection criteria in tabular form and apply across all selections, as seen in the Table below. Note that a case study need not fulfil all seven criteria in order to be selected, but the more criteria satisfied, the stronger the case for including the particular case study. **This list of criteria develops a strategic approach, but it must be based on prior art wherever possible, given the limited resource for each individual case study.** We especially note that where offline examples have proved particularly influential and/or are being adapted for use by Internet SROs, there can be a strong case for their reassessment.

Table 2: Case Study Selection Criteria

Selection Criterion	Case Study Selected
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² Video content that is pre-classified and formatted for one platform, such as mobile, has economies of scale for other platforms e.g. IPTV or PC

Strategic importance (Lisbon goals)	As described in EC documents/ policy statements/ speeches (e.g. mobile content, video-on-demand etc).
Divergence of National Practices	Demonstrating variable approaches
Policy Transfer capability/potential	Classified due to market size or innovative capacity
Pan-European Scheme Suitability	Potential to meet Lisbon/Internal Market goals
Access to interviewees/documentation	Practical resources to undertake case study
Selection in previous studies	Demonstrating enduring policy interest
Reform proposals or developments	Value added in conducting further research building on previous studies

Policy transfer represents the extent to which the practices and processes of the SRO can be replicated elsewhere, and therefore how relevant the SRO can become to other SROs and as a model for new SROs emerging into policy gaps. They centre on:

- [1] scalability – across sectors or geographies;
- [2] leading practice – whether their goal is to disseminate such, or whether they have been identified as such by previous studies, interviewees or Commission and other official documents;
- [3] whether reforms are currently in progress or proposals tabled.

The reason for focussing on these criteria was to comply with the Terms of Reference, in seeking case studies that help to identify both practice (notably good and bad) and evaluative techniques that can be applied, particularly with reference to the Lisbon goals.

Therefore, scalability is the first category, as its presence indicates a scheme that is capable of widespread adoption throughout the Internal Market (or indeed globally). Best practice is rather an obvious category, and its identification by studies and experts makes it a self-selecting category. It will be nonetheless important to re-examine such examples to evaluate the evolution and sustainability of previously-identified good practices. The question of reform is an important characteristic that we identified in our Inception Report. Reform of an institution requires formal consultation with membership and stakeholders, and reveals the institution's capability of renewal and (often) expansion. In addition, reform generally requires re-examination of the institution's *raison d'être* and its wider role in Internet regulation, including its relationship with government and user groups.

We identify twenty case studies of broad interest for the potential to transfer findings and apply in a broader context. We accept that a different team might construct a somewhat different matrix and therefore produce a different set of criteria and case study candidates. However, this set is a representative and diverse mix of SROs which should serve the requirements of the study and permit significant development over previous research.

1.2 Methodology and Phases in Research

The study proceeded from:

- a mapping exercise (Phase 1)

- via a logical framework (logframe) analysis of individual SROs chosen in consultation with the Steering Committee (Phase 2), and
- a further meta-evaluation across those schemes (gap analysis following Phase 2).

There are three main methodological elements in the evidence-gathering phases:

- documentary evidence gathering;
- expert interviewing, and
- a web-based survey.

1.2.1 Primary and Secondary Documentary Evidence

The study methodology is populated largely via documentary evidence collated through publicly available and other sources as detailed in the bibliography at the end of this report. This is a more comprehensive set of sources than that offered in previous studies, given the breadth and scope of the sectoral schemes that we intend to examine.

Generic Documentation Applicable Includes:

Official and policy documents include:

- Policy papers relating to EU policies for innovation; for Internet regulation, and for the role of policy in Information Society content, services and applications;
- Documentation relating to E.C. requirement for monitoring and evaluation systems e.g. SEC (2005) 433;
- Any essential parallel information on activity in the other Directorates-General, especially in relation to the Lisbon objectives and innovation; and
- Documentation relating to past monitoring and evaluation studies in Internet regulation e.g. those in existing ICT and media programmes (e.g. Hans Bredow 2006), Safer Internet Action Plan (e.g. Tambini et al 2004), College d'Europe ICANN study (2003); and
- Peer-reviewed literature on the design, performance and evolution of self- and co-regulatory institutions, including for instance LSE for ICANN (2005).

1.2.2 Expert Interviewing

We supplemented documentary evidence with expert interviews with key stakeholders. These were laid out in D2 (Phase 1 report) with suggestions on specific case studies (and the key interviewees) for Phase 2. In both of the substantive research phases of this study, key expert interviews were designed to 'road test' the emerging analytical framework and draft conclusions and recommendations with experts. (A further 'reality check' was provided by the September workshop after the Phase 2 fieldwork). While robust independence of the study's work is maintained, the continued engagement with the leading exponents of Internet self-regulation enhanced the ability of the study members to fully and constructively test the validity of results of the study.

Over 60 expert interviews were conducted for the Phase 1 and Phase 2 investigations,

whereas the Tender assured that 50 interviews would be conducted. We note that Phase 1 interviews were necessarily less formal than Phase 2, as the questionnaire for Phase 2 is central to the Phase 2 fieldwork.

In this context, we note further that the geography and identity of the experts is a complex and dynamically evolving map: both the territorial extent of Internet regulation and the multi-stakeholder participation in the process is becoming more multi-level. There are global, plurilateral, regional (including European) and national fora, as well as thematic activities. Stakeholders include industry, governments (including European Commission experts), independent and academic experts and civil society representatives (Non-Governmental Organisations, NGOs). Some of these have relatively little-known formal representational legitimacy but substantial ‘soft power’ to influence and form coalitions to influence self-regulatory processes. The mapping of these ‘soft power’ geometries, primarily via expert interviewing, is a complex but unavoidable task that needs further development from previous studies.

The interviewees were selected from the following groups:

- Regulators: National or international regulators with specific expertise in co-regulation;
- Co-regulators: Founders and board members of co-/self-regulatory institutions;
- Independent Experts: Academic and other experts as current/former participants in co-/self-regulatory institutions;
- Industry: Industry participants and experts in self-/co-regulatory institutions;
- Civil Society: Civil society participants and experts in self-/co-regulatory institutions;
- Other Experts: Analysts and observers of co-/self-regulatory institutions.

In addition academic experts were consulted, in addition to feedback received from both relevant conferences and workshops detailed in the Annex 3.

We note that the initial interviews were heavily weighted towards international institutions and interviewees, a deliberate selection given the ‘pyramid’ structure of Internet governance, with these institutions and individuals representing the broadest and most strategic groups of actors in Internet regulation. The interviewees in this initial phase were especially insightful in the gap analysis of current modes of Internet regulation, for instance in the area of security and standards, and the ‘democratic governance deficit’ (notably in the Working Group on Internet Governance, the Domain Name System, but also in national and regional co-/self-regulatory schemes).

The initial ‘sounding board’ provided by these discussions in February-May lead to more formal structured interviews within the case studies in June-September, and (where more appropriate) in discussion of the comparative merits of different co- and self-regulatory institutions in July-October. By use of an Internet survey, we complemented this with users (civil society, approximately). As anticipated, Phase 2 case study interviewees comprise more national, pan-European and sector specific experts, which balance the Phase 1 selection (see Phase 1 Report Annex).

Figure 1: Phase 2 Interviewees and Dates

Interviewee	Affiliation	Other Information	Date (location if not telephone)	Interviewer
Abernathy, Steve	CEO Squaretrade		18 September	Neil Robinson
Archer, Phil	CTO, ICRA-FOSI		13 September	Chris Marsden
Aust, Tom	Bond Analyst (Buy-side), GE Capital	Ex-Deputy to Commissioner, New York Public Utilities Commission	29 July, New York	Chris Marsden
Ayed, Marta	General Manager, Confianza Online		20 September	Neil Robinson
Banks, Karen	Association for Progressive Communications	Member, WGIG	London, 28 August	Chris Marsden
Benhamou, Bernard	Senior Lecturer Paris Pantheon Sorbonne University	Former member, ICANN GAC	31 August	Chris Marsden
Borthwick, Rob	Regulatory Affairs, Vodafone UK	Key negotiator, IMCB and pan-European mobile agreement	10 August	Chris Marsden
Boyle, Martin,	Department for Business Enterprise and Regulatory Reform	Formerly IGF negotiator, UK Presidency of the EU (2005)	6 September	Chris Marsden
Callanan Cormac	Managing Director, INHOPE	Left INHOPE on 20 September	10 September	Chris Marsden
Carlberg, Ken	Science Applications International Corporation	IETF expert participant	21 August	Ian Brown
Carr, John	Coordinator, UK children's charities	Consultant, MySpace; Former IWF board member	London, 08 August	Chris Marsden
Cecil, Andrew	Regulatory Affairs, Yahoo! Europe, Paris		August 10	Chris Marsden
Chazerand, Patrice	Chief Executive PEGI		Brussels, 26 June	Chris Marsden
Christiensen, Per	AOL Germany, Regulatory Director	Former researcher, Munster University	26 August	Chris Marsden
Clark, David C.	Head, FINE programme, NSF	Interview and paper presentation	Washington D.C. 29 September	Chris Marsden
Clayton, Richard	Research Fellow, Cambridge University Computer Laboratory		Cambridge 28 August	Chris Marsden
Delgado, Juan	Yahoo! Europe search engine		26 July	Chris Marsden

	business unit			
Doria, Prof. Avri	ICANN GNSO Committee	Explanation of the GNSO PDP	San Juan Puerto Rico, June 25	Adam Peake
Eijk, Nico Van	Professor University of Amsterdam	informal interview and paper presentation	Istanbul 3 September	Chris Marsden
Frank, Sabine	Managing Director of FSM		July 25	Lisa Klautzer
Graham, Sir Alistair	Chair, ICSTIS	ICSTIS Scope review round table lunch	London, 25 June	Chris Marsden
Guadamuz, Andres	Edinburgh Law School		Edinburgh, 26 October	Chris Marsden
Hoff, Ola Kristian	Norway-based independent legal advocate	Former CTO ICRA and DG Infosoc	14 September	Chris Marsden
Hogge, Becky	Managing Director, Open Rights Group		30 August, London	Chris Marsden
Hunsinger, Dr Jeremy	Co-Founder, Association of Internet Researchers		27 July, New York	Chris Marsden
Hutty, Malcolm	Policy Officer, LINX	Treasurer INHOPE	30 August	Chris Marsden
Ito, Joi	Chair, Creative Commons	Board member ICANN	Rueschlikon, 14 June	Chris Marsden
Kiedrowski, Tom	Ofcom Strategy Manager	head of Ofcom Self- and Co-Regulation Study	London, 20 September	Chris Marsden
Latzer, Michael	Professor, Austrian Academy of Sciences	informal interview and paper presentation	Istanbul 3 September	Chris Marsden
Millwood-Hargrave, Andrea	Secretary, ATVOD	Former Research Director, broadcasting Standards Commission	London, 26 September	Lorna Woods
O'Connell, Rachel	Chief Safety Officer, Bebo	Consultant to Council of Europe on Internet child safety	London, 30 August	Chris Marsden
Ondrejka, Cory	Chief Technology Officer, SecondLife	Keynote speaker, iSummit, Dubrovnik	Rueschlikon, 14 June (phone) 08 August	Chris Marsden
Poel, Martijn	Senior Analyst, TNO	informal interview and paper presentation	Istanbul 3 September	Chris Marsden
Robbins, Peter	Chief Executive, Internet Watch Foundation		17 August	Chris Marsden
Sahel, Jean-Jacques	Department for Business Enterprise and	Former Chair OECD ICCP Committee;	24 August, London	Ian Brown and Chris Marsden.

	Regulatory Reform	Chair London Action Plan		
Selloni, Cristina	Deputy Head of Cabinet to Communications Minister, Italy		15 July	Lisa Klautzer
Servida, Andrea	DG INFSO			Neil Robinson
Swetenham, Richard	DG INFSO	Head of Unit, Safer Internet Action Plan	4 July	Chris Marsden
Taylor, Emily	Legal and Public Policy Director, NOMINET		30 June, London	Chris Marsden
Verhulst Stefaan	Head of Research, Markle Foundation	Author, V-chip study, EC DG Inforsoc	26 July, New York	
Weitzner, Danny	General Counsel, W3C	Professor of law, MIT	London 17 September	Chris Marsden
Whiteing, Paul	Director, IMCB	Director, ICSTIS	London, 31 August	Chris Marsden
Wolfson, Alex	Global Strategy, Nokia	Ex-Deputy Director, CITI Columbia University	27 July, New York	Chris Marsden

1.3 Detailed Methodological Approach: log frame analysis

We in Phase 2:

- analyzed the in-depth case studies,
- conducted in-depth expert interviews,
- operated and disseminated the web survey to stakeholder groups, and
- examined documentary evidence relevant to indicators for each case study.

Implicitly or explicitly, assessment methods normally utilise some form of logic modelling. This is particularly useful in imposing structure on the highly variable operations of Information Society SROs. Formal regulatory organisations are consciously designed and have specified remits, objectives and powers of actions. Self- and co-regulatory arrangements are inherently more diverse and flexible.

To understand individual organisations, it is necessary to put them in a context defined by evolving (existing and emergent) challenges, opportunities and other organisations. Thus, in order to understand the general efficacy of such arrangements and the possibilities for fruitful collaboration between formal and informal regulatory bodies it is necessary to take account of:

- their internal logic (the specific actor's motivation and role),
- the policy landscape (the theatre) and
- the 'evolutionary play' of overlapping entities and initiatives.

This account could easily become complex – our intention is to make it clear, without losing its complex reality. In other words, while it is not necessary (or possible) to develop a full, unbiased and analytic account of the deliberate and fortuitous forces behind the organisations, it is necessary to recognise two organising linkages:

- many organisations arise, change or act in response to a given threat (they do not 'take turns' or agree to stay out of each others' way); and
- individual organisations produce benefits by (changes in) their objectives and engagement with key actors as well as through the exercise of explicit hard/soft power. Alliance building is an element of importance in co-/self-regulatory design.

In the following sections, we show how the dynamic of the organisation interacts with the broader policy environment. First we demonstrate via two diagrams how the process flow of the institution fits within the environment. Then we unpack the internal workings of the institution and show how a straightforward log frame analysis can illustrate the organisation's processes.

Figure 2 illustrates the manner in which interests flow into needs and then institutional design. The institution then produces outcomes which have broader impacts. The four processes on the right side of the Figure – the real work of the institution – have been often viewed from outsiders as a 'black box' inside the regulatory institution without transparent process. Our methodology is designed to remedy this and make processes more transparent. 'Needs' and 'Outcomes' are found in the arena of daily political public debate,

and the Interests and Broader Impacts are of a meta-impact level such that they form a frame around the daily debate: the shifting view of trade-offs between freedom of speech, information security, child protection or family values might form such a context.

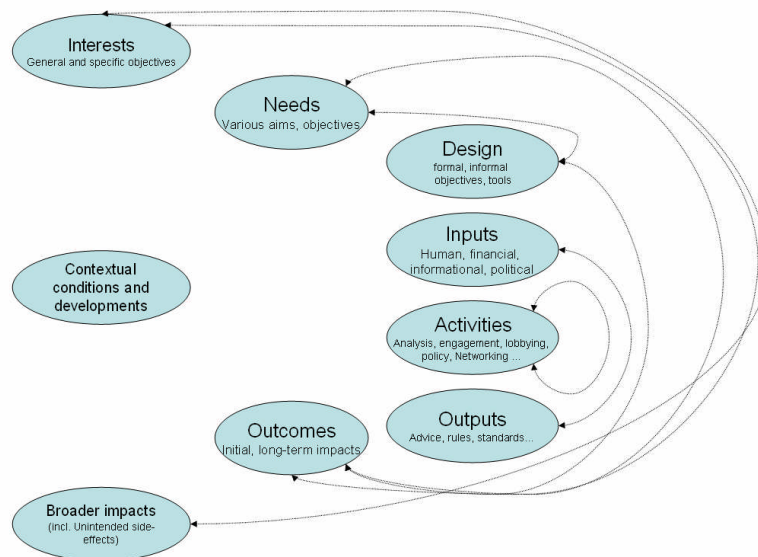


Figure 2: Simple Diagram of Regulatory Interests-Needs and Their Outcomes-Impacts³

The more structured perspective that policy analysts in government take of such processes produces a more complex interplay between differing policy agendas, especially in a 'mixed' (economic-technical-social-rights based) environment such as Internet regulation. This may help to explain why constitutional lawyers or institutional economists or technical experts so often develop entirely differing views of the Interests-Needs and Outcomes-Impacts of self- and co-regulation in Information Society activities. The multi-disciplinary team in this project should help to mitigate against such mono-disciplinary tendencies in the research approach.

Figure 3 below shows these relationships within an evaluation context. The Domain context is where the various institutions overlap. The dotted arrows indicate the overall intervention logic of various institutions, connecting a range of needs (since a given self-regulatory institution may combine many interest groups) with a range of outcomes (since the members and other stakeholders will be concerned with a range of 'target' outcomes and with others not directly connected to the constitution of the organisation). Within this column, there are two types of more detailed map of the organisational ecology.

³ Developed from inter alia the EC Guidelines for Evaluation.

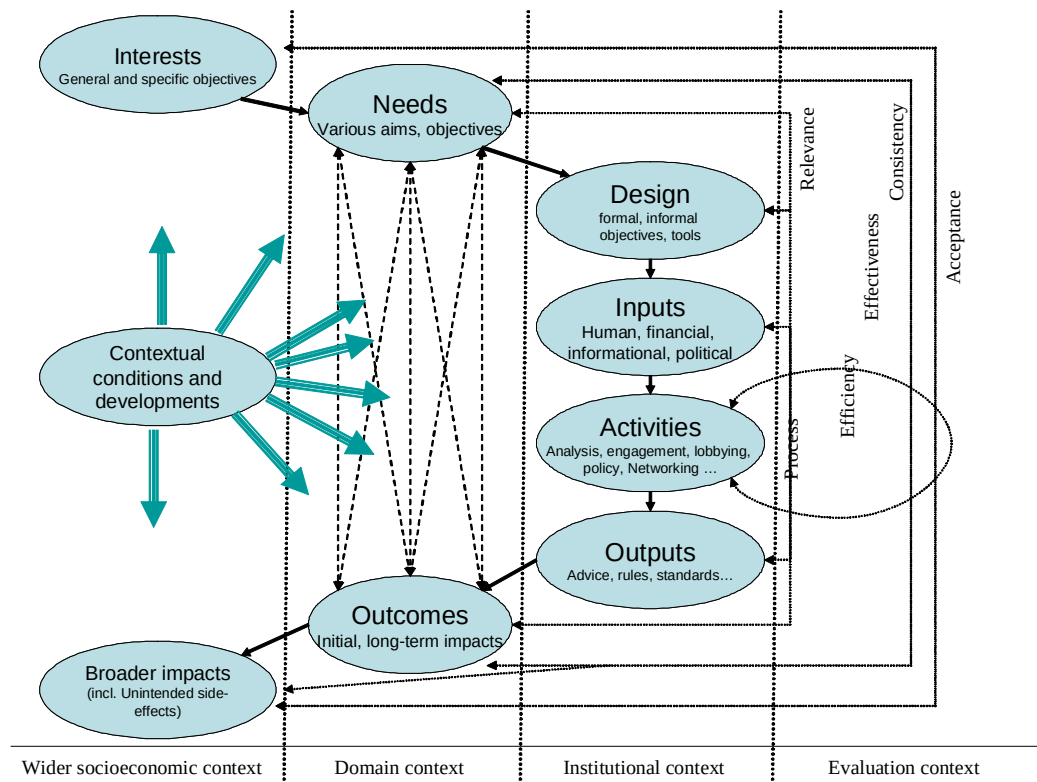


Figure 3: Overall Framework Including Contexts for Activities

The first is a *process map* showing activities within and among the various stakeholders. Interchanges can include:

- Directive (command and control) influence (hard power)
- Informational flows
- Promulgation of standards
- Resource transfers or sharing

Activities within SROs can include the specific activities exemplified in the “Institutional context” column of Figure 3. It is important to recognise that many of these flows are connected: for instance, an exchange of regulatory forbearance for some form of public activity. In this regard, note also that SROs, in distinction to formal bodies, are not defined by their functions. Thus, an individual firm may fall within the technical, economic or societal regulatory scope of a given formal agency, but belong to an SRO defined along different lines. If the regulator, for instance, has economic regulatory power over the firm, but also has a societal regulatory obligation, it may exchange performance in one area for forbearance in another. These trade-offs can be opaque where, for instance, rate of return regulation is clearly modelled on transparent public methods, but elements of social regulation (e.g. content or media literacy) are devolved to a self-regulatory institution⁴.

⁴ Examining this ‘Gordian knot’, through expert interviews and the web survey, may increase the transparency of such trade-offs, and assist in formulating an

The second could be a *relational map* showing the relations between organisations in the context of specific domains. These relations could take various forms:

- Hierarchical – one organisation reports to or must obey another - and therefore one is more important than the other (in soft or hard power terms);
- Complementary – organisations' activities can advance each others' objectives (as above, this may cross domains);
- Complicating – another organisation must be taken into account when formulating strategy or tactics, evaluating outcomes, etc.;
- Co-operating – when organisations act jointly.

This finding is not discoverable within Phase 2 itself, but in Chapter 6 of synthesis and analysis across case studies, the relations between such SROs are a goal of the analysis.

1.3.1 Examples of Log Frame Analysis Applicable to Each Case Study

We can analyse each institution much more straightforwardly in inserting evidence into each example. For this we use standard log frame analysis. We have structured each individual case study as follows:

Section	Subject
1	Policy Context
2	Design, organisation
3	Inputs
4	Activities
5	Output
6	Outcome
7	Impact
8	Sustainability
9	Reform
10	Evaluation

To populate the log frames, we required three types of evidence: interview, documentary, and survey. We have described the expert interview approach, and note the interview protocol in Table 3. Note that the interview protocol was based on a template designed to reveal the internal and external dynamics of the institution beyond those facts accessible via annual reports, press interviews or the website. Therefore the protocol focussed on the formation and reform of the organisation, and the manner in which the original mission and constitution, and reforms thereof, were achieved. In addition, the questions focussed on governance, civil society involvement, innovation and competition, and enforcement. Interviewees were also invited to address other matters that they considered relevant.

evaluation agenda that reveals whether the cost-benefit of such implicit trade-offs is increasing or decreasing over time.

Table 3: Phase 2 Interview Protocol

Subject	Specific Queries
Interests and Policy Needs	How was the organisation formed? What functions does it fulfil? What is its mission? How does the organisation fit with formal legal and declared political pressures to regulate its original sector?
Design & organisation of the Institution	Is regulation for the SRO a function required by law? Which laws? Is the SRO co- or self-regulatory? How does the SRO fit in with government regulations? Are they relevant? Are there other organisations with similar missions and regulatory regimes? How are they different?
Inputs	Where it is based? Name of the Chief Executive or Chairman? Does the institution file accounts? If so, where? Does it report to a regulator (other than financial)? Approximately what is the budget per annum? Where does the funding come from? How many staff work there?
The board and strategic direction	How independent is the board of directors from the executive of the organisation? Are there committees independent of the board, for instance for finance or audit? How are civil society stakeholders involved in its work? Other stakeholders? How is policy made?
Reform	Is it expanding or being reformed? How (new sectors, countries)? Why? How does this affect regulation? How is redesign of the institution being carried out? Please state the primary driver for change in the organisation's mission or function ⁵ . Does the organisation innovate? Is its regulation model replicable or an exception to other regulatory forms? Is the organisation responsible for liaison with other Internet SROs?
User knowledge of and participation in SRO	Does the annual general meeting attract a large audience? Is there sufficient press coverage of its activities? Are its activities well-known to its members? Is it well-known to Internet users? Are any reform proposals circulated? How transparent is the organisation to: Board members? Ordinary members? Internet users? Governments? How accountable is it? How accessible is management information?
Enforcing regulations	Is there a tribunal or other enforcement arm? • How many enforcement actions occur each year? • What types of enforcement actions are undertaken? Is there an appeal process or ombudsman?
The market	Do you believe there is competition against this institution and/or its functions?

⁵ Six options were given: Internet usage or design; Government requests or instructions; Competition in the market; Members' suggestions; Civil Society request for greater inclusion; Merger of functions and / or management

	Who are the competitors? Is there commercial value in the work of the organisation? Can you define the market, if any, in which this institution functions? What is the impact of this “Market dynamic” on your organisation? If the institution does perform a market function, how large is the total market? What share of the market does the institution take? How is the market split (i.e. what share does the largest other institution take)? Does the organisation impact on economic performance?
Evaluation	Have there been external reviews of the institution? What are they? Are you aware of studies into regulation of the SRO or similar organisations?

We identify the documentary evidence and survey research approach that will assist in this process. Documents relevant to the SROs include:

- The charter, Codes of Conduct and rules of the body
- Annual reports
- Press briefings
- Parliamentary or regulatory filings
- Minutes of directors’/ board meetings
- Public documents and presentations
- Member companies’ releases, reports and other documents relating to the work of the institution
- Stakeholder responses and analyses
- Financial accounts and reports
- Tribunal and/or other case data
- Other forms of dispute resolution permitted under the ‘constitution’ of the self-regulatory body.

Where necessary, appropriate and relevant, for instance where there is a lack of transparency and documentation in the public sphere concerning the body, this primary data was supplemented by reviews of the body’s work. Ideally these were peer-reviewed scientific surveys, but also included less authoritative yet indicative coverage in the press, online reportage, journalists’ blogs, and the wider ‘blogosphere’⁶.

In Phase 2, we undertook an electronic survey of stakeholder participants, specifically to sample non-participants in expert interviews (i.e. non-enfranchised users) and measure

⁶ In particular it is acknowledged that the controversy surrounding the work of these self-regulatory bodies often leads to ‘slash-dot’ type incidents, in which a mass of media-generated user complaints and commentaries are made about a particular judgment or decision from the regulatory body. Such incidents are often illustrative of a particular concern regarding the legitimacy of the activity of the body, though the ‘technorati’ of educated and often libertarian consumers is by no means the only relevant group. We therefore treat such evidence with the proper caution that it merits.

perceptions of and satisfaction with self- and co-regulatory arrangements in terms of specific policy areas and overall transparency, accountability, effectiveness, etc. We conducted a large-scale survey with over 300 answers, to capture those interests often overlooked in expert studies of Internet governance: civil society stakeholders and Internet users. Due to the voluntary nature of many of the arrangements, insight into the choices and constraints users face is vital to assessment of the current impact and evolution of self- and co-regulatory arrangements. The limitations of surveys are well known and accepted. The objective was to sample the range, not to replicate the statistical distribution. However, these soundings supported some quantitative analysis especially of correlations and patterns of response (and non-response). The survey was carried out with the assistance (in terms of contact details at a minimum) of the civil society groups constituted within the fora with which the Phase 2 study interacted. Examples included the Association of Internet Researchers (AoIR), Creative Commons, and Association of Progressive Communications (APC). The survey URL distribution was very much a broadcast activity, with the intention of reaching a broad audience of users. We relied on the institutions and personal contacts to distribute the survey. Given the resource limitations, we recognised that this was not intended to be directly representational of the entire Internet population: the World Internet Project or Eurobarometer perform such functions. It was therefore only intended to be broadly representative of user opinion as a “best effort” activity. Given the specific nature of the individual surveys for each SRO that the survey elicits from users, there is little or no added value in reaching the entire Internet audience without specific knowledge of individual SROs. The stakeholders whose views we captured were participating on an anonymous basis. They included both participants and users of the institutions, and those who bear the consequences, and particularly responded to re-distribution of the survey by activists in the Creative Commons movement and World Wide Web Consortium⁷. The answers from the survey are analyzed in the Appendix.

1.3.2 Phase 2: Analysing and Integrating the Evidence Base

Based on the three complimentary and synergistic evidence types (documentary, expert and broad survey), we draw together a comprehensive holistic analysis of the evaluations for each case study, to produce in the final Phase 3 report generalisable conclusions on effectiveness, efficiency and sustainability in co- and self-regulation.

It should be emphasised that this goes beyond the heavily summative and judgemental character of many evaluations. In addition to its formative character, it examines a set of overlapping public, private and civil society institutions. Therefore it is inappropriate to simply evaluate them as one institution’s programme in terms of its stated objectives and terms of reference. Rather, we shall take account of the multiplicity of institutions, and assess the balance of roles, responsibilities, information, powers to act and incentives. This is essential not least because many of the challenges driving self- and co-regulatory innovation will, if not handled in this way, be dealt with in other ways.

Thus the counterfactual is not ‘no enforcement’ but different enforcement, and the assessment will be integrated to consider the evolution of the ensemble of interacting

⁷ See for a draft of the survey: <http://web3.rand.org/resurvey/TakeSurvey.asp?SurveyID=5MIm53L02lm0M>

arrangements on the basis of a suitable evaluation of its components.

1.3.3 Phase 2 Deliverable

This is the Phase 2 report (D3) containing the detailed assessment of selected cases and gaps.

1.4 Classification of SROs for Case Study Selection

We briefly detail the case studies. Note that we do not repeat or reiterate the work of earlier specific EC evaluations, in particular those of the Safer Internet Action Plan, which has had specific evaluations of its work conducted by IDATE in 2006, and of particular funding projects conducted in for instance 2007 (PEGI). The experts and stakeholders we interviewed referred to their specific work on these evaluations, but we used these comments as background. Table 5 shows case studies by chapter.

Table 4: Grouping Case Studies According to Scope and Interconnectedness

2: Internet Infrastructure and Standards	3: Internet Self- and Co-Regulation	4: Content and Filtering/Rating Case Studies	5: Emerging Self-Regulation Areas
ICANN	IWF	ICSTIS	<i>SecondLife</i>
Nominet	INHOPE	IMCB	Creative Commons
IETF	EuroISPA	NICAM	<i>Bebo</i>
W3C	KJM	PEGI	Trustmarks
ICRA	FSM	ATVOD	London Action Plan
			IGF

We classified the SROs by region (global, European, national) and also by network where the SRO is a single company and its user relations rather than a pan-industry grouping. For these purposes, that includes SNS and virtual worlds, but also the ISP filtering systems, which have been adopted by some, but not all, commercial ISPs in the UK and Scandinavia.

Table 5: SROs by Region and Type

	Co	Self	Organisational
Global	ICANN LAP IGF	IETF W3C	Creative Commons
Regional	<i>INHOPE</i> (contested regulatory function)	PEGI <i>ICRA</i> (US and Europe based – not global)	<i>Bebo</i> (US but European centric regulation) <i>EuroISPA</i> (contested regulatory function)

National	KJM ICSTIS NICAM	Trustmarks IMCB IWF ATVOD FSM NOMINET	SecondLife (US base)
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The classification of co-, self- or organisational SROs follows the definitions given in the Inception and Phase 1 reports. We further note Recital 36 to the Audio Visual Media Service (AVMS) Directive agreed text:

...self-regulation constitutes a type of voluntary initiative, which enables the economic operators, social partners, non-governmental organisations or associations to adopt common guidelines amongst themselves and for themselves.

Member States should, in accordance with their different legal traditions, recognise the role which effective self-regulation can play as a complement to the legislative and judicial and/or administrative mechanisms in place and its useful contribution to the achievement of the objectives of this Directive. However, while self-regulation might be a complementary method of implementing certain provisions of this Directive, it should not constitute a substitute for the obligations of the national legislator.

Co-regulation gives, in its minimal form, a legal link between self-regulation and the national legislator in accordance with the legal traditions of the Member States. Co-regulation should allow for the possibility for State intervention in the event of its objectives not being met.

Without prejudice to Member States' formal obligations regarding transposition, this Directive encourages the use of co-regulation and selfregulation. This should neither oblige Member States to set up co- and/or self regulatory regimes nor disrupt or jeopardise current co- or self-regulatory initiatives which are already in place within Member States and which are working effectively⁸.

This complements the approach taken in the E-Commerce Directive (EC/2000/31) and the Recommendation on the protection of minors (2006)⁹. Therefore co-regulation requires “a legal link between self-regulation and the national legislator”. In case studies, this link was the basis for our classification as co-regulation (though certain SROs wished to be self-classified as “co-regulatory” even though this link was not present).

The following three sections and their tables illustrate the case studies by our Phase 1 mapping: critical infrastructure and resources; ill-defined issues; and issue areas converging on the Internet. The most logical set of case studies are those relating to ‘core’ Internet issues. The choice of these case studies should be largely uncontroversial. Furthermore, because of the intricate and complex interdependencies and relationships between SROs

⁸ Recital 36 AVMS in file st10076-re06.en07 of 23 November 2007

⁹ The Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry, OJ L 378, 27.12.2006, p. 72.

and the individual policy actors in this field, the cross-institutional analysis is very rewarding.

Table 6: Critical Infrastructure and Resources Case Studies

Sector	SRO	Scaleability	Best Practice	Reform Proposed	Interviewees	Enforcement
Domain names	ICANN gTLD	Y		Y	Y	Contractual
Search engines	KJM/FSM		Y		Y	Expulsion/Suspension
Domain names	Nominet		Y		Y	Contractual
ISP	EuroISPA	Y	Y		Y	Expulsion/Suspension
Hotlines	INHOPE	Y	Y		Y	Norms/opinions
Blocking Illegal Content	IWF 'Cleanfeed'	Y		Y	Y	Norms/opinions
Labelling	ICRA	Y	Y	Y	Y	Expulsion/Suspension
Labelling	W3C PICS	Y		Y	Y	Standards
Standards	IETF	Y		Y	Y	Standards

We note that these nine case studies represent the concise reduction of the potential for many more issues. In particular, one could choose any individual country level registrar: the choice of Nominet reflects its high standing as a not-for-profit registrar, the access to interviewees and its prominent role in policy making for other institutions (notably ICANN and the IGF). The standards bodies are essentially self-selecting: the W3C and IETF are models often cited not merely as paradigms of Internet standardisation but also for broader ICT standard setting. For specific ISP content control, we have chosen the INHOPE and EuroISPA models, again from an i2010 perspective. For content labelling, ICRA is the model for any other type of website labelling, while the German self-regulation of search engines is unique in Europe.

Unsurprisingly, there are very few SROs in the WGIG category of 'ill-defined issues'. This reflects the uncertain nature of issues in this area. However, there are two SROs of particular interest in Table 9: the London Action Plan which Sahel (2007) identified as a paradigm of multi-stakeholder involvement; and the e-commerce trustmark schemes. We reclassify and expand this section for Phase 2, in what is necessarily a particularly complex set of issue areas.

Table 7: Squaretrade and London Action Plan Case Studies

Sector	SRO	Scaleability	Best Practice	Reform Proposed	Interviewees	Enforcement
E-commerce trust	Squaretrade	Y	Y		Y	Expulsion/Suspension
Security	London Action Plan	Y	Y		Y	Norms/opinions

Given the multiplicity of issue areas converging on the Internet, the largest category of SROs chosen in Phase 1 are in this category. The previous work in this field has provided a substantial documentary base from which to choose the most relevant SROs, and we particularly note the mix of best practice and new case studies. The latter includes the IMCB, ATVOD and PEGI, all with pan-European dimensions noted in speeches by the Commissioner. It also includes the various types of 'Web 2.0' user-generated content communities, including immersive 'virtual worlds' (*SecondLife*), and open SNS (*Bebo*).

Table 8: Content and Social Network Case Studies

Sector	SRO	Scaleability	Best Practice	Reform Proposed	Interviewees	Enforcement
Mobile Content	IMCB	Y		Y	Y	Contractual
Content rating	KJM/FSM	Y	Y		Y	Co-regulation
Premium Content	ICSTIS		Y	Y	Y	Co-regulation
Content rating	NICAM	Y	Y		Y	Co-regulation
IPTV	ATVOD		Y	Y	Y	Dispute settlement
Online games	PEGI	Y		Y	Y	Expulsion/Suspension
Virtual Worlds	SecondLife	Y		Y	Y	Expulsion/Suspension
Digital Copyright	Creative Commons	Y	Y	Y	Y	Licensing
Public social network	Bebo	Y	Y		Y	Expulsion/Suspension

Note the range of enforcement mechanisms available, from co-regulation to dispute settlement to contractual basis. In several cases, the only sanction would be expulsion of an offending company from the SRO (search engines, SNS and virtual worlds). In the case of Creative Commons, the sanction is the theoretical possibility of individual recourse to legal action to enforce the non-commercial and other aspects of the licence. The range of enforcement and remedy actions is an important element in ascertaining the effectiveness of the SRO in the circumstances: we do not make a purposive deduction based on a legal analysis that suggests enforcement is directly linked to availability of legal sanction. The case studies should demonstrate whether habitual conformance to the SRO norms is possible without directly enforceable sanctions.

It is quite possible to choose a different set of case studies in converging areas, but the selection chosen is intended to capture the maximum range of possible schemes capable of extension, whether on a cross-sectoral or international basis. This once more reflects our concern with i2010 goals and the possibilities for pan-European self- and co-regulation.

1.5 Conclusion

In Sections 1.1 to 1.3 we showed the applied methodology and the interviewees and protocol used to conduct the individual case studies, noting the need for aggregated and comparative analysis. Section 1.4 summarised Phase 1 and the 21 SRO case studies chosen, of broad interest for the potential to transfer findings and apply in a broader context. We accept that a different team might construct a different matrix and therefore produce a different set of criteria and case study candidates. However, this set is a representative and diverse mix of SROs which serve the requirements of the study and permit significant development over previous research.

In the following four chapters we set out the case study evidence individually by case study, before in Chapter 6 conducting a comparative analysis and re-examining the regulatory gaps which were identified in the Phase 1 report. We begin in Chapter 2 with critical infrastructure and standards.

CHAPTER 2 Critical Infrastructure and Resources Case Studies

2.1 Domain Names (Global): ICANN

Internet Corporation for Assigned Names and Numbers: ICANN

Researcher: Adam Peake

ICANN was founded in 1998 as a California corporation: this unique arrangement was supervised in a co-regulatory arrangement by the Department of Commerce. Its Directors have legal status based on their private law obligations as corporate managers, not as regulators. It has a Government Advisory Council, with differing opinions as to its influence on the board's decisions. ICANN has invested substantial resources in attempts to achieve broad inclusion and transparency with its international stakeholders, including elections to the Board which were carried out in 2000 and then abandoned as an experiment. Evaluations have been carried out by OneWorldTrust, LSE, and College d'Europe. In 2007, major governance reforms were undertaken.

Table 9: Summary of ICANN Case Study

Was there a government mandate initially?	Yes and continued
What kind of government involvement is there?	GAC
Which other stakeholders are involved and how?	Broad community including industry and civil society- At Large Advisory Committee
How is transparency ensured?	Ombudsman-public outreach manager-elections-
What is the enforcement mechanism, is it effective, at what cost?	Varied, see in particular relations with GNSO community. Litigants better funded than ICANN.
What is the relative size of administrative burdens?	Relatively low in absence of litigation
Is financial independence assured/how?	Yes, through growth in size of DNS overall
Which internal factor most impacts success?	Transparency of relation between executive and complex committee structure
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Outstanding issue is relation with US government and domain name farmers, as well as IPv6
Lessons for European policy	Complexity problematic, continued efforts to address user community praiseworthy. US government role obvious unfinished issue.

2.1.1 Interests and Policy Needs

The Internet Corporation for Assigned Names and Numbers (ICANN) is a non-profit, private-sector corporation that serves as a technical coordination and policy-making body for the Internet's unique identifier system. Created in 1998, ICANN has been gradually assuming the responsibility for a set of technical and policy functions previously performed under US government contract by the Internet Assigned Numbers Authority (IANA) and other groups. ICANN was created to privatize and internationalize oversight of these functions through a series of steps provided in a Memorandum of Understanding (MoU) with the U.S. Department of Commerce. ICANN is a California public benefit, non-profit corporation.

In creating ICANN the U.S. government expressed the wish that the transition to private sector oversight would be complete by September 30, 2000 as an "outside" date. At the time of writing transition is still not complete.

Industry self-regulation was a key tenet of Clinton Administration e-commerce policy and policy toward the Internet. Influential policy-makers resisted government intervention and saw the participatory decision making processes that guided the development of the Internet as essential to the innovation and rapid growth the new network was enabling. ICANN's operating principles and structures are very much a product of this period.

2.1.2 Design & organisation of the Institution

In June 1998, the National Telecommunications and Information Administration (NTIA), an agency of the U.S. Department of Commerce, issued a Statement of Policy entitled "Management of Internet Names and Addresses," which invited the private sector to come together and form a new, not-for-profit corporation to administer policy for the Internet name and address system. Known as the White Paper, the statement of policy established principles for the new private system and described the tasks the new private entity undertaking these tasks should complete¹⁰. ICANN was recognized as this private entity in an MoU signed with U.S. Department of Commerce on 25 November 1998. The MoU translates the requirements of the White Paper into a contractual project agreement to be completed by ICANN.

In November 1998 the domain name system consisted of three globally available "generic" top-level domain names, .com, .net and .org, and over 240 "country-code" top-level domains, or "ccTLDs", operated by countries and external territories. The gTLDs .com, .net and .org were operated by a company called Network Solutions, Inc (NSI), which acted as both the registry operator and registrar taking domain name registrations from users. ICANN was created to introduce competition at both the registry and registrar levels. This would be achieved through the introduction of new gTLDs and registries, and by separating out registry and registrar functions so new businesses that took name registrations from users could develop. Hofmann (2007, page 39) describes these businesses as the "rule takers" of ICANN's regulatory policies implemented through contracts.

As a new entity, ICANN's first task was to establish organizational and policy-development structures reflecting the requirements of the MoU, i.e. ensuring the interests of affected stakeholders, including direct interests of Internet users were represented. The new structure included three supporting

10 The process that led to the creation of ICANN was a U.S. Government statement of policy known as the "White Paper" published in the Federal Register on February 20, 1998. It is available from <http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm>

organizations created to represent the interests of the providers and users of the domain name system and to develop policy. The initial supporting organizations were an Address Supporting Organization for the Internet Protocol address registries; a Domain Name Supporting Organization representing gTLD and ccTLD registries, registrars and users of domain names; and a Protocol Supporting Organization representing international Internet-related standards development organizations. Each Supporting Organization would elect three Directors to the ICANN Board. The interests of Internet users were to be represented by nine "At-Large" Directors selected by some means to be determined.

The Supporting Organizations were created during 1999 and their Directors seated during that year. The selection of At-Large Directors was more complex and controversial and resulted in global elections held in October 2000 to seat five of the nine Directors.

At the same time as creating these organizational structures, the MoU also identified work that should begin immediately. ICANN should start to develop policies for the creation of additional of TLDs, and establish qualifications for domain registries and registrars in the system so as to increase competition.

In cooperation with the World Intellectual Property Organization (WIPO), it should establish an alternative dispute resolution system for resolving trademark/domain name disputes (cybersquatting) which was a significant problem at the time. An important early indication of ICANN's regulatory powers over these registries and registrars was a condition from the US government that they should be required to abide by the decisions of the ADR system, i.e. from beginning ICANN was given rule making powers over economic actors.

ICANN's mission is derived from requirements of the MoU and is described in ICANN's bylaws as "to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
 - a. Domain names (forming a system referred to as "DNS");
 - b. Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and
 - c. Protocol port and parameter numbers.
2. Coordinates the operation and evolution of the DNS root name server system.
3. Coordinates policy development reasonably and appropriately related to these technical functions."¹¹

The MoU also established four operating principles, ICANN should:

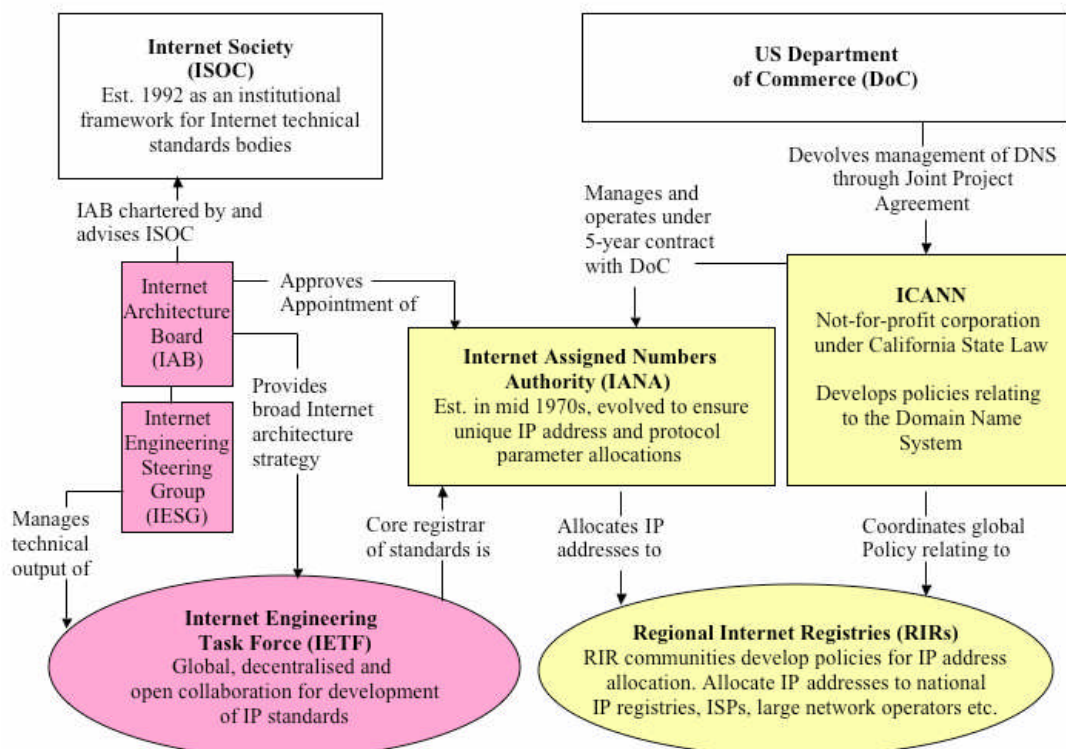
- preserve the security and stability, reliability of the DNS;
- promote competition through market mechanisms that support competition and consumer choice;

¹¹ Bylaws for the Internet Corporation for Assigned Names and Numbers, As amended effective 28 February 2006. Article 1, Section 1, Mission
<<http://www.icann.org/general/bylaws.htm#1>>

- develop and implement policy through bottom-up consensus-based processes, and;
- achieve a broad representation of global Internet communities through structures that reflect the functional and geographic diversity of Internet users and international participation in decision-making.

Figures 5 and 6 below illustrate ICANN's relationships, management structure and policy process as of October 2007, reflecting the changes implemented in the evolution and reform process of 2003 and new relationship with the U.S. Government. Both figures are closely based on diagrams produced for the GNSO Review (September 2006) undertaken by the LSE Public Policy Group for ICANN and have been adapted for the purposes of this report. Figure 5 provides a general overview of ICANN's relations with the U.S. Department of Commerce and key global bodies responsible for Internet technical coordination and the development of Internet standards. ICANN's relationship with the Department of Commerce is through two contracts: a Joint Project Agreement intended to transition oversight of the DNS to the private sector, and contract to perform the IANA functions. The diagram is not an exhaustive representation of all organizations active in the technical standards community. In addition, ICANN is advised by both the IETF and a Technical Liaison Group with membership from the European Telecommunications Standards Institute (ETSI), the International Telecommunications Union's Telecommunication Standardization Sector (ITU-T), the World Wide Web Consortium (W3C), and the Internet Architecture Board (IAB).

Figure 4: ICANN's relationships with the U.S. Government and Internet technical coordination and standards organizations

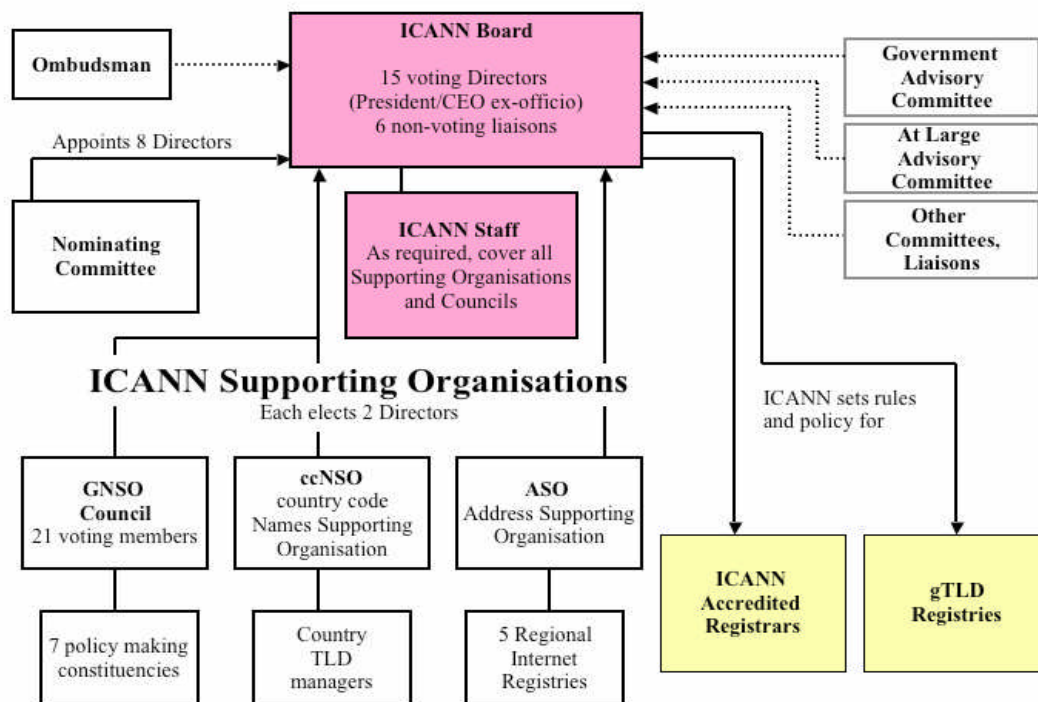


Source: adapted from GNSO Review (Sept. 2006) undertaken by the LSE Public Policy Group for ICANN

Figure 7 provides an organizational overview of ICANN, its supporting organizations, advisory councils, staff and other bodies providing organizational and policy input, and with the gTLD registries and registrars that take "rules" from ICANN and these policy development processes.

Supporting Organizations develop policy in their respective areas of responsibility and also select two members of the Board of Directors. Following the 2003 reforms, the DNSO was divided into two Supporting Organizations, one responsible for gTLD issues, the Generic Names Supporting Organization (GNSO), and one for ccTLD issues, the Country Code Names Supporting Organisation (ccNSO). The ASO remained unchanged.

Figure 5: ICANN organizational and policy structure



Source: adapted from GNSO Review (Sept. 2006) undertaken by the LSE Public Policy Group for ICANN

The relationships between ICANN, the Internet Society (ISOC) and the Internet standards bodies, Internet Architecture Board (IAB), Internet Engineering Task Force (IETF), and Internet Engineering Steering Group (IESG), and the relationships between those bodies are too complex for this diagram to illustrate precisely. As described by the LSE Public Policy Group, "The graphical dimensions given to each entity in the diagram do not in any way reflect size or status. Technical standards bodies are shaded pink and domain naming system bodies are shaded in yellow."¹² ICANN also has a contractual and financial relationship with ISOC through ISOC's management of the .org gTLD¹³.

¹² GNSO Review (September 2006) undertaken by the LSE Public Policy Group for ICANN.

¹³ In 2002, to increase TLD registry competition ICANN redelegated the registry operation of the .org registry. ICANN organized an open process for reassigning the registry and ISOC was successful in its bid. ISOC now manages the .org domain through a not-for-profit corporation called the Public Interest Registry (PIR). Revenues from .org registrations were over

ISOC was created in 1992 to provide an institutional framework for the IAB and IETF, standards making bodies that emerged with the earlier development of the Internet. ISOC help internationalize the Internet standards process, and also provided administrative arrangements. The IAB is chartered by ISOC, acts as a technology advisory group to ISOC, and provides broad direction for the development of the Internet architecture to the IETF. The IETF develops protocol and standards for the Internet, while it was formally established by the IAB, an IETF nominating committee process selects members of the IAB. The IESG is responsible for technical management of IETF activities and the Internet standards process, its rules and procedures are ratified by ISOC's Board of Trustees.

The Internet Assigned Numbers Authority (IANA) oversees the global allocation IP address by providing blocks of address space to the Regional Internet Registries (RIRs), and allocates and controls other unique Internet protocol assignments. From the mid-1970s, the functions that would become the IANA were performed under project agreements and contracts with the United States Department of Defence, until ICANN assumed that responsibility under a contract with the Department of Commerce. ICANN's contract with the Department of Commerce for the IANA function is a one-year contract renewable four times (i.e. five year maximum before renegotiation.) The IETF and IAB also have a relationship with the IANA, with the right to agree who should be the authority allocating the protocols developed by the IETF process.

2.1.3 Inputs

Location	Chief	Founded	Directors	Funding
Marina del Rey and Brussels	CEO: Paul Twomey	1998	15 - independent	Fee and activity-based

Locations:

4676 Admiralty Way, Suite 330, Marina del Rey, CA 90292-6601, USA,

and,

6 Rond Point Schuman, Bt. 5, Brussels B-1040, Belgium.

President and CEO: Paul Twomey

Staff: 70 (including IANA), ICANN website October 2007

Three Year Rolling Budget Summary, from ICANN Fiscal Year 2007 - 2008 adopted budget documents, dated 17 May 2007 and updated 29 June 2007. This summary compares fiscal year 2005-06 actual revenue and expenses with those projected in 2006-07 and budgeted in 2007-08.

Figure 6: ICANN Budget: three year trend comparison

FY 05-06		FY 06-07		FY 07-08	
\$\$\$	%	\$\$\$	%	\$\$\$	%

\$5.5 million in 2006 F/C and are expected to increase steadily.

RAND Europe

Registrar						
Application Fee	\$780	2.6%	\$285	0.7%	\$75	0.2%
Accreditation Fee	\$1,965	6.6%	\$3,156	7.7%	\$2,700	5.5%
Variable Fee	\$3,789	12.7%	\$3,800	9.2%	\$3,800	7.7%
Transaction Fee	\$16,609	55.4%	\$17,980	43.6%	\$19,026	38.5%
Deferred Trans Fee 04-05					\$116	0.2%
Deferred Trans Fee 05-06					\$377	0.8%
Deferred Trans Fee 06-07					\$636	1.3%
Subtotal	\$23,043	77.3%	\$25,221	61.2%	\$26,730	54.1%
Registry						
Fixed Fee Tiers 1&2	\$30	0.1%	\$41	0.1%	\$91	0.2%
Fixed Fee Tier 3	\$820	2.8%	\$10,050	24.4%	\$8,122	16.5%
Transaction Fee	\$6,480	21.7%	\$5,217	12.7%	\$11,439	23.2%
Subtotal	\$7,330	24.6%	\$15,308	37.2%	\$19,652	39.8%
Regional Internet Registries						
Fixed Fee	\$823		\$823		\$823	
Subtotal	\$823	2.8%	\$823	2.0%	\$823	1.7%
ccTLD						
Contributions	\$278	0.9%	\$881	2.1%	\$1,222	2.5%
Agreements	\$255	0.9%	\$619	1.5%	\$578	1.2%
Subtotal	\$533	1.8%	\$1,500	3.6%	\$1,800	3.7%
Investment	\$105	0.4%	\$264	0.6%	\$1,348	2.7%
Total Revenue	\$31,834		\$43,116		\$50,353	
Bad Debt Allowance	-\$2,026	-6.8%	-\$1,912	-4.6%	-\$980	-2.0%
Net Total Revenue	\$29,808	100%	\$41,204	100%	\$49,373	100%
EXPENDITURES						
Personnel	\$7,533	40.9%	\$13,450	43.2%	\$18,028	41.7%
ICANN Meetings	\$2,163	11.8%	\$3,949	12.7%	\$4,369	10.1%
Travel, Other meetings	\$1,864	10.1%	\$2,444	7.8%	\$3,613	8.4%
Professional Service	\$4,695	25.5%	\$7,538	24.2%	\$9,226	21.3%
Administration	\$2,105	11.4%	\$3,784	12.1%	\$6,402	14.8%
Total Expenses	\$18,360	99.7%	\$31,165	100%	\$41,638	96.3%
CAPITAL	\$53	0.3%	\$0	0.0%	\$1,591	3.7%
Total Expenditures	\$18,413	100%	\$31,165	100%	\$43,229	100%
Additional to cash reserve	\$11,395		\$10,039		\$6,144	

Source: ICANN Proposed Budget: Fiscal Year 2007-2008

The ICANN Board of Directors, which was considered an Interim Board when it was created with nine appointed members, was also required to develop methods to replace itself with Directors

appointed by the Internet community as described above. To replace At-Large elections, a Nominating Committee with membership drawn from all ICANN constituency bodies selects eight Directors and also selects three members of the GNSO and ccNSO councils, and five members of the At Large Advisory Committee (ALAC). The President/CEO joins the ICANN Board as a ex-officio voting Director. Five Advisory Committees each provide a non-voting liaison to the board. Advisory Committees and Councils not represented on the diagram are the Security and Stability Advisory Committee (SSAC), DNS Root Server System Advisory Committee (RSSAC), and Technical Liaison Group, which represents international organizations involved in the development of technical standards. The Internet Engineering Task Force (IETF) also provides a liaison to the board. ICANN Staff provide support to the GNSO, ccNSO, ALAC and Nominating Committee. ICANN staff provides support for and work with other Supporting Organizations and Councils as necessary. The Office of the Ombudsman is independent of the ICANN staff.

Processes for review and appeal of decisions have been built into ICANN's governance structures since its creation. There are now three mechanisms for dealing with complaints, reconsideration and appeal: the Committee of the Board on Reconsideration, ICANN Ombudsman and the Independent Review Panel of Board actions. They are independent of each other, but create a comprehensive complaints system within the overall governance structure.

The Committee of the Board on Reconsideration is responsible for handling requests for reconsideration of ICANN Board and staff actions. Constituted by five board members, it has the authority to investigate and evaluate requests for reconsideration and to make recommendations to the Board of Directors, which ultimately determines how to resolve such requests. The committee has been part of ICANN's structure since its creation, and underwent a reform process in during 2002. It has been used quite actively by the ICANN community, but has tended not to challenge board decisions. It is notable that committee members are all members of the board so were participants in the decision the process is asking them to reconsider.

The Office of the Ombudsman was created to act as an Alternative Dispute Resolution (ADR) mechanism for the ICANN community. The Ombudsman accepts complaints about a staff, Board, Council or Supporting Organization decision, action or inaction with the goal of ensuring fairness in process and outcome. The Ombudsman is an independent officer of the organization, contact with the office are confidential. During the financial year 2006/2007, the Ombudsman handled 375 complaints, which resulted in two major reports to the Board and community and three evaluations. During 2007 ICANN commissioned an independent review of ICANN's accountability and transparency which identified that the Ombudsman provided a means of complaint for the ICANN community, but not for staff. None of the mechanisms allowed staff to confidentially raise complaints. Such "whistleblower" policies are considered good practise in global organizations, and the whistleblower protections exist under California State law, the law ICANN is incorporated under.

ICANN bylaws allow for the creation of an Independent Review Panel to review board actions. The Panel is in addition to the reconsideration process and Ombudsman and as a mechanism for resolving disputes is considered an escalation of any action. When requested, the Independent Review Panel will be operated by an international arbitration provider appointed by ICANN. An Independent Review Panel has never been used, and this may be because with the degree of concern that would cause a person or entity to request an independent review is such that parties have

resorted to litigation rather than begin this process. ICANN has been involved in litigation on 12 occasions, with one case outstanding as of October 2007¹⁴.

The role of each of the ICANN organisations is considered in depth in the following sections.

2.1.4 Activities

The Joint Project Agreement (JPA) now governs ICANN's role as the coordinator of private sector leadership of the Domain Name System. The JPA specifies activities and responsibilities ICANN must undertake, these include:

- ensuring the security and stability of the Internet unique identifier system
- enhancing relations with the root server operators and enhancing security of the root server system
- ensuring it conducts operations in a transparent and accountable manner
- implementing the introduction of new TLDs including IDNs, while ensuring competition and consumer interests are maintained
- achieving stable agreements with ccTLD operators
- maintaining and improving the multi-stakeholder model, and improving bottom-up policy development processes
- facilitating more effective consideration of governments' advice (via the GAC) in public policy aspects of its work
- continuing to collaborate with the RIRs in the policy-making activities relating to IP address allocation
- achieving excellence in corporate responsibility and excellence and efficiency of operations, including mechanisms to foster participation in ICANN by global Internet stakeholders
- reviewing and improving its corporate administrative structure and corporate governance best practises.

The requirements of the JPA must be achieved if ICANN to gain independence from the U.S. Government. Some doubt if this independence will ever be allowed to happen, either because of political pressure that the United States should not give away something so important, or for national security reasons; ICANN is responsible for global critical infrastructure.

The JPA was agreed on 29 September 2006 and terminates on 30 September 2009. However, a midterm review is scheduled where ICANN's progress will be assessed. If ICANN has made significant progress by the midterm point, 31 March 2008, then some hope the Department of Commerce may give ICANN independence earlier, or give greater independence if not complete freedom from oversight.

Government Advisory Committee (GAC)

Governments have always had an indirect role in ICANN's policy process, and the bylaws prevent

¹⁴ Creation of an Independent Review Panel has been requested once, the substance of the complaint was passed to the Ombudsman and resolved.

any official of a national government or intergovernmental organization from serving as a Director. However, the influence of the Government Advisory Committee (GAC) has increased significantly since the reform process. One reason for this is initial proposals for reform made by the then ICANN President recommended offering a more direct role to governments, including seats on the board in return for funding. More importantly, this increased interest is because of the global recognition of ICANN's role in the oversight of critical Internet resources. The eleventh and final item in ICANN's statement of core values (ICANN bylaws) illustrates this new relationship:

While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

The GAC should provide advice on ICANN activities as they concern governments, particularly where ICANN's policies intersect with international agreements, national laws and may affect public policy issues. The ICANN Board must notify the GAC of any proposal raising public policy issues on which the Board or Supporting Organization is seeking public comment, and shall take into account and response from the GAC. The GAC's advice on public policy matters shall be taken into account in both the formulation and adoption of policies. If the Board chooses not to follow the GAC's advice it should state reasons why, and should attempt to find a mutually acceptable solution. If GAC advice is still not followed, the Board shall explain why.

Interpreting these recommendations in practise is becoming increasingly difficult as more governments become interested and active in ICANN. National laws vary, as do views on what is and is not public policy. The GAC has become active in the *Whois* debate, some defending rights to privacy and so are critical of *Whois*, while others are concerned that information valuable to law enforcement may be lost if *Whois* policy is changed (some governments, for example Australia, have said public *Whois* is necessary for reasons of security and law enforcement even though it violates national privacy law.)

GAC's involvement in the process to evaluate the proposed new sponsored top-level domain .xxx provides an example of government's role in "public policy" issues and ICANN policy. An application to operate .xxx as a sponsored TLD as a voluntary option for sexually explicit sites on the Internet was made in a round of applications to operate new TLDs in 2003. The application passed technical requirements and other operational criteria and was provisionally accepted by the ICANN Board in June 2005. In August 2005 the US Department of Commerce objected to the creation of the new domain, and it later became clear the Department had been lobbied by powerful Republican constituencies to express this view. Other governments then began to discuss the domain, some expressing genuine public policy concerns, while for others it became something of a political football as politicians established their credentials as opposing Internet pornography. In March 2006, the ICANN Board voted against adding .xxx to the root.

How much Directors were influenced by GAC's concerns is not clear, most who voted against the applications said they were not. However there was no agreement in the GAC about .xxx. Some governments thought it a problem, some expressed no opinion, and some thought it met the TLD application criteria and was a worthwhile addition to the domain name space. GAC can be extremely influential, but it seems unable as yet to find ways to reach and codify how to achieve consensus decisions it can present to the ICANN community. Incoming ICANN Chair Dengate Thrush

(2007)¹⁵ stated:

"I think issues were raised by the GAC as to matters of public policy concern to that committee, and I just want to record mine -- and I think the rest of the board's -- great appreciation of the value of GAC advice, and the respect required to be accorded to that, given that it's the collective expression of will of governments here to support the ICANN mission in providing their specialist public policy advice."

When ICANN was created those associated with it described ICANN as a technical coordination body. The first Chair of the ICANN Board, Esther Dyson, wrote

ICANN does not "aspire to address" any Internet governance issues; in effect, it governs the plumbing, not the people. It has a very limited mandate to administer certain (largely technical) aspects of the Internet infrastructure in general and the Domain Name System in particular.¹⁶

ICANN now describes itself as a multi-stakeholder organization and recognizes that most of its work is policy development, and it is very much the centre of global discussions about Internet Governance. However Governments are still trying to find their role in this "multi-stakeholder" organization: they are certainly not equals with other stakeholders, and until their role is more clearly defined and limits known, situations like that over .xxx will continue. .xxx also makes clear that the ICANN Board can also interpret public policy in different ways.

ICANN's bylaws present three Supporting Organizations responsible for policy development in their respective areas, and advisory councils established to bring comment and proposals from other parts of the community. The Policy Development Processes of two Supporting Organizations, Generic Names Supporting Organization (GNSO) and Country Code Names Supporting Organisation (ccNSO), are defined in the bylaws. Policy development for IP address allocation is defined through an MoU with the Regional Internet Registries, and they are represented in ICANN by the Address Supporting (ASO).

Generic Names Supporting Organization (GNSO)

Membership of the GNSO is made up of six constituencies: gTLD registries, accredited registrars, commercial and business users, intellectual property interests, Internet service providers and non-commercial users. Each constituency appoints three members of the GNSO Council, the Supporting Organization's governing body responsible for managing the policy development process. Decisions are taken by voting, and the aggregate number of votes of the gTLD registries and registrars –the organizations under contract with ICANN and obligated to implement ICANN policy– is equal to the number of votes of representatives of the other "user" communities. Liaisons from the Government Advisory Committee (GAC) and ALAC serve as non-voting members of the GNSO Council.

The policy development process (PDP) is complex, should observe tight timelines, and is based on task forces created from members of the GNSO Council and constituencies and should aim to develop "consensus policies"¹⁷. A PDP begins with a request for an "Issues Report". Such reports can be requested by the ICANN Board, GNSO Council member, or Advisory Committee, and should be on an issue the requesting entity believes within the policy scope of the GNSO. ICANN

¹⁵ <http://public.icann.org/node/161#dengarethnush>

¹⁶ Esther Dyson, letter to Ralph Nader, 15 June 1999, available at <<http://www.icann.org/correspondence/dyson-response-to-nader-15jun99.htm>>

¹⁷ Annex A of the ICANN bylaws describes the GNSO Policy-Development Process <<http://www.icann.org/general/bylaws.htm#AnnexA>>

staff develop the Issues Report, outlining the matters concerned and saying if the issues are within scope or not. A vote of 33% of the GNSO Council can agree to start a PDP based on the issues report. If staff says the issue is out of scope a super-majority vote of Council members is required for the PDP to continue.

Once the Council has decided to begin a PDP a first public comment period is started. The Council then decides whether or not to create a Task Force to further develop recommendations. Constituency statements are collected and should include a clear statement of the constituency's position, how that position was arrived at, an analysis of how the issue would impact the constituency including any financial concern, and how long it would take to implement the policy. The Task Force meets to consider public comments and constituency positions and issues an preliminary report based on these. A second round of public comments to consider the Task Force report is started. Based on further public comment the Task Force issues a final report. The GNSO Council votes on the recommendations in the Task Force report, and a Council report of the vote and recommendations is sent to the ICANN Board.

The ICANN Board adopts the GNSO Council's report and recommendations unless more than 66% of Directors vote against the policy based on a determination that the policy is "not in the best interests of the ICANN Community or ICANN" (ICANN bylaws and GNSO PDP.) Policy should then be implemented or returned to the GNSO Council if the board votes not to adopt.

The time-line for PDP development is closely defined:

- Request of Issues Report to publication of the report: 15 days
- Publication of the Issues Report to initiation of the PDP: 15 days
- Initiation of the PDP to publication of the Task Force charter and terms of reference: 10 days
- Task Force charter to appointment of Task Force chair: 5 days
- Initiation of the PDP to receipt of Constituency statements: 35 days
- Initiation of the PDP to publication of the preliminary Task Force Report: 40 days
- Publication of the preliminary report to deliberation meeting of the GNSO Council: 5 days
- From the date of Task Force meeting to publication of the second report: 5 days
- The Task Force should send its final report to the GNSO Council after 20 days of public comment¹⁸.

The GNSO Chair gave examples of actual PDP timelines during a presentation at ICANN's meeting in San Juan, 24 June 2007:

- Task Force on Contractual Conditions formed in February 2006 completed its work in May 2007.
- *Whois* Task Force formed in February 2005 completed its work in March 2007.
- New gTLD Committee of the GNSO Council was formed in December 2005 and its work was ongoing at the time of the San Juan meeting.

¹⁸ Grateful to the GNSO Chair, Prof. Avri Doria, for an explanation of the GNSO PDP process

A recent report by the ICANN Board Governance Committee suggested the Task Force process is the main cause of these delays. Constituency representatives tend to take their established positions into the discussions and seek to form voting blocks with like-minded groups rather than reaching a consensus of the whole. The committee recommended adopting a more open working group model commonly used in other Internet policy development bodies such as the IETF, RIRs and W3C¹⁹.

2.1.5 Enforcement

ICANN contracts with each registry operator, setting conditions of service, including price and fees they must pay to ICANN. As noted above, some TLDs have been created to serve a specific "sponsored" community, others such as COM, INFO, NET and ORG are open to anyone who wishes to register. Registry operators must abide by ICANN consensus policies as they apply to their domain, and comply with UDRP and *Whois* requirements. Each registry agreement has specific conditions, and this lack of uniformity has been noted as a barrier to creation of more new TLDs as the process needs to be negotiated fresh for each new domain, and requirements have tended to change as negotiations are ongoing. There appears to be no consistency in this process of allocating scarce resources, a criticism made by Hoffman (2006) and Mueller (2002), as well as board members Crawford (2007)²⁰, Ito (2007)²¹ and new ICANN Chair Dengate Thrush (2007)²² who stated in the wake of the .xxx fiasco (see below): "we either come to terms with what it means to be granting TLD contracts and the consequences that flow or we stop".

Accredited Registrars: For a company to become eligible to offer domain name registration services it must first be accredited by ICANN, and this is achieved by entering into a contract with ICANN called a Registrar Accreditation Agreement (RAA). The current RAA has been in place since May 2001 and is under review. There are now over 900 accredited registrars operating in 48 countries²³. The RAA defines the obligations of ICANN and the company contracting to become a registrar. Through contracts and agreements with registries and registrars ICANN acts as regulator of actors in the domain name market, and shapes that market through rules and fee structures.

In broad terms there are two types of top level domains:

- unsponsored, which operate under policies developed by ICANN processes to serve the global Internet community, and
- sponsored TLDs which have a sponsor representing a specialized community.

Registry agreements vary by TLD but have common main features requiring data escrow, completion of a monthly operators report, commitment to provide *Whois* and UDRP compliance, a service level agreement and functional and performance specifications, a registry/registrar agreement, and list of reserved names.

For sponsored TLDs, the sponsor carries out delegated policy-formulation responsibilities over many

¹⁹ See for instance on the efficiency claims of open standards, Shah, Rajiv C. and Jay P. Kesan (2007) An Empirical Study of Open Standards, Paper presented at 35th Research Conference on Communication, Information and Internet Policy, September 30

²⁰ http://scrawford.blogware.com/blog/_archives/2007/3/30/2845638.html

²¹ http://joi.ito.com/archives/2007/03/31/icann_board_votes_against_xxx.html

²² <http://public.icann.org/node/161#dengathrush>

²³ Not all accredited registrars offer domain name registration services, and not all offer registrations in all gTLDs or ccTLDs. The number of countries is based on the company address, and their services are available to residents of most countries of the world.

matters concerning the TLD. The sponsor is also responsible for selecting a registry operator to provide technical operation of the registry. The sponsoring agreement with ICANN establishes the purpose for which the sponsored TLD has been created and will be operated and this is monitored by ICANN for compliance. Both types of registry must submit a monthly "Registry Operator Monthly Report" which describes the status of accredited registrars serving the TLD, performance related to criteria of a service level agreement, *Whois* activity and other technical activity related to the TLDs zone files.

Registries are required to be in compliance with requirements of their registry agreements, and the key elements of this are the service level agreements specifying acceptable amount of downtime, both scheduled downtime for technical purposes and other. Registries have been in compliance. Registries wishing to offer new services are able to do so through a "Registry Services Evaluation Process" which was developed through ICANN's consensus policy development process. This process includes public comment periods on both the registries application and ICANN staff response, board review before a final decision by the ICANN board.

Domain names fees are controlled in different ways. Registry agreements include the amount a registry will pay ICANN, usually a mix of fees per transaction and a set amount for a given period. The amount a registry may charge a registrar for each name they register may be capped (not more than a certain amount), and may not increased by more than a given percentage over a period of time. Or, as is often the case for sponsored TLDs, the sponsor may charge a registrar what they think is the appropriate amount for their community. Registrars, unless otherwise constrained by a specific registry agreement, can charge what they wish, some registrars may offer names free, others, for a name under the same TLD, may charge some tens of dollars.

The Registrar Accreditation Agreement (RAA) requires registrars to adopt any ICANN consensus policies affecting registrars, abide by any code of conduct for ICANN-Accredited registrars, provide access to *Whois* data with data fields specified by ICANN in the agreement, and that it will comply with requirements of the UDRP. The registrar will pay yearly fees to ICANN, these include an accreditation fee and variable fees established by the ICANN Board of Directors. Registrars can decide which gTLDs they wish to take registrations in by agreeing specific conditions for each of the 16 TLDs ICANN contracts with.

Currently, the only contractual mechanism ICANN has to address non-compliance with the RAA is termination of the agreement. There is no middle ground for requiring improved performance etc, only the option or threat of termination. The ICANN community has requested graduated sanctions be introduced, and a policy development process for this will be started.

ICANN recently began to provide a review of registrar and registry compliance through a semi-annual contractual compliance audit. The audit process was introduced in March 2007 as part of an updated contractual compliance program and addresses compliance with nine items in the registrar agreement, many related to *Whois*, and seven items for registry agreement²⁴.

Country Code policy development: ICANN found it impossible to enter into contractual relationships with ccTLD managers, who were concerned by their lack of influence in policy processes and that ICANN contract negotiations were attempting to take too much control over their

²⁴ The first audit is available from the ICANN website <<http://www.icann.org/compliance/reports/contractual-compliance-audit-report-18oct07.pdf>>

operations²⁵. ICANN had also limited success in reaching contractual agreements with the Regional Internet Registries, responsible for IP address allocation and policy. ICANN was also in near constant litigation with VeriSign (previously Network Solutions Inc.) the registry operator of the .COM, .NET and .org gTLDs. Litigation was expensive, took valuable staff and Board time, and also was another barrier to achieving the requirements of the MoU. ICANN generally lacked necessary funding to achieve the tasks required by the MoU and was no closer to achieving the transition to private sector oversight than it was in 1998.

The Country Code Names Supporting Organisation (ccNSO) was an outcome of the reform process that took place during 2002-2003. The ccNSO is established under ICANN's bylaws and is responsible for developing and recommending to the Board global policies relating to country-code top-level domains. Many ccTLD policy issues are addressed at the national level or through regional consensus and the ccNSO considers a much narrower range of issues than the GNSO. ICANN does not impose any contractual requirements on registrars of ccTLDs, including *Whois*. However, there has been a trend in recent years for United States Trade Representative (USTR) negotiations of bilateral agreements to require ccTLD operators to provide *Whois* information and to adopt ICANN's UDRP as a means of resolving trademark disputes.

Membership of the ccNSO is limited to ccTLD managers, at the time of writing 62 of the 252 ccTLDs are members of the ccNSO, however many more participate in its meetings and mailing lists. Non-membership means not being able to vote. ccNSO members are not required to have a contract or any agreement with ICANN. 32 ccTLDs have entered into a basic agreement with ICANN, an "Accountability Framework" which describes commitments both parties make to providing accurate information and services for the integrity of the zone file (ccTLD database records) and the stable operation of the root name server system and IANA function. The framework also includes a commitment from the ccTLD to provide ICANN with funds. Other ccTLDs, have different types of agreement ranging from sponsorship agreements (seven ccTLDs), in which ICANN has recognized a new operator of a ccTLD, to a Memorandum of Understanding (seven ccTLDs) and one new registry agreement, which was for the creation of the new .EU top-level domain.

The ccNSO Council is responsible for managing policy development processes and has 18 members, three ccTLD managers from each of ICANN's five geographic regions, and three members appointed by ICANN's Nominating Committee.

The ccNSO policy development process is similar to that of the GNSO, but without rigidly defined timelines. The PDP begins with an issues report initiated by any council member, ICANN board, regional ccTLD organization, members of the ccNSO or advisory committee, and is followed by a process to identify that there is support for the issue to be continued as a full PDP. The Council decides by majority vote to initiate the PDP and decides whether or not to initiate a Task Force. If a Task Force is formed members are selected and a timeline for work agreed. If a Task Force is not required, each regional ccTLD organization submits a regional statement. An Issue manager either collects and edits regional statement into a finished report, or accepts the Task Force's report. There is a requirement for public comment period, and the Issue manager may include these comments in the Task Force or collated regional report. The Council formally requests the Chair of the

25 The ccTLDs were part of the DNSO with a minority voting in the Supporting Organization. Work of the DNSO focused almost entirely on gTLD issues such as creating new TLDs, establishing a systems for accrediting new domain name registrars. ccTLD managers were also very wary of ICANN staff's attempts to exert control over what most consider sovereign concerns.

Government Advisory Committee to offer opinion or advice on the report.

The ccNSO Council considers whether to make a recommendation on the issue and produces a Council Recommendation which is then considered along with any minority dissenting reports and voted on by the ccNSO membership. If 66% of members are in favour of the recommendation it is passed to the ICANN Board as a final report. The Board should adopt the recommendation unless more than 66% of the board determines the recommendation is not in the best interests of the ICANN community or of ICANN. The Board must give reasons for rejecting the recommendation and the ccNSO Council may take those reasons into consideration and resubmit an amended recommendation.

The ccNSO PDP has not been as active as the GNSO, but is expected to become the focus of much of ICANN's work over the coming months and years as the ccNSO being processes for the introduction of internationalized domain name (IDN) ccTLDs. ICANN is expected to have to decide on a range of issues affecting ccTLDs ranging from the identification of appropriate intellectual property concerns and protection of intellectual property, to issues of security and stability and mediating between language communities. ICANN has had a limited regulatory impact on ccTLDs, but this may soon change.

Global Coordination of IP address allocation: ASO: The Address Supporting Organization (ASO) represents the Regional Internet Registries in ICANN. The ASO appoints two Directors and entered into an MoU with ICANN on 21 October 2004²⁶. The White Paper attempted to give ICANN broad policy responsibility for IP addresses, but the RIRs have been able to retain most policy development responsibilities and coordinate their global activities through a Number Resource Organization (NRO). The NRO undertakes the functions of the ASO as defined in the ICANN bylaws. The RIRs each have their own regional, bottom-up policy development processes, these are open and have a proven record in producing policy accepted by their user communities.

The ASO is responsible for global IP address policy development, and makes recommendations to the ICANN Board on such policy. Global policies are defined in the MoU as "Internet number resource policies that have the agreement of all RIRs according to their policy development processes and ICANN, and require specific actions or outcomes on the part of IANA or any other external ICANN-related body in order to be implemented."²⁷ Most policies are developed regionally and do not require ICANN Board involvement. However, ICANN's draft Strategic Plan, July 2008 – June 2011 anticipates working with the RIRs and addressing community in providing leadership to publicize the depletion of unallocated IPv4 addresses and the need to encourage the adoption of IPv6. It is also possible that ICANN may become involved should the monetization of IPv4 addresses become a global problem.

The RIR policy development processes have been held up as an exemplary example of industry self-management. Policies are developed by the RIR membership and broader Internet community. Each RIR's policy process differs slightly but follows the same general model. The policy process is open to anyone and policy processes can be begun at face-to-face Open Policy Meetings, which are held twice each year, and via mailing list discussions. Anyone can propose policies. Everyone can discuss policies. The policy process is documented from the initial proposal, through discussion where the

²⁶ The three then existing RIRs signed an initial MoU with ICANN on 26 August 1999, the new MoU reflects changes to the organizations after the 2002-3 reform process.

²⁷ ICANN Address Supporting Organization (ASO) MoU, 21 October 2004 <<http://aso.icann.org/docs/aso-mou2004.html>>

community agrees or not to the validity of the proposal, to any decision. The policy process is intended to be community driven "bottom-up", is transparent and inclusive. Policies developed by the community are ratified by the RIRs' respective boards or executive councils²⁸.

ICANN's most direct regulatory activity (aside from *Whois*) is the operation of an alternative dispute resolution system, Uniform Domain-Name Dispute-Resolution Policy (UDRP), as a means of resolving trademark disputes. Compliance with the UDRP is a contractual requirement for registrars and registrants. The UDRP is applied to all gTLDs and has been adopted by some ccTLDs. The UDRP is intended as a low cost, easy means of resolving conflicting intellectual property claims to domain names. The UDRP was introduced to counter a proliferation of "cybersquatting", where a domain name had been registered in bad faith to either mislead or to profit from the goodwill associated with a trademark belonging to another entity. The UDRP has largely been successful in addressing these problems.

2.1.6 Outcomes

Maintenance of accurate *Whois* records is a requirement of ICANN's contracts with registry operators. ICANN's Registrar Accreditation Agreement (RAA) requires registrars to obtain *Whois* data from their customers. Discussion about *Whois* began when ICANN was created in 1998 and still is to be resolved. The White Paper instructed the new private corporation (ICANN) to ensure a publicly searchable database of registered domain names was available providing accurate information necessary to contact a domain name registrant when a potential conflict arose between a trademark holder and a domain name registrant. The database should provide up-to-date contact information of the registrant and other information about the domain name registration.

This requirement essentially describes the *Whois* database, which had been in existence for many years originally as a means for technical operators to contact other users. With commercialization of the Internet the greatly increased use of domain names by individuals changed the nature of the contents of the database from being those of mainly Internet technicians to the global public. However, the publication of the personal information *Whois* requires is contrary to national laws of many countries in Europe, and also others such Australia and Canada. Data protection authorities informed ICANN of this conflict between national law and its contractual requirements as early 2000, yet *Whois* requirements are still part of ICANN's contracts and are an issue of conflict within the GNSO's policy development processes.

A notable current controversy is between ICANN and Telnic, operator of the new gTLD .TEL. In June 2007 Telnic asked ICANN to waive parts of the registry/registrar *Whois* requirements so that its operations could comply with UK data protection laws, specifically to allow a degree of user choice with respect to information published in *Whois* and so limit the public display of *Whois* information. UK data protection authorities told Telnic (and have long expressed this concern) that a *Whois* policy that does not allow individuals to have some control over the disclosure of their personal contact information is unlikely to be compatible with UK data protection laws. Telnic had been preparing to launch the new .TEL TLD and wished to be compliant with UK law. To date, ICANN has not granted Telnic's requests and requires it to follow conditions of the RAA. ICANN's regulations (contracts) appear to be requiring a contracted entity to contravene national law.

28 Depending on the region and local corporate governance regulations, fee structures used by the RIRs can be considered to the fiduciary responsibility of the executive body and not appropriate for the open policy process, some legacy issues from before the RIR system was created in the mid-1990s may also be out of scope of the policy process for some the RIRs.

ICANN's GNSO has produced consensus policies on eight issues. ICANN's agreements with accredited registrars and gTLD registry operators require compliance with various specifically stated procedures and also with "consensus policies." Sponsors and registry operators of sponsored TLDs may be required to comply with consensus policies in some instances. Consensus policies have been adopted on:

- GNSO Recommendation on a Procedure for Potential Conflicts between WHOIS Requirements and Privacy Laws
- Uniform Domain Name Dispute Resolution Policy
- *Whois* Data Reminder Policy
- Inter-Registrar Transfer Policy
- *Whois* Marketing Restriction Policy
- Restored Names Accuracy Policy
- Expired Domain Deletion Policy
- Registry Services Evaluation Policy

2.1.7 Outputs

Given ICANN's difficult beginnings, in less than 10 years the organization has made significant progress in introducing competition and has helped create a new business area, which when the secondary domain name market is included is valued globally at over \$2 billion/year²⁹. The total number of name registrations worldwide grew from approximately 90 million names in 2005, to almost 140 million at the end of the second quarter 2007. ICANN has become self-supporting financially.

ICANN has created 13 new gTLDs and one ccTLD for regional use, and a market of more than 900 domain name registrar companies with operations based in 48 countries.

ICANN policy processes have created a complex organizational structure (see Figure 6 above). Its agreements and contracts with the industry it oversees and regulates, and the agreements and procedures it has developed with other entities that contribute to or interact with its activities form a highly complex web of processes³⁰.

ICANN has a low global media profile and is regarded by many in the media as performing an obscure technical function. This view changes when ICANN is viewed purely as an Internet Governance organization. ICANN holds three meetings each year, these rotate between ICANN's five geographic regions and are typically attended by between 800 and 1200 people. 1600 people subscribe to ICANN's online weekly newsletter and monthly magazine.

ICANN has been the focus of significant international discussion in the United Nations World Summit on the Information Society (WSIS), the International Telecommunications Union and

²⁹ The secondary domain name market is the buying and selling of domain names after registration.

³⁰ A summary of current and past ICANN processes is available online <<http://www.icann.org/processes/>>

United Nations Internet Governance Forum (IGF). ICANN's role in overseeing resources critical to the operation and evolution of the Internet is regarded as controversial by many, particularly many developing nations³¹.

2.1.8 Impact

ICANN is responsible for the oversight of critical Internet resources and matters relating to the domain name system, however it is still not globally accepted in this role, and has not been able to achieve independence from the United States government and create a privatized and internationalized system of oversight. But ICANN has credibility with most key actors from the Internet industry and other standards development and governance related bodies.

ICANN's relationship with other Internet standards bodies is firmly established (Figure 5 above) through shared liaisons and contributions to mutual standards and other processes. At the beginning of 2007, representatives of government of 101 countries and observers from nine international organizations participated in ICANN Government Advisory Committee.

ICANN has made a strong commitment to international representation and participation, and this reflected in meetings it holds three times each year in locations that rotate through five geographic regions³². These meetings typically last one week and conclude with a meeting of the ICANN board. They are where the Supporting Organizations and Councils meet and conduct business. Meetings are free of charge to attendees, and organized through an open request for proposals process to select the local host within a given region. ICANN's annual general meeting of 2008 will be held in Los Angeles and will be ICANN's 30th public meeting.

2.1.9 Sustainability and Reform

Global online elections were held in 2000 to elect five of the nine At Large Directors, and while this was a unique and very popular experiment in global democracy, 34,035 people cast votes and five people were successfully elected, it was not deemed sustainable as a cost and resource effective and reliable means of seating Directors on an annual basis. In addition to resource issues, problems creating a bounded electorate and concerns that elections proved vulnerable to capture caused the still Interim ICANN Board to vote against further elections³³.

ICANN underwent extensive reform during 2002/3 to place the organization on a firmer financial footing. Reform is now built into the ICANN bylaws as part of the organizations accountability framework. Every three years the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (except the Governmental Advisory Committee which provides its own review mechanisms), and the Nominating Committee should be subject to independent review. The criteria and standards of each review will be set by the board after a period of public comment on their terms of reference, with two primary aims: to determine if the organization has a continuing purpose in the ICANN structure, and if changes are necessary to achieve its effectiveness. These reviews have been slow in starting, but many of the bodies are now

31 For detailed discussion on ICANN and Internet governance in World Summit on the Information Society and Internet Governance Forum see the chapter in this report describing the Internet Governance Forum.

32 In 1999, 2001 and 2002 ICANN held four meetings each year, as the organization matured and first efforts to create the organisation's operational and policy structures were established the number of meetings was reduced to three.

33 For a contemporary account and review of the election, see "ICANN, Legitimacy, and the Public Voice: Making Global Participation and Representation Work", a report of the NGO and Academic ICANN Study August 2001 <<http://www.naisproject.org/>>

under review. In addition a review of the Board is also scheduled.

ICANN is now financially stable, and for the time being at less risk from litigation than it has been in the past. However as an organization working primarily online and with policy made by volunteers it could be vulnerable to court action in the U.S. where rules of discovery are very powerful.

ICANN's main vulnerability is to actions of outside intergovernmental forces, particularly those stemming from the World Summit on the Information Society (WSIS.) In WSIS governments showed great interest in ICANN and its role as coordinator of global critical Internet resources, and that it acted under oversight of only the U.S. government in coordinating these global resources. Discussion about a process to allow governments to take a more active role in the public policy issues related to the management of critical Internet resources known as "enhanced cooperation" is beginning in the United Nations system. This intergovernmental discussion –which may take place under rules and procedures where ICANN and other non-governmental actors have very limited rights to provide comment– will come at a time when ICANN is trying to achieve the milestone of the Joint Project Agreement and could be disruptive of that process³⁴.

The transition from IPv4 to IPv6 internetwork-layer protocols and depletion of IPv4 address space may also cause ICANN to become the centre of government and industry attention. There are likely to be difficulties with this transition, and while the RIRs are responsible for IP address allocation and policies, it is reasonable to expect that ICANN will become the focus of attention while difficulties are resolved.

ICANN makes a very strong commitment to international participation and representations, and concerns to geographic diversity have been a strong current throughout the organizations history. ICANN's rotation of meetings through its five defined regions: Africa; Asia, Australia and Pacific, Europe, Latin America and Caribbean and North America and the most visible example of its concern for the international community. At the same time, geographic diversity requirements are built into many of its representative structures: the board must have at least one Director from each of the regions and not more than five, ccNSO and At-Large council members are selected to ensure equal representation from the regions³⁵. While the organizations working language is English, ICANN is beginning to produce more documents in other languages and provide simultaneous interpretation in appropriate regional languages at many of its meetings.

ICANN's MoU with the Department of Commerce contained actionable items, however ICANN tended to treat these as work to be considered rather than a series of project milestones that must be achieved if the conditions of the MoU were to be satisfied and ICANN achieve independence. This flawed approach to the tasks it was required to complete, seriously compounded by the issues mentioned above, particularly lack of funding and resources, resulted in the MoU being extended five times, and amended on six occasions. The MoU was eventually replaced by a new agreement with the Department of Commerce, a Joint Project Agreement (JPA), specifying activities and responsibilities ICANN must undertake.

2.1.10 Evaluation

In a relatively short period of time ICANN has grown into a substantial body on the Internet.

³⁴ Enhanced cooperation is discussed in more details in the article about Internet Governance Forum.

³⁵ Appointees by the Nominating Committee to the ccNSO cause a very minor un-balancing.

ICANN has many critics, however it is achieving its founding principles of ensuring security and introducing competition through bottom-up and inclusive processes involving the broad interests of global Internet users.

The organization continues to grow in staff and budget, and the issues it undertakes are also increasing both in number of policy tasks and also in complexity. For example, ICANN is expected to begin a new process for accepting applications to operate new gTLDs before the second quarter of 2008, and has begun a program to introduce internationalized (non-ASCII) TLDs, particularly for ccTLDs. The creation of IDNs will significantly increase ICANN's workload and scope.

One of the reasons ICANN was created was to introduce competition at both the registry and registrar levels. Since ICANN was created in 1998, 13 new gTLDs have been added to the root³⁶. In addition, operation of the .org domain was re delegated to the Internet Society and is operated by Public Interest Registry on ISOC's behalf. The ORG domain is intended to serve the non-commercial community, but there are no restrictions on who may register within .org. The .EU domain is restricted to residents of the European Union and was created as a new ccTLD. The .COM and .NET domains are operated by VeriSign Global Registry Services.

Hofmann (2007, page 46) describes problems with ICANN's self-governance approach in that it implies policies need the consent of "rule takers". This is particularly true when the rule maker has fewer resources than the rule taker, as is the case with ICANN and VeriSign the operator of the .COM and .NET domains. Hofmann goes on to say:

In some cases, this leads to non-transparent decision-making processes and biased results at the expense of users' interests

referring to the arrangement between ICANN, VeriSign and the Department of Commerce about the delegation of the .COM domain entered into in February 2006. The agreement, which ICANN Legal Council said was not a policy issues so did not require the GNSO to begin a policy development process, gave VeriSign the right to operate .COM domain until 2012 and the right to increase its rates by up to 7% in four of the next six years. In return, VeriSign agreed to end litigation with ICANN and provide new fees from name registrations that would overtime ensure ICANN's budget may achieve up to \$50 million year. The deal, done behind closed doors, is an example of both the influence of one government, the United States, on ICANN, and ICANN's own regulatory powers to bend its procedures when it needs.

³⁶ The .AERO domain is reserved for members of the air-transport industry and is sponsored by Société Internationale de Télécommunications Aéronautiques (SITA).

The .ASIA domain is restricted to the Pan-Asia and Asia Pacific community and is operated by DotAsia Organisation.

The .BIZ domain is restricted to businesses and is operated by NeuLevel, Inc.

The .CAT domain is reserved for the Catalan linguistic and cultural community and is sponsored by Fundació puntCat

The .COOP domain is reserved for cooperative associations and is sponsored by Dot Cooperation LLC.

The .INFO domain is operated by Afilias Limited.

The .JOBS domain is reserved for human resource managers and is sponsored by Employ Media LLC.

The .MOBI domain is reserved for consumers and providers of mobile products and services and is sponsored by mTLD Top Level Domain, Ltd.

The .MUSEUM domain is reserved for museums and is sponsored by the Museum Domain Management Association.

The .NAME domain is reserved for individuals and is operated by Global Name Registry.

The .PRO domain is restricted to credentialed professionals and related entities and is operated by RegistryPro.

The .TEL domain is reserved for businesses and individuals to publish their contact data and is sponsored by Telnic Ltd.

The .TRAVEL domain is reserved for entities whose primary area of activity is in the travel industry and is sponsored by Tralliance Corporation.

There are areas where the organization continues to be criticized, notably instances where the Board has taken decisions that are at odds with community consensus and the less than ideal representation of individual users. Internet users are represented through a complex structure of regional and local organizations that do not provide an easy direct means for individuals to participate in policy development processes. The representation of users in ICANN's policy processes adds an important dimension to the otherwise industry dominated policy development processes. Without the views of users, and people in policy leadership positions brought in by the independent Nominating Committee process, ICANN risks being viewed as an industry association making rules for itself and may be vulnerable to anti-trust claims.

ICANN will continue to come under pressure from governments from three different directions:

- In the international arena through the discussion of enhanced cooperation and role of governments in the oversight of critical Internet resources;
- In its "domestic" relationship with the U.S. Department of Commerce and review of the Joint Project Agreement in March 2008, and the JPA's end date of 30 September 2009;
- And in policy development an implementation through the processes to create internationalized country code domain names, which will involve national governments in sovereign public policy issues.

2.2 Domain Names (UK): Nominet

NOMINET

Researcher: Chris Marsden

Nominet is the UK Top Level Domain registrar, founded in 1996 by Willie Black. It is seen as an 'exemplar' of non-profit self-regulation. It is a not for profit charity with a very large membership (3000). This creates a problem for decision-making: a largely 'inactive' membership creates problems in changing fees for domains. Nominet is growing with the market, and has a large turnover, invests in technical and other staff, and carried a £16million surplus which it proposes in part to invest in a Foundation for Internet policy research. Its current challenges include competition with profit-making and entrepreneurial TLD organisations for back-office services and the ENUM transition, as well as new market developments such as domaining. It underwent major governance reform consultations in 2007.

Table 10: Summary of Nominet Case Study

Was there a government mandate initially?	Not directly
What kind of government involvement is there?	Informal relations
Which other stakeholders are involved and how?	Broad community including industry and civil society
How is transparency ensured?	Broad outreach efforts – considered best of kind
What is the enforcement mechanism, is it effective, at what cost?	Compulsory arbitration, effective litigation.
What is the relative size of administrative burdens?	Relatively low in absence of litigation
Is financial independence assured/how?	Yes, through growth in size of .uk market
Which internal factor most impacts success?	Relation between executive and membership – reforms intended to

	strengthen executive powers
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: relationship with UK and especially with ICANN. Technology: consolidation and professionalisation of esp. back office services. Market: growth of secondary markets in domain tasting.
Lessons for European policy	Not-for-profit non-government status highly effective, continued efforts to address user community praiseworthy. Replicability in less resourced markets potential problem.

2.2.1 Interests and Policy Needs

Most countries have their own country code Top Level Domain (ccTLD). The .uk TLD was first used during the 1980s, and at that time a voluntary group called the 'Naming Committee' managed the registration of .uk domain names. As with other ccTLDs it was delegated to an individual by Jon Postel: Dr Willie Black at the UK Education and Research Networking Association (UKERNA). Domain requests were emailed to - and manually screened by - the UK Naming Committee before being processed by UKERNA. This Committee was in practice a mailing list of representatives of all organisations involved in the UK Internet system at the time.

.uk is the Internet country code top-level domain (ccTLD) for the United Kingdom. At the end of 2006 it was the fourth most popular top-level domain worldwide (after .com, .de and .net), with over 5 million registrations. Nominet UK is the .uk domain name registry in the United Kingdom, which was founded by Dr. Willie Black on 14 May 1996 when its predecessor, the 'Naming Committee' was unable to deal with the volume of registrations then being sought under the .uk domain.

By the mid-1990s the growth of the Internet, and particularly the advent of the World Wide Web was pushing requests for domain name registrations up to levels that were not manageable by a group of part-time voluntary managers. Oliver Smith of Demon Internet forced the issue by providing the committee with a series of automated tools, called the "automaton", which formalized and automated the naming process end to end. This allowed many more registrations to be processed far more reliably and rapidly, and inspired individuals such as Ivan Pope to explore more entrepreneurial approaches to registration. Various plans were put forward for the possible management of the domain, mostly Internet service providers seeking to stake a claim, each of which were naturally unacceptable to the rest of the committee.

In response to this Black, as the .uk Name, proposed a not-for-profit commercial entity to deal with the .uk domain properly. Commercial interests initially balked at this, but with widespread support Nominet UK was formed to be the .uk Network Information Centre.

2.2.2 Design & organisation of the Institution

The options to set-up as a profit-making company or a charity were rejected, and Nominet was established in 1996 as a private, not-for-profit company, limited by guarantee. It has 'members' who act as shareholders. Anyone can become a member, but most members are internet service providers who are also registrars.

Unlike the model in other countries, by and large customers wishing to register a domain do not approach Nominet directly, but register the domain via a 'registrar'. This is an organisation registered with Nominet to register and update domains on behalf of customers, and who have provided a PGP

public key to enable Nominet to authenticate communications from them. Registrars were formerly known as "tagholders".

Stakeholder engagement is enabled by the Nominet model contracting directly with registrars and registrants, an unusual model that Taylor (2007) argues enables a balance of interests as there is less risk of 'capture' – e.g. in transfer of the registrant, where registrars don't want that free transfer but Nominet can intervene as it contracts directly with both. To have 3000 members is very different to most European models (for instance the German registry has about 200 larger members).

As of January 2007 the .uk register held 5,522,104 .uk domain names (with an annual growth rate of 18%) making it the fourth largest Top Level Domain in the world (exceeded only by global domains). Nominet also deals with disputes about registrations of .uk domain names, via its Dispute Resolution Service (DRS), which is similar to the UDRP system used for generic Top Level Domain Names, but with certain innovations such as a free mediation service.

2.2.3 Inputs

Location	Chief	Founded	Directors	Funding
Oxford	CEO Lesley Cowley	1996	10 - independent	Fee-based income based on activities

Registered office:

Sandford Gate, Sandy Lane West, OXFORD, OX4 6LB

Chair: Bob Gilbert

Chief Executive: Lesley Cowley

Nominet is a company limited by guarantee, and had no shareholders and pays no dividend. It does have members who join the company and pay a membership fee. The members guarantee £10 each, in the event of insolvency. Nominet is managed by a Board comprising up to two executives and four non-executive directors. Of the four, two stand down and are re-elected at each AGM.

Day to day operations are carried out by a staff of around 115, comprising technical, administrative and customer support personnel.

The current membership is mainly made up of Internet Service Providers but also includes law firms, company formation agents, the police, and specialist consultants. Nominet members are entitled to a discount on domain name registration fees, as opposed to the fee payable by those registering direct with Nominet. There are 3000:

We manage over six million domain names. With 3,000 members, 115 staff and a turnover of £14m, we play a key role at the heart of UK e-commerce.

Any individual or organisation with an interest in the Internet can become a member of Nominet UK on payment of a joining fee and annual subscription.

Operating costs are covered by the subscriptions of its members and domain name registration fees. Nominet also charge fees for registrar transfers and registrant transfers on a cost recovery basis. Currently, a complete membership vote is necessary for fee changes. A Remuneration committee examines executive pay and staff pay, while the overall budget is set by executive, presented to board.

Nominet has a Policy Advisory Body (PAB) which is made up of two non-executive directors, representatives of up to eight appointed organisations plus eight Nominet members who are elected by the membership. The PAB was set up in March 1999 and develops proposals for policies and rules for consideration by the Nominet Board and Nominet members. Informally, every member can communicate with Nominet on a regular basis via an email discussion forum. Formally, members can propose and vote on resolutions at all AGMs and EGMs.

Nominet now has an annual turnover of £14.7m (year to September 2006)³⁷ and has a £21m surplus. The surplus has grown with .uk domain name success, and has reached a level where its sheer size and the extreme difficulty in reducing fees (subject to unanimous approval of members) and thus the surplus have become problems. It explains that:

Nominet has been profitable almost since its earliest years and these profits have been used to fund the development of the business and to accumulate reserves. In 1999 we developed a set of financial principles, known as the Bligh principles, one of which was 'the company will build up reserves sufficient to cover two years of running down costs (in the event that the need for new .uk registrations should cease), unexpected legal costs and unforeseen budget variances'. The level of reserves needed has been met since 2003 and we have continued to add those funds with each subsequent year.³⁸

On 22 November 2007, the Board proposed the reform of the surplus by:

“proposing the establishment of a Nominet Foundation for the purpose of public benefit to UK Internet stakeholders through education, research and the funding of suitable projects. It recommends that we create the Nominet Foundation as a charity and company limited by guarantee, with a first year donation of £5m.”

It explains that the Foundation was first proposed before Nominet was set up, but was rejected as initially “it was thought unlikely that Nominet would ever make any surpluses, particularly as it was envisaged that our charges would only just match operating costs.” As surplus in 2006 was £3.2m this clearly has changed. Consultation will continue and no conclusion will be drawn until 2008³⁹.

2.2.4 Activities

The general form of the rules (i.e. which domains can be registered and whether to allow second level domains) was set by the Naming Committee. Nominet has not made major changes to the rules, although it has introduced a new second level domain .me.uk for individuals. It is prohibited to register a domain name directly under .uk (such as internet.uk) and a second-level domain must be used (such as internet.co.uk). Some domains delegated before the creation of Nominet UK remain⁴⁰. No new 'normal' registrations at the second level are accepted although there is a system for allocating new second level domains to expand the capacity of the system. Such allocations are rarely made. It is possible to directly register a domain name with Nominet UK but it is faster and cheaper to do it via a Nominet registrar.

37 Nominet (2006) Annual Report and Accounts, at http://www.nominet.org.uk/digitalAssets/17259_Report_and_Accounts_2006.pdf

38 <http://www.nominet.org.uk/policy/consultations/foundation/>

39 In mutual societies, letting the surplus be returned to members is possible, but only when the organisation is legally altered – so it's a one-time windfall. In the Nominet case, there's so many members that it would be very hard for new members to 'pack in' in search of a windfall. Martin Boyle provided useful context for this discussion.

40 Examples include parliament.uk (Parliament), bl.uk and british-library.uk (the British Library), nls.uk (the National Library of Scotland), nhs.uk (The National Health Service), and jet.uk (UKAEA as operator of the Joint European Torus experimental fusion tokamak).

Allocations are on a strict first-come, first-served basis to qualified applicants. There are no territorial restrictions: applicants need not have any connection to the UK. “co.uk” is by far the most used of the domains, followed by .org.uk. The intended restriction of “co.uk” to companies is purely nominal; in practice it is open to any and all applicants. Likewise, whilst “org.uk” is for organisations, there are no restrictions on registering domains⁴¹.

Table 11: Second-level domains managed by Nominet and managed by other organisations

	Nominet	Other organisation
Second-level domains	.co.uk .org.uk .net.uk .ltd.uk .plc.uk .me.uk .sch.uk	.gov.uk .ac.uk .police.uk .mod.uk .nhs.uk .parliament.uk

2.2.5 Enforcement

Nominet set up its Dispute Resolution Service (DRS) for the 1990s problem of ‘cybersquatters’. As courts got hold of the problem it died down, as many problems were clearly trade mark infringement. A mark of the Nominet model I compulsory mediation as part of the DRS, a widely praised model. About 1 in 2000 domain name registrations become subject to the DRS. 1095 disputes were registered in 2005/6. Nominet (2006) explains that:

The DRS continues to be a popular service and was copied in New Zealand during this financial year. Where a response to a dispute is received the parties receive the benefit of informal mediation, which is handled by Nominet’s Centre for Effective Dispute Resolution (CEDR) trained mediators. The mediation settlement rate remained at about 58% despite extensive staff changes.

A review of the DRS is held about every 3 years (most recently 2003 and 2006/7). An Experts’ Review Group was established in 2006, to support the Chair of DRS Experts in a number of other administrative improvements.

The problem of “domaining” is becoming more important, with entrepreneurs taking trial membership of expired domains to ‘taste’ the traffic (this is called “tasting”). Where there is significant traffic, they then take ownership of the domain in order to secure revenues from sites that reward reallocation of traffic to their portal – notably search engines. This practice occupies billions

⁴¹ While “me.uk” originally had no restrictions on registrants it has since been tightened up to require registrants to be natural persons (i.e. not companies, etc). Registrants in “ltd.uk” must be, and remain, private limited companies incorporated under the UK Companies Act 1985. In addition, names can only be registered if they correspond (in accordance with the algorithm in the rules of registration) with the exact company name, as recorded at the companies registry at Companies House. The same conditions apply for “plc.uk”, but for public limited companies. Neither of these domains is widely used. “net.uk” is more open, but the Nominet regulations still mean that a registrant must be an ISP, or a similar body, and that the domain is not used for providing services to end-users. “ac.uk” domains are intended for the use of higher education institutions (beyond compulsory education age), and are also used by some academic support bodies such as the Universities and Colleges Admissions Service (www.ucas.ac.uk), public research establishments, and learned societies such as the Royal Society (royalsoc.ac.uk) and the Royal Institution (ri.ac.uk). Primary and secondary education uses “sch.uk”.

of addresses globally, and is worth billions of dollars annually. Where individuals and companies allow their active website domains to expire, the only way to reclaim that domain from “tasters” and “domainers” is to go into the DRS or equivalent⁴². As Nominet is such a large TLD, it is substantially involved in policy responses to the problem at national, regional and global (ICANN) levels. There is a vocal minority of active Nominet members who actually make money from trading in ‘secondary expires’ and other borderline issues – so Nominet needs to be aware of such special pleading.

A connection exists between ‘phishing’ (fraudulent websites using similar-appearing domains to legitimate sites in order to extract sensitive user information) and ‘tasting’: potential phishers can simply take over an expired legitimate site for an even more convincing way to extract user data. The PAB has issued a policy recommendation on this, and Nominet has discussed it with APACS and financial self-regulators.

Nominet also engages in court actions against fraudsters and defended itself from a blackmailing criminal in 2005, in addition to pursuing debtors for bankruptcy in cases where courts awarded it damages. It is therefore relatively active in legal enforcements.

2.2.6 Outcomes

The Policy Advisory Board is an important function advising Nominet’s board. The Board agrees to put on PAB agenda, with papers published a week in advance. Strawman draft resolutions are normally proposed. Note that PAB resolutions are highly persuasive but non-binding on the Executive. Taylor (2007) argues that the diversity of the PAB can help find a range of views – for Internationalised Domain Names there was no consensus view, nor can there be for the privacy problems of the WHOIS directory. The Information Commissioner’s Office (the privacy regulator) is on the PAB because of the 2002 and consequent WHOIS debate.

The PAB is able to engage in strategic or speculative discussion more than the executive-oriented Board, and Minutes from the 51st PAB meeting reveal its current preoccupation with the new commercial dynamics of the domain marketplace⁴³. The secondary market (renewal of domains or “domaining”) has grown hugely since 2004, and at gTLD level may exceed the primary, driven by or instance Google AdWords which pays several billion dollars per annum for referrals. As Taylor (2007) suggests, “Mr Average can’t get an expired domain” as the professionals are well-organised.

At the July 2007 PAB, Nora Cotter from Sedo⁴⁴ highlighted the significant growth of the secondary market for .uk domains: a 353% increase in transaction value since 2004⁴⁵. Nick Wood from Com Laude believed the practice of domaining could change how the Internet is regulated:

“He asked whether a registry should allow itself to become dominated by special interests (or by any select group of registrars). The primary and secondary markets are converging and the value of the secondary market now outstrips the primary.”

His research project revealed that a high proportion of ICANN-accredited registrars were involved

42 ICANN Board Member Joi Ito encountered such a problem with his enormously popular website joi.it and was obliged to threaten the domainer with such action to reclaim his domain, without which all his work in building up the content and audience would have been taken by the new legal owner.

43 http://www.nominet.org.uk/digitalAssets/21237_PAB_meeting_report_51.pdf

44 Sedo is an organisation which offers a global marketplace for the brokerage and auction for domain names, explained that Sedo has more than 400,000 members, 6.5 million domains for sale, 3 million parked domains, and achieves a domain transaction volume of more than €3m per month.

45 It notes that “she highlighted Sedo’s own self-regulation policies and procedures for the secondary market such as its Rights Protection Programme, Stolen Domains Policy, and Rules for Domain Parkers and the process by which it protects its and others’ intellectual property rights.” Clearly she is suggesting Sedo as a best practice example.

with domaining and registering domains for their own purposes. In response:

The PAB agreed that there was a flourishing secondary market and noted that this market was unregulated. The PAB felt there was a need to differentiate between "wrong" domaining - typo and cyber-squatting, for example, and legitimate domaining activities. The PAB noted that while it was difficult to agree a universal, catch-all definition for domaining, it should nevertheless debate and decide upon a policy statement on this topic. It was agreed however that the practice of trying to limit domain buying would be unworkable.

2.2.7 Outputs

As a not-for-profit company, Nominet can invest freely in IT infrastructure and development, and is only concentrated on one mission centrally. ENUM (as an example) brings NOMINET into a more converged 'competitive' position, where other registries (including global and for-profit) can be more dynamic and entrepreneurial.

Internationally, registries coordinate through CENTR meetings – and the ICANN GAC has intergovernmental cooperation. This is all quite informal but useful, in Boyle's view (2007). He notes in relation to vulnerabilities for ccTLDs that Verisign (.com domain controller) had big hacker attacks made upon it, but they didn't work so far. However, he notes that it is easier to attack other TLDs, and queries whether there is a case for minimal security regulation to ensure critical infrastructure is protected. That said, the size and technical budget of Nominet places it squarely in the commercially powerful and technically defensible group of domain controllers, not the smaller country group where vulnerabilities may be harder to defend. He asks whether ccTLDs may be like airlines, with "flag carriers everywhere" or should there be regional groupings or technical support.

2.2.8 Impact

In international coordination, it is notable that NOMINET is more engaged in the Internet Governance Forum (IGF, see below) than other country code TLDs. It decided not to adopt an 'empty chair' policy, but to meet and mitigate the potential threat of government control, as well as to educate stakeholders. The initial worry for Taylor (2007) that WSIS would add 'cost delay complexity and inefficiency' has been overcome 'so we saw it as a business threat and opportunity'. Nominet engages CENTR members in trying to increase visibility, though many CENTR members do not have the resources to contribute. The CENTR working group proposed a workshop on critical infrastructure resources which ran at the Rio IGF.

At national and regional level, Nominet also has an excellent outreach programme, with a broad focus across stakeholders, which has been strengthened as a strategic priority since 2005 (Nominet 2006 at 14). For the Rio IGF, Nominet ran a Best Practice competition at national level to inform its deliberations at, and contributions to, the IGF itself.

2.2.9 Sustainability and Reform

The corporate governance design for Nominet in 1996 was for the 100 existing members, all of whom were involved in policy. Now that there are 3000, there are still 100 larger interested members. The dilemma becomes: can NOMINET governance scale yet maintain its diversity? Is a civil society board representation useful? Liabilities on board members with a company turnover of £16m indicate that any board member needs substantial experience in large concerns. Governance questions will be raised in new potential board composition.

Nominet are updating their Articles of Association. The first consultation dealt with Board

composition, policy and fees and ran for 3 months between 2 February 2007 and 9 May 2007⁴⁶. Nominet received 70 responses⁴⁷. The second consultation also lasted 3 months from 31 July to 31 October, covering the remaining issues of membership, poll voting, proxies and "legal technicalities". The process is open to those who:

- respond to the online survey, or
- attend the outreach event in London on 16 October and give feedback, or
- email answers to the questions presented in the consultation paper.

Taylor (2007) suggests three reasons for corporate governance reforms:

1. to increase formalised representation
2. to introduce good governance reforms as recommended by the Better Regulation Executive and other best practice reports (this was also a cause for ICSTIS reform)
3. to increase the power and visibility of the board to respond to possible competitive pressures.

The Board has proposed decreasing elected non-executive directors, which has raised some member concern. PAB member James Conaghan⁴⁸ indicated that:

In my opinion, there are already concentrations of power and in line with DTI thinking on representation, I have to question the reduction in elected non-executives from 4 to 3 and the introduction of a new category of 3 appointed non-executives. I believe the Board would indeed benefit from the expertise of appointed non-executives from outside the Membership (and the industry) but the concept of a board that is top heavy on appointed non-executives and executives seems alien to the Membership ethos upon which Nominet was founded and upon which it grew. In my opinion therefore, a more balanced board, which would not concentrate power in any one direction and which would encourage balanced decision-making, would be a mix of 2 executives, 2 appointed non-executives, and 4 elected non-executives."

I would support a requirement in the Articles that Nominet will consult with the PAB, the Membership, and the wider Stakeholder Community on Policy issues. I therefore support enshrining the company's practice of consulting with relevant stakeholders on policy in the Articles, though I think it should specifically include consulting with the PAB, the Membership, and the wider Stakeholder Community if and when necessary.

He supports the proposal that the Board should be able to set registration fees without consulting the Membership or PAB, however he opposes raising membership fees:

"without consulting the Membership and/or the PAB. My rationale is this. If a thing is conceivable, it is possible, and it is entirely conceivable that a future Board might increase Membership fees to an extent where all small members are priced out of membership...I think the Membership ethos should be protected to the extent where "anyone with an interest in the Internet may become a member of Nominet" and at a reasonable price too."

Management has in Boyle's view (2007) evolved from the "original techies to a new style based on

⁴⁶ <http://www.nominet.org.uk/policy/consultations/firstgov>

⁴⁷ <http://www.nominet.org.uk/policy/consultations/firstgov>

⁴⁸ Conaghan James (2007) Articles of Association - Consultation Response http://www.nominet.org.uk/digitalAssets/21402_James_Conaghan.pdf

hard-headed business approach”. In this, it is similar to Netherlands rather than Germany, Italy, or Sweden which remain technical. In his view, “this creates the strength, security and stability of a business organisation.” However, the “weakness of the Nominet model is that byelaws require a very high percentage of membership to approve change.”

2.2.10 Evaluation

Comparative evaluation of ccTLDs would provide a comparative benchmark for the evaluation of the activities of Nominet. In addition, there is a question of the regulatory typology for Nominet. Boyle states that: “Nominet is a monopoly, as is Verisign, but in a particular sense. You’ve put in such an investment in a co.uk name that its very hard to get out of it” – like car spare parts as an after-sales market more profitable than the original purchase⁴⁹. He adds that:

“Nominet, as a membership organisation, is almost co-regulatory rather than a cartel or traditional monopoly. The framework is neutral enough that everyone can get the best value out of it. It doesn’t favour a type of member: registrars, ISPs, or software houses.”

Unlike a profit-maximising organisation “by accident or design, the model of Willie Black doesn’t have the failings that most other ccTLDs have.” The nearest examples he cites are Swedes and Dutch, but these are charitable foundations not membership organisations. Sweden is a particular type as its registry had served a heavily regulatory function. “Having the owners of the organisation as those with most to lose if it goes down” is what makes it work. Netherlands has a foundation basis and arguably no incentive for members to reform from the inside: hence government acts as insurance policy. Business continuity failed, whereas the company limited by guarantee structure of Nominet means that it has a “self-protecting mechanism” with no government intervention.

Taylor (2007) argues that competition exists and is sharper for English-language based institutions, as gTLDs are substitutable for country codes, even if there are higher trust levels for .uk domains. She also notes that Affilias operates 11 ccTLD technical back-ends, but that NOMINET wants to maintain its vertical integration as a technical expert as well as policy provider. This raises a question of the function of a ccTLD: Is it a flag carrier OR is it a stock exchange? Affilias and C&W are running Caribbean and African ccTLDs on behalf of the national owners, and the Australian registry subcontracts its registry back-end – an Affilias-type organisational approach in a relatively large ccTLD. Consider also RIPE and other RIRs ensure the basic back-end rooting table allocation done regionally – but hardly a business integration logic. Paul Cane has suggested ‘community DNS’, to allow smaller ccTLDs and others to share infrastructure. The alternative business practice to aim for is Affilias, in terms of technical registry services that Nominet and other large ccTLDs might provide. In Poland, NASK runs economies of scope for all Internet self-regulatory services – the ccTLD, hotline, and CERT. Other ‘bundled’ technical institutes are suggested provide economies in Italy, Spain, and France.

Other interviewees have claimed Nominet is an exemplary ccTLD, and certainly the corporate governance reforms currently undertaken express very strong commitment to better regulation, multistakeholder partnership and professionalism in undertaking the central function assigned to Nominet. It would be of great value to conduct further research at a European level comparing the

⁴⁹ Note there are similarities with such growth markets as the UK franchising of commercial TV in the 1950s, where a ‘licence to print money’ developed, based on advertising market growth far exceeding costs, even with the high cost of transmitter and receiver equipment (1950s TV and licence versus 21st Century PC and broadband connection). This led to re-regulation, higher public service requirements and taxation. Thus far, none of this is suggested for the UK registrars.

different types of ccTLD operations, their impact on markets, their governance structures and in particular their preparedness for attacks, both technical (i.e. hacker) and financial (changing market structures, domaining practices, possible loss of business continuity).

2.3 Standards (Global): Internet Engineering Task Force

IETF: Internet Engineering Task Force

Researcher: Ian Brown

IETF was named in 1986, and developed from ARPANet architectural standards committees. Its design is based on extreme radical openness by standards organisation traditions – all budgets, contracts, board discussions are published; consensus decisions may only be reached on public working group mailing lists open to all. Most radically, there are no “members”. The volunteer structure with no corporate entity and low costs (\$4m/annum with many thousands of participants) has continued, and it remains the unchallenged pre-eminent Internet standards body. In regulatory discussions, it considers security implications of standards, for instance, but other public policy considerations are driven on a case-by-case basis by participants (e.g. privacy, accessibility) except in extreme circumstances.

Table 12: Summary of IETF Case Study

Was there a government mandate initially?	Not directly: DARPA funding for projects
What kind of government involvement is there?	None direct
Which other stakeholders are involved and how?	Only via IETF meetings
How is transparency ensured?	ISOC secretariat – RFC process ensures technocratic transparency
What is the enforcement mechanism, is it effective, at what cost?	Market adoption of standards, rival standards bodies
What is the relative size of administrative burdens?	Very low for chosen community. Risk of exclusion given particular culture.
Is financial independence assured/how?	Yes, through growth in size of standards ‘market’
Which internal factor most impacts success?	Relation between executive and membership – particularly via potential dominance of larger company representatives
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: relationship with national and regional standards bodies. Market: growth of other standards bodies and relation to telephony standards and others.

2.3.1 Interests and Policy Needs

The Internet Engineering Task Force (IETF) is an open international community of network designers, operators, vendors and researchers that is the principal standards-setting body for the Internet. Its mission is “to produce high quality, relevant technical and engineering documents that influence the way people design, use, and manage the Internet in such a way as to make the Internet work better” (Alvestrand 2004). Davidson, Morris & Courtney (2002 p.6) commented:

Like the Internet itself, the IETF is a decentralized confederation of equals. Those who participate do so on a volunteer basis, and the trappings of formality – business suits, political posturing, and elaborate hierarchies – are generally rejected.

The IETF conducts its business via e-mail lists and Web documents that are open to any interested individual. It holds tri-annual discussion meetings in locations around the world, loosely influenced

by the residency of recent participants and recently in North America, Europe and east Asia. Currently this usually means that two meetings are held in the US and one outside.⁵⁰

Organisationally, the IETF is an activity of the Internet Society, which in 2006 received \$2.3m revenues from meeting registration fees and sponsorship (Internet Society Annual Report 2006 p.19). This provides an umbrella legal structure over the IETF.

The formation of the IETF

The IETF evolved out of the community of network researchers that were funded from 1968 by the US Advanced Research Projects Agency (ARPA, later DARPA) to experiment with the shared computer networks that became ARPANET and then eventually the Internet. The informality of these researchers' decision-making processes persisted as they slowly added more structure to their deliberations, both in the Request For Comments (RFC) series that documents the outcomes of their discussions and the institutions that coordinated the activities of the much larger group of technologists that gradually became involved (Gould 2000 pp.203—205).

The Internet Configuration Control Board (ICCB) was the first such institution, created in 1979 by DARPA and chaired by the Massachusetts Institute of Technology's Dr David Clarke. In 1983 the ICCB was reorganised as the Internet Activities Board around a number of task forces – including from 1986 the IETF. By 1989 this had become the principal subsidiary of the IAB, determining standards that were given final approval by the IAB (Cerf 1990).

In 1992 the re-chartered Internet Architecture Board became part of the Internet Society, which was created that year to replace funding from the US government for Internet standards development. The Society is an international non-profit organisation with over 20,000 individual and over 100 organisational members from over 180 nations concerned with the Internet's evolution and growth. Its board of trustees is elected by individual members. The Society now funds IETF activities as conveyed to the Society by the IETF chair (Cerf 1995).

Changes and developments

While there have been several proposals to streamline the IETF standardisation process into a one or two-step procedure, no consensus solution has yet been found (Perkins 2007). The most recent organisational change was the introduction of a randomly-selected Nominations Committee to ensure that all of those qualified for an IETF position had a fair opportunity to be appointed.

2.3.2 Design & organisation of the Institution

The IETF standardisation process has the following goals (Huizer and Crocker 1994 p.4):

- high quality
- prior implementation and testing
- openness and fairness
- timeliness.

The majority of the IETF's work is carried out by working groups chartered for a specific task and then disbanded. Any interested technical expert may join a group mailing list and attend its physical

⁵⁰ The locations of all 69 past meetings are listed at <http://www.ietf.org/meetings/past.meetings.html>

meetings. Individuals contribute in their own right rather than as representatives of organisations, although large numbers of technology company employees participate on company business. Working groups are organised into one of a small number of areas, such as Network Management and Security, whose work is coordinated by one or two Area Director(s).

Each working group develops and makes available online Internet-Drafts that document its work. These documents are open to review by the entire IETF community. Drafts continue to be revised until they reach a level of quality and consensus amongst the working group that would allow their publication as an RFC, following approval by the RFC Editor and the Internet Engineering Steering Group (Huizer and Crocker 1994).

Informational or Experimental RFCs may be submitted by individuals and published after approval from the RFC Editor and the Internet Engineering Steering Group. Standards-track RFCs must meet a series of further requirements, such as interoperable implementations and significant operational experiences, to progress from Proposed Standard to Draft Standard and finally to Internet Standard by action of the IESG (Bradner 1996). Relatively few RFCs become Internet Standards.

The Internet Architecture Board provides architectural oversight to the work of the IETF. The Board reviews new IETF working group charters, appoints the IETF chair, approves the selection and policies of the RFC Editor and provides an appeal process for incorrect application of standardisation procedures. Its members are proposed for a term of two years by a Nominations Committee of 10 randomly-selected volunteers who have attended at least two of the previous three IETF meetings, along with non-voting liaisons and advisors and a non-voting chair appointed by the Internet Society president. Nominations must be approved by the Internet Society board of trustees (Hovey and Bradner 1996; Galvin 1996).

The Internet Engineering Steering Group (IESG) manages the IETF's technical activities. It must approve new working group charters and the progression of RFCs from Proposed Standard, to Draft Standard, to Standard. It is chaired by the IETF Chair and consists of the Area Directors, who (like IAB members) are proposed for a term of two years by a Nominations Committee of 10 randomly-selected volunteers who have attended at least two of the previous three IETF meetings, along with non-voting liaisons and advisors and a non-voting chair appointed by the Internet Society president. Nominations must be approved by the IAB (Hovey and Bradner 1996; Galvin 1996).

The Internet Administrative Support Action (IASA) manages the administrative services necessary to organise IETF meetings and support the RFC publication process. IASA is directed by the IETF Administrative Oversight Committee (IAOC), who manage a full-time IETF Administrative Director. This Director must produce monthly, quarterly and annual financial and operational updates for IAOC and IETF community review. The IAOC consists of the Internet Society President, the IETF Chair, one member appointed by each of the IAB and IESG, the IAB Chair and two members appointed by the Nominations Committee for two-year terms. The IAOC are the members of the IETF Trust, which manages intellectual property for the benefit of the IETF.

Any member of the IETF community may request a review of an IAD or IAOC decision, which is posted publicly and responded to within 90 days by the IAOC. This response may be appealed to the Internet Architecture Board, and then finally to the Internet Society board of trustees (Austein & Wijnen 2005).

IASA has currently contracted out its support functions as follows:

- The RFC Editor function is run by the University of Southern California.
- The IETF Secretariat function is run by NeuStar Secretariat Services.
- Copy-editing is carried out by individual consultants.
- The Internet Assigned Numbers Authority is operated by the Internet Corporation for Assigned Names and Numbers.

2.3.3 **Inputs**

Location: 1775 Wiehle Ave., Suite 102, Reston, VA 20190-5108, USA

4, rue des Falaises, CH-1205 Geneva, Switzerland

Chair: Russ Housley

Staff: Administrative support is contracted as required to support meetings, RFC editing and publication and tool development, overseen by a full-time IETF Administrative Director

Table 13: IETF budget. Source: IASA budgets as adopted 2007

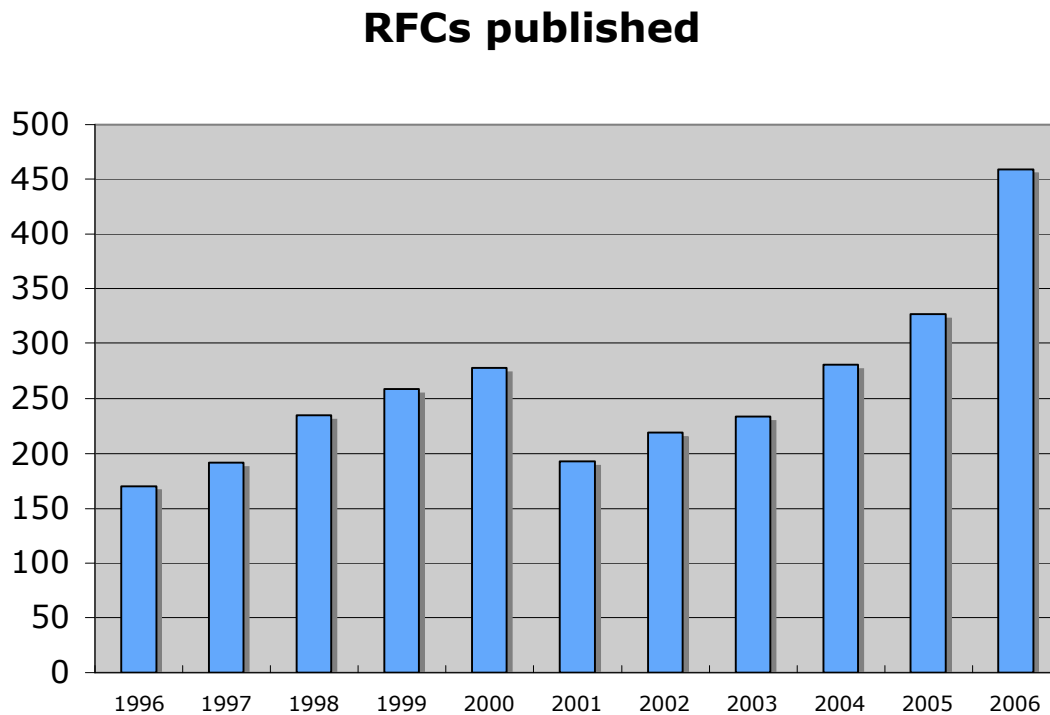
Revenues	2007	2008	2009
Meetings	\$2,477,500	\$2,477,500	\$2,665,000
ISOC sponsorships	\$325,000	\$325,000	\$325,000
ISOC Contribution	\$1,325,106	\$1,404,556	\$1,479,180
Total revenues	\$4,127,606	\$4,207,056	\$4,469,180
Expenses	2007	2008	2009
Programmatic			
RFC Editor & Publisher	\$744,525	\$677,815	\$590,000
Copy-Edit Services	\$60,000	\$60,000	\$60,000
NSS Secretariat & Meeting	\$2,506,241	\$2,608,331	\$2,749,198
Other meeting expenses	\$240,625	\$212,325	\$321,885
Special projects			
Short-term contracts	\$50,000	\$50,000	\$50,000
Tools	\$20,000	\$20,000	\$20,000
Administration			
IASA support	\$278,983	\$279,986	\$296,068
IETF support	\$59,300	\$62,265	\$65,378
IAB support	\$57,175	\$60,034	\$63,035
Tools Depreciation		\$128,333	\$201,667
ISOC G&A	\$87,257	\$21,667	\$23,333
Admin subtotal	\$482,715	\$552,285	\$649,482
Total expenses	\$4,104,106	\$4,180,756	\$4,440,565

Table 14: IETF Trust expenses. Sources: IASA budgets as adopted 2007

	2007	2008	2009
Legal	\$17,500	\$20,000	\$22,000
Insurance	\$6,000	\$6,300	\$6,615
Total	\$23,500	\$26,300	\$28,615

2.3.4 Activities

The IETF's main activity is developing and publishing its Requests For Comments document series and progressing certain of these documents along the IETF standards track towards full Internet Standards. The rate of RFC publication over the last decade is shown below:

Figure 7: Number of RFCs published 1996-2006

Source: RFC document statistics tool at <http://www.arkko.com/tools/rfcstats/pubdistr.html>

2.3.5 Enforcement

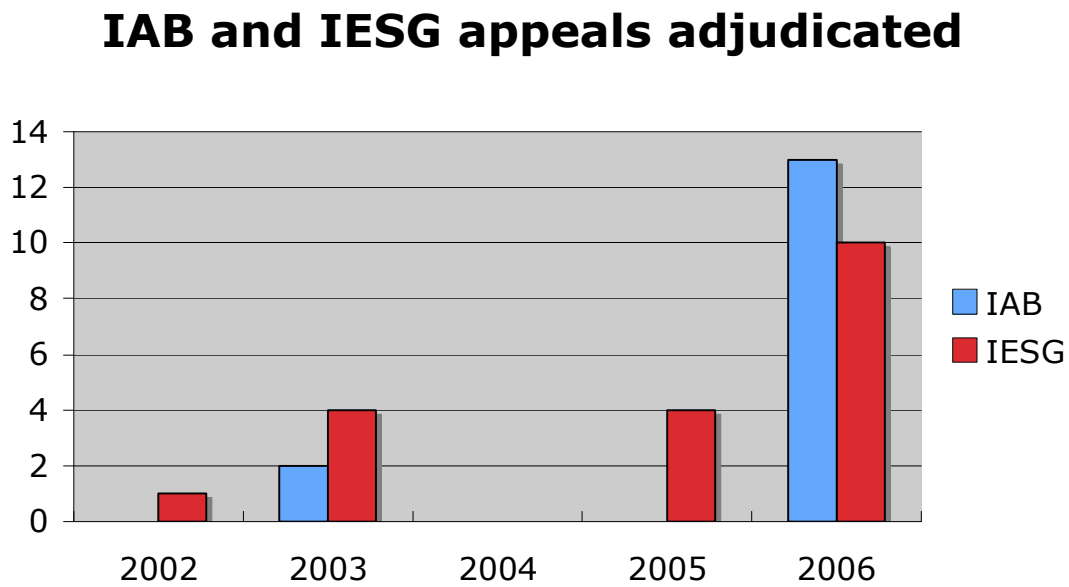
Use of any and all IETF standards is required only to communicate with other users making use of such standard(s).

Any IETF participant may appeal via e-mail to Working Group Chairs, individual Area Directors and then to the Internet Engineering Steering Group if they feel that the IETF standardization process is being incorrectly followed. Decisions of the IESG may be further appealed to the Internet

Architecture Board. Any of these individuals or groups may reverse decisions they conclude have been incorrectly made.

Appeals and decisions are published on the IAB and IESG websites. The number of appeals heard by the IESG and IAB since 2002 is shown below:

Figure 8: Appeals adjudicated 2002-2006



Sources: IAB and IESG appeals pages at <http://www.iab.org/appeals/index.html> and <http://www.ietf.org/IESG/Appeals.html>

Compliance Monitoring

The Internet Society board of trustees is ultimately responsible for the design of the IETF appeals process (but not individual cases).

2.3.6 Outputs

The IETF receives substantial coverage in the technology press. Google News lists 59 stories in the one-month period to 20 August 2007.

The Internet Society works with the IETF to publish the IETF Journal three times each year to provide “an easily understandable overview of what's happening in the world of Internet standards with a particular focus on the activities of the IETF Working Groups.”⁵¹

2.3.7 Outcomes

International Comparisons and European Adoption of the Model

European companies and individuals have been enthusiastic participants in the work of the IETF. The top six countries of residence of RFC authors are shown below (the remaining nations represent less than 4% of total RFCs):

⁵¹ The IETF Journal homepage is at <http://www.isoc.org/ietfjournal/>

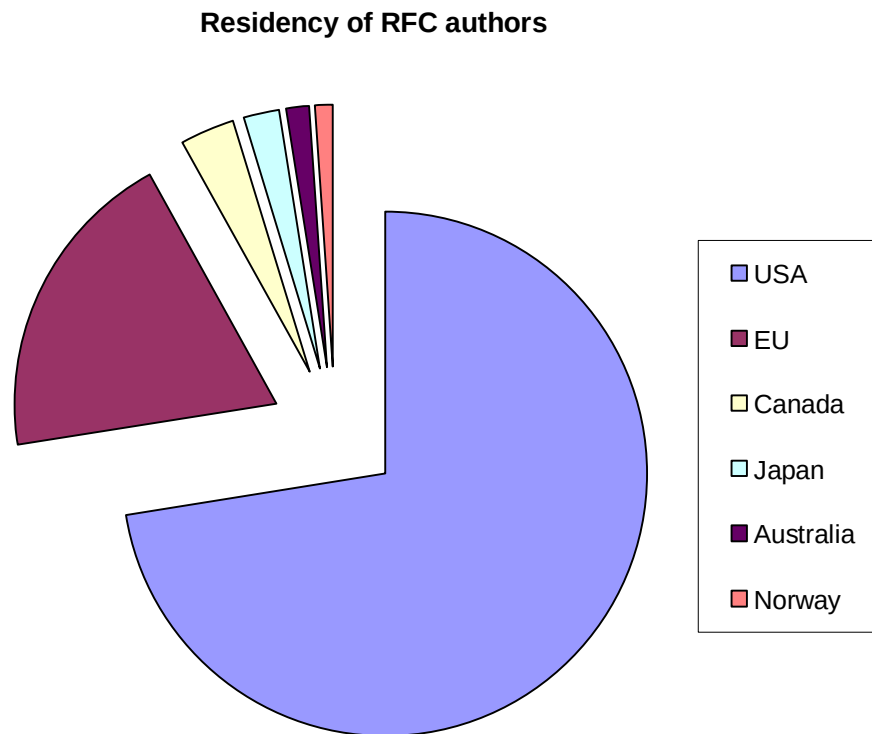


Figure 9. Top six countries of residence of RFC authors. Source: RFC document statistics tool at <http://www.arkko.com/tools/rfcstats/d-countryeudistr.html>

2.3.8 Impact

The IETF remains the premiere standards-setting body for the Internet. Standards Definition Organisations (SDOs) such as the mobile telephony 3rd Generation Partnership Project actively liaise with the IETF, and as appropriate bring their own protocols to appropriate IETF working groups for further standardisation. While this is the preferred mechanism for collaboration, the IETF has appointed liaison officers to the following SDOs:⁵²

- International Standardisation Organisation
- MFA Forum
- International Telecommunications Union
- Unicode
- World Wide Web Consortium

⁵² IETF Liaison Activities, listed at <http://www.ietf.org/liaisonActivities.html>. Accessed on August 20th, 2007.

- World Intellectual Property Organisation
- 3rd Generation Partnership Project
- 3rd Generation Partnership Project 2
- Internet Corporation for Assigned Names and Numbers
- Open Grid Forum
- Institute of Electrical and Electronics Engineers
- Open Mobile Alliance
- CableLabs

Since 1998 the International Telecommunications Union and IETF have collaborated on the basis of a specific agreement (Brett, Bradner & Parsons 1998).

2.3.9 Sustainability and Reform

The IETF has recently made the decision to raise meeting attendance fees by \$100 in order to meet a 2007 budget shortfall (Lindqvist 2007). The advance registration fee for the 70th IETF meeting, being held in Vancouver, is \$700.

The IETF standardisation process has become slower as a much greater number of Internet-Drafts are being published. This has partly happened in response to a loosening of requirements for “running code.” Volunteer IESG members now have to commit 20-40 hours per week to the organisation, which is much greater than previously. The IETF community has recently discussed the reintroduction of an implementation requirement, both to reduce the number of drafts and to increase their quality, but no consensus has been reached (Carlberg 2007). Concerns have also been expressed that individual IESG members have a disproportionate ability to block the progress of specific drafts, whereas working groups look for consensus rather than unanimity in their decision-making.

2.3.10 Evaluation

The IETF, a volunteer organisation with annual budgets of around \$4m, has been enormously successful at driving the continued evolution of the Internet. Vincent & Camp (2004) found that the IETF was one of the most open and transparent Standards Definition Organisations and “quickly responds to the needs of an evolving marketplace.” Davidson, Morris & Courtney (2002 p.6) commented:

The Internet’s success to date is a testament to the success of the IETF. One reason for the effectiveness of IETF standards has been that the same network operators and researchers who later became the standards’ primary users created them. At the same time, the IETF’s fluid structure and emphasis on near-instant electronic communication has helped it stay abreast of new technologies and adapt to a rapidly-evolving network environment.

The IETF is the paradigmatic example of a standards-setting body driven by a technocratic elite. Decisions are made by “rough consensus and running code” within an engineering discourse of trial and error. Online and face-to-face discussions are often confrontational, with participants attacking others’ views and competence.

Gould (2000 p.205) noted that: “It is not clear how rough consensus is reached. In some instances

there seems to be more roughness than consensus.” Communication concerning specific documents often takes place via private e-mail and small “corridor” meetings at IETF events, although determination of consensus most commonly occurs at working group meetings. Doria & Pisanty characterised successful participants as “aggressive but also coalition builders” (2007). Perkins noted that the intensity of discussion, and difficulty in building technical consensus, tends to follow cycles in levels of industry activity (2007).

Perkins observed that the IETF has improved its transparency and quality over recent years at some cost to the speed of the standardisation process (2007). Internet-drafts now go through reviews by Area Directors and teams such as the security or applications expert review team. Draft status can be monitored using a new I-D Tracker tool.⁵³ Working Group chairs must now write detailed reviews of drafts before they are considered for publication (Levkowetz, Meyer, Eggert & Mankin 2007).

The IETF has recognised the public policy impact of its work, most significantly in the areas of privacy and data integrity (Brown 2002; Davidson, Morris & Courtney 2002). However its nature as a collective activity of volunteer technologists inhibits the consistent assessment of the public policy implications of standards under development, despite suggestions of how such assessments could take place (Morris & Davidson 2003). Davidson, Morris & Courtney (2002 p.7) commented:

The organizations that develop Internet standards have organizational structures, expectations, and priorities that will be unfamiliar to many public interest advocates. Moreover, the style of public policy advocacy and lobbying that is effective in the traditional public policy venues of legislatures and government agencies is particularly unsuited to the atmosphere of most Internet standards setting bodies. Although sound bites, broad generalizations, and rhetorical overstatements can be effective among lobbyists and legislators, they are precisely the wrong tools to be effective in most standards setting discussions. A new approach, combining respect for technical procedures and goals with clear thinking about public policy effects, must be adopted.

Developing nations have minimal input within the IETF, with India the only such country represented amongst the authors of RFCs.⁵⁴ The Internet Society funds a small number of IETF fellowships each year that pay the travel expenses of technologists from developing regions to attend IETF meetings, where they are mentored by experienced participants.⁵⁵ However, these fellows are unlikely to have the “knowledge, time, money, and experience” required to drive standards through the IETF process (Davidson, Morris & Courtney 2002).

Doria & Pisanty have found that government and civil society participants are less than comfortable with the IETF culture, even when communicating with engineers from their own countries (2007). The IETF community sees technical implementation experience as a critical badge of expertise, and is decreasingly welcome to those without it – even computer science researchers at universities.

2.4 Standards (Global): World Wide Web Consortium

W3C: World Wide Web Consortium

Researcher: Chris Marsden

Tim Berners Lee founded the W3C in 1994. It was founded as an international standards

⁵³ See <https://datatracker.ietf.org/idtracker/> last accessed 7/09/07

⁵⁴ See <http://www.arkko.com/tools/rfcstats/d-countryeudistr.html> last accessed 21/8/07

⁵⁵ <http://www.isoc.org/educpillar/fellowship/> last accessed 21/8/07

consortium with Europe and Japanese partner institutions to the US headquarters. The membership organization and Director's powers to enforce decisions was adopted with lessons drawn from the IETF. It licences its patents royalty free to members, a decision following a complex four year negotiation to 2002 which illustrates the complex and detailed attention of the corporate members. Its relationship with regulators includes funding by the European Commission, and standards that include regulatory requirements in design, for instance the P3P (Platform for Privacy Preferences) and PICS. Evaluation has largely been by academic comparisons with other standards bodies.

Table 15: Summary of W3C Case Study

Was there a government mandate initially?	Not directly: EC funding for French office
What kind of government involvement is there?	None direct
Which other stakeholders are involved and how?	None directly – deliberate efforts to achieve interoperability and multilingual/accessible standards
How is transparency ensured?	Web publication of all proceedings
What is the enforcement mechanism, is it effective, at what cost?	Market adoption of standards, rival standards bodies
What is the relative size of administrative burdens?	Very low for chosen community. Risk of exclusion given membership costs.
Is financial independence assured/how?	Yes, through growth in size of standards 'market'
Which internal factor most impacts success?	Relation between executive and membership – particularly via potential dominance of larger company representatives
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: relationship with national and regional standards bodies, and content regulation . Market: growth of other standards bodies and relation to (especially) IETF. Technology: development of semantic web standards.
Lessons for European policy	Membership approach and focussed status highly effective, greater efforts to address user community than IETF. Potential competition problems with some standards given closed membership.

2.4.1 Interests and Policy Needs

The W3C is the standards body established by Tim Berners Lee, the inventor of the World Wide Web, the hypertext protocol-based information standards that provide the most-used publishing interface for the Internet for consumers and non-technical users⁵⁶. HTML and HTTP were known to be rather old-fashioned technologies but were application developer friendly – unlike more elaborate systems.

W3C has as its central mission the tightly focussed set of standards for the WWW whereas “the IETF was not prepared to devote sufficient attention and energy to web architecture as a system” – http but not html – so there was the need for a devoted organisation. It was a question of bandwidth and priorities” (Weitzner 2007). In other words, WWW standards would be a small part of IETF discussion, but the entire focus of the fledgling W3C.

⁵⁶ See generally Berners Lee, T. (with M. Fischetti) (2000) *Weaving the Web: The Original Design and Ultimate Destiny of the World Wide Web*, New York: HarperCollins; Kahin, B. and Nesson C. eds. (1997) *Borders in Cyberspace: Information Policy and the Global Information Infrastructure*, Cambridge MA: MIT Press; Kahin, Brian and Abbate, Janet eds. (1995) *Standards Policy for Information Infrastructure*, Cambridge MA: MIT Press;

2.4.2 Design & organisation of the Institution

W3C states:

The mission of the World Wide Web Consortium (W3C) is to lead the World Wide Web to its full potential by developing common protocols that promote its evolution and ensure its interoperability. The W3C Process Document describes the organizational structure of the W3C and the processes related to the responsibilities and functions they exercise to enable W3C to accomplish its mission⁵⁷.

Its mission is basically standards and outreach-based:

W3C primarily pursues its mission through the creation of Web standards and guidelines. Since 1994, W3C has published more than ninety such standards, called W3C Recommendations. W3C also engages in education and outreach, develops software, and serves as an open forum for discussion about the Web ... By publishing open (non-proprietary) standards for Web languages and protocols, W3C seeks to avoid market fragmentation and thus Web fragmentation⁵⁸.

The W3C was set up organisationally in direct contrast to the 'grandfather' standards organisation for Internet protocols generally, the IETF considered above⁵⁹. In particular, rather than rely on 'rough consensus and running code', it is actually dependent on:

- a broad international corporate and academic membership,
- core teams based in the US, Japan and France (and now Southampton in the UK), and
- a 'benevolent dictator' in Tim Berners Lee.

The formal membership model is that of industry standards bodies in for instance telecoms, the global organisation reflects more traditional United Nations related bodies which are 'born global', and the 'benevolent dictator' model is related to that of the Free Software Foundation (in which Richard Stallman plays that role). Weitzner states⁶⁰:

"There are choices that W3C has made that position it between the poles of IETF and European standardisation."

The logic to this organisational structure is that the first (membership) ties corporate developers into participating in the standards process very tightly, the second (an intercontinental secretariat⁶¹) provides for the stability and funding of the organisational structure and secretariat, and the third (dictatorship) provides for a classical and simple model to overcome any sclerotic impasses dictated by the first two factors⁶².

W3C chose to be membership-based, with clear funding and transparency impacts. The "community-governance body" over time had to devote more time to transparency. This is also

⁵⁷ <http://www.w3.org/2005/10/Process-20051014/>

⁵⁸ <http://www.w3.org/Consortium/>

⁵⁹ Interview with Danny Weitzner, General Counsel, W3C, 17 September 2007 London. Comments of Tim Berners Lee, informal interview Southampton, September 19 2006.

⁶⁰ Ibid

⁶¹ Though the principal funding is commercial, the European office in Sophia-Antipolis has received some funding from EC.

Funding cycle was from huge initial support, then leaner years but with greater work in 2003-5 period, and better now. Funding model is based on individual members at \$6000 or \$60,000.

⁶² See Resnick, P. and J. Miller (1996) "PICS: Internet Access Controls Without Censorship" Association for Computing Machinery 39(10): 87-93 at

<http://www.w3.org/PICS.iacwcv2.htm> For the end-to-end design, see Saltzer, J., D. Reed, and D. Clark (1984) "End-to-end arguments in system design" ACM Transactions in Computer Systems 2(4): 277-288.

different to a more open source ‘dictator’ model – such as the Python standards family. Member agreement and process document are public – the Director (Berners Lee) has authority to make every decision. That was considered essential in 1994-6 during the Netscape/Microsoft HTML wars. This ability to arbitrate between rivals by making independent decisions became the de fault ‘final appeal’ when all attempts at consensus fail. W3C realised early on that having a paying board of directors, one-country one-vote or one-company-one-vote system would not work. There is no way to legislate against votes and lobbies, but the dictator model allows for the elimination of the worst obstructionist attempts by lobbies.

W3C may have differences from IETF but the critical lesson taken from IETF was technical meritocracy. Weitzner (2007) states “If we’ve done one thing that should be remembered, its that decisions must have technical merit and engineering substance behind them.”

2.4.3 Inputs

Founded: October 1994

Location:

Massachusetts Institute of Technology,
32 Vassar Street, 32-G519,
Cambridge, Massachusetts 02139, USA. ("MIT")

European Research Consortium for Informatics and Mathematics,
2004, Route des Lucioles, BP 93,
F-06902
Sophia Antipolis, France ("ERCIM");

Keio University
5322 Endo,
Fujisawa,
Kanagawa 252-8520, Japan

Constitution: industry consortium with second category of non-profits⁶³:

In order to promote a diverse Membership that represents the interests of organizations around the world, W3C fees vary depending on the annual revenues, type, and location of headquarters of an organization. For instance, as of 1 April 2007, a small company in India would pay 953 USD annually, a non-profit in the United States would pay 6,350 USD, and a very large company in France would pay 65,000 EUR.

Members: 439 at 2 November 2007⁶⁴. Members can put forward one representative to the Advisory Committee.

Budget: Not public – over \$10m annual. Fees, research grants, other contributions

⁶³ <http://www.w3.org/Consortium/fees>

⁶⁴ <http://www.w3.org/Consortium/Member/List>

including Supporters' program (including EC funding)

Director:

Tim Berners Lee: See Membership Agreement, Paragraph 4d⁶⁵:

Overall direction of the Consortium shall be the responsibility of an MIT-appointed Consortium Director ("Director"), who will act as chief architect for all specifications produced by the Consortium and who shall have the ultimate authority for all Consortium activities ... ERCIM and KEIO shall each appoint a Deputy Director who report to the Director and manage the development effort at ERCIM and KEIO, respectively.

Management Team:

- Steve Bratt, Chief Executive Officer
- Tim Berners-Lee, Director
- Judy Brewer, WAI Domain Leader
- Jérôme Chailloux, Site Manager for W3C/ERCIM
- Daniel Dardailler, Associate Chair for Europe
- Ted Guild, Head of Systems Team
- Tatsuya Hagino, Deputy Director for Asia
- Philipp Hoschka, Deputy Director for Europe; Ubiquitous Web Domain Leader
- Ian Jacobs, Head of W3C Communications
- Philippe Le Hégaret, Architecture Domain Leader
- Chris Lilley, Interaction Domain Leader; Graphics Activity Lead
- Mauro Nunez, North American Business Manager
- Nobuo Saito, Associate Chair for Asia
- Ralph Swick, Technology and Society Domain Leader
- Susan Westhaver

Over 60 technical employees in total.

Advisory Board: elected on 2 year terms (half each year) by the Advisory Committee, Acting Chair Steve Zilles⁶⁶. Its remit is:

Created in March 1998, the Advisory Board provides ongoing guidance to the [Management] Team on issues of strategy, management, legal matters, process, and conflict resolution. The Advisory Board also serves the Members by tracking issues raised between Advisory Committee meetings, soliciting Member comments on such issues, and proposing actions to resolve these issues. The Advisory Board manages the evolution of the Process Document. The Advisory Board hears appeals of Member Submission requests that are rejected for reasons unrelated to Web architecture [which are appealed to the TAG].

⁶⁵ <http://www.w3.org/2005/03/Member-Agreement>

⁶⁶ Members : Jean-François Abramatic (ILOG – former Chair), Ann Bassetti (Boeing), Jim Bell (Hewlett-Packard), Don Deutsch (Oracle), Eduardo Gutentag (Sun Microsystems), Steve Holbrook (IBM), Ken Laskey (MITRE), Ora Lassila (Nokia), Arun Ranganathan (AOL), Steve Zilles

Most importantly, the Advisory Board oversees the evolution of the W3C Process Document, the ‘constitution’ of the W3C⁶⁷. Members also sign an agreement binding them to the Process⁶⁸.

The Technical Advisory Group charter was added to W3C process July 2001, and its membership consists of 9 people: Tim Berners-Lee (W3C) (Chair), Dan Connolly (W3C), Rhys Lewis (Volantis), Noah Mendelsohn (IBM), David Orchard (BEA), T. V. Raman (Google), Henry Thompson (U. of Edinburgh), Norm Walsh (Sun), Stuart Williams (HP)⁶⁹. With the exception of TBL, all members are elected or appointed by the W3C for 2-year terms (four in each year), with the majority elected. Agendas and meeting minutes are publicly available⁷⁰.

2.4.4 Activities

W3C follows IETF Best Current Practice as set out in RFC 2119⁷¹. Standards are described as Recommendations and proceed through the 22 W3C activities and 68 working groups (currently)⁷² with the following steps⁷³:

1. Working Drafts
2. Candidate Recommendation (CR): A Candidate Recommendation is a document that W3C believes has been widely reviewed and satisfies the Working Group's technical requirements. W3C publishes a Candidate Recommendation to gather implementation experience.
3. Proposed Recommendation (PR): A Proposed Recommendation is a mature technical report that, after wide review for technical soundness and implementability, W3C has sent to the W3C Advisory Committee for final endorsement.
4. W3C Recommendation (REC): A W3C Recommendation is a specification or set of guidelines that, after extensive consensus-building, has received the endorsement of W3C Members and the Director. W3C recommends the wide deployment of its Recommendations.

Closed Activities and Groups are as shown in the Table.

Table 16: W3C Closed Activities and Working Groups

Closed Activities	Closed Groups
Amaya	HTML Working Group. Internationalization
Device Independence	GEO Working Group
Digital Signature (DSIG)	P3P Policy and Outreach Working Group
Electronic Commerce	P3P Specification Working Group
HTTP	Quality Assurance Activity

⁶⁷ <http://www.w3.org/Consortium/process.html>

⁶⁸ <http://www.w3.org/2005/03/Member-Agreement>

⁶⁹ <http://www.w3.org/2001/tag/#about>

⁷⁰ <http://www.w3.org/2001/tag/2007/09/17-agenda>

⁷¹ <http://www.ietf.org/rfc/rfc2119.txt>

⁷² <http://www.w3.org/Consortium/activities.html>

⁷³ Paragraph 7.1.2 of the W3C Process Document at <http://www.w3.org/2005/10/Process-20051014/tr>

HTTP Next Generation	RDF Core Working Group
Jigsaw	Semantic Web Best Practices and Deployment Working Group
Metadata	Web Ontology (WebOnt) Working Group
Mobile Access	Web Services Architecture Working Group
Policy	Web Services Description Working Group
TV/Web	XML Binary Characterization Working Group
URI	Semantic Annotations for WSDL Working Group
Web Characterization	Web Services Addressing Working Group
XML Encryption	
XML Key Management (XKMS)	
XML Protocol	
XML Signature	

Source: <http://www.w3.org/Consortium/activities.html>

The Timeline overleaf expresses W3C developments.

Figure 10: W3C Timeline



Source: <http://www.w3.org/2005/01/timelines/timeline-2500x998.png>

2.4.5 Enforcement

The development of patent policy in 1999-2003 is the most challenging case of W3C staff persuading member companies to adopt a new policy. By choosing royalty-free standards, the W3C chose to avoid patent licensing negotiation in favour of wider deployment. This was strongly influenced by the ability to deploy more widely than a commercial model could provide. By this point, the WWW was mature enough that “everyone could see that the value was in its universality.” Weitzner states that:

“An interesting test of [SRO] robustness is to ask whether its able to make hard decisions like that. Our decision wasn’t a simple democratic decision. It took four years to develop, and a vote at any annual stage before that would have rejected it ... An unheralded strength of a well-working SRO is that change of attitude works in both directions – from members and staff.”

He argues that staff perseverance forced a deliberated and constructive decision, with a huge expenditure in time in order to achieve that result. It was achieved as a result of refusing to follow established ‘in the box’ thinking by initially staff, and then increasingly closely engaged members such as IBM. A handful of members left in that period (whether through cost-cutting, market turbulence or policy disagreement is not audited), but membership was growing and continues to grow.

The Membership agreement sets out the patent policy at Paragraph 7b:

patentable inventions and copyrighted materials developed jointly by MIT, ERCIM, KEIO and Member during the course of Consortium activities shall be jointly owned. Each joint owner shall be entitled to exercise all rights of ownership as provided by law, without, however, an obligation of accounting from one to the other. Member acknowledges that all such jointly owned inventions, software or other copyrightable materials, or materials owned by Member made available by Member for Consortium activities, will be made available to the general public pursuant to the then-current W3C Software Notice and License (which exists at <http://www.w3.org/Consortium/Legal/copyright-software>). Specific exceptions may be made upon approval of the Director, with the advice of the Advisory Committee.

c. Licenses.

MIT, ERCIM and KEIO agree to grant and hereby grant to Member a non-exclusive royalty-free, irrevocable, right and license to use, reproduce, modify, translate, distribute, publicly display and publicly perform all computer software and documentation described in Section 7 (b) throughout the world...

W3C-Government Relations 1: Platform for Internet Content Selection

Weitzner (2007) stated that filtering/labelling was the obvious tool to ensure end-users had the choice of which content to view⁷⁴. He states that the Campaign for Democracy and Technology broadly supported the W3C decision to develop PICS, that the Electronic Freedom Foundation was ambivalent, the ACLU against it. Weitzner states:

“What was at stake for the industry was their chance to prove they didn’t have to be treated like the mass media, and that was the result in the *Reno* decision. It was a different

⁷⁴ Berman and Weitzner law review article – if parents have tools, government censorship is unconstitutional.

kind of process to the P3P process, where the FTC made clear that regulation was the alternative ... The coordination was between the early Internet industry, some part of the civil liberties community and the White House – Gore, Magaziner, Clinton – who gave their blessing right after the *Reno* decision appeared.”

This was classic industry-led self-regulation which “worked in that it was the right approach, but not as regards interoperability with other incentives for individual website owners.” He agrees that co-implementation on child pornography is clearly not a self-regulatory issue. PICS has transparency issues but is in his view the inevitable model. Where real issues existed, there were some differences between the market-driven US approach (“not self-regulatory but technology will provide the tools”) and EU co-regulatory standards-based approach towards ICRA. He concludes:

“I don’t think there were ever clear expectations set by policymakers as to results, nor were there adequate resources provided for deployment. To my mind that is putting a figleaf on the problem.”

W3C-Government Relations 2: Platform for Privacy Protection (P3P)

A case study in W3C’s relations with government enforcement is its development of P3P, a standard for ensuring privacy protection. There are two interpretations of the reasons for the development of P3P, based on US or European policy, though both are acknowledged to be influential. P3P was driven by the US privacy regulator, the Federal Trade Commission and companies from 1997. The target problem was third party profiling for DoubleClick-type banner advertising. Weitzner maintains that it was essentially a US privacy issue first, not directly influenced by the European Article 29 working party, the committee of national data protection agencies established by Article 29 of the Data privacy Directive (EC/95/46) . However, the Article 29 WP was critical in the development of P3P, with a 1998 paper written to critique the early development of the standard. European Commission officials discussed the changes and development they preferred to see with W3C officers. At the OECD Ministerial in Ottawa 1998, the Working Party agreed to take second look at P3P. W3C knew it had to allow companies to comply with EC/95/46 if required. By the end of the standard’s development in 2002, the Article 29 Working Party informally appeared to agree with the policy as it then stood, but never published a paper to say so.

P3P is an unusual policy by W3C, to develop an informally agreed policy with governments, and this was a real challenge for W3C. This is an ongoing issue, which was brought up again by consensus amongst members and European Commission projects e.g. PRIME and also ENISA (see LAP case study).

2.4.6 Outcomes

W3C policies are generally broadly-adopted by the web development community and the wider market, though not without controversy in for instance the late 1990s ‘browser wars’ between Microsoft and Netscape. As an unusually tightly-knit and focussed standards body, W3C has maintained a coherence of approach which Weitzner and others argue is unusual in technical standardisation in such a public set of standards.

2.4.7 Outputs

It is genuinely international in its approach, with over 40 languages used on its website, for

instance recently attending to Armenian, Georgian and Greek numbering⁷⁵:

W3C's global initiatives also include nurturing liaisons with national, regional and international organizations around the globe... W3C operations are jointly administered [at MIT in the USA, France (from 1995) and Japan (from 1996)].

W3C also has World Offices in 18 other territories.

2.4.8 Impact

The W3C standards are very widely used and Sir Tim Berners Lee is an international celebrity whose life work forms the basis for W3C standards development. However, W3C itself has a low profile, though its more controversial developments such as PICS and P3Pgave it an unwelcome reputation for attempting technical fixes to what are essentially political problems. For instance, Weitzner explained that W3C “needed to repair a lot of disconnects in the first P3P process, and we expect this one to be more joined up in its thinking.” He also argues that the semantic web needs incentives to conform to good privacy practices:

“where there are agreements on data sharing – and where benefits of such data integration are apparent across system boundaries: a database of databases in ever expanding and intersecting circles....Every link has a cost and they may be too high for certain intersections – financial services and natural sciences for instance.”

The turning point for the semantic web was for him that Oracle installed native RDF support – for life sciences and geospatial communities. He believes that:

“Governments could have an incredibly positive role – in making government information available in open semantic web structures.”

2.4.9 Sustainability and Reform

The failure of the semantic web thus far to develop as its supporters in W3C had predicted is perhaps the most significant lack of impact that W3C standards have sustained. The semantic web is a ‘next generation’⁷⁶ of web services which will provide far greater richness and functionality for World Wide Web (‘web’) applications on the Internet. Web inventor Tim Berners-Lee has recently described the timeframe for such a transformation to take place⁷⁷.

There have been various attempts to create electronic records for government data, with the most basic XML data input taking place in about 1998. More recent initiatives label data using Resource Description Framework (RDF), a data standard that enables ‘semantic’ mixing of data based on the raw data source. That includes a project to place public information in semantic web form⁷⁸. This process requires a network effect to become commonplace, in which the RDF standard is used by pilot or ‘brochureware’ products and projects, leading early adopters to trigger a ‘cascade’ effect via growing

⁷⁵ <http://www.w3.org/International/>

⁷⁶ See Darlington, John, Jeremy Cohen, William Lee (undated, mimeo) *An Architecture for a Next-Generation Internet based on Web Services and Utility Computing*, London e-Science Centre

⁷⁷ Berners-Lee, Tim (2006) Presentation to Terra Future conference, 19 September, at <http://www.w3.org/2006/Talks/0919-os-tbl/>

⁷⁸ See <http://www.aktors.org/people/>

incentives (learning by doing, and peer education and reputational incentives) to follow others who have adopted the standard. The resource and adoption curve needs in this process mean that it will be at shortest a medium term project to move from basic to semantic web standards.

Baron (2006) states⁷⁹:

[Economic] motives lead groups within the W3C to spend significant amounts of time on things that don't help the Web. For example, a company that is using W3C technologies in a non-Web environment may push the issues that arise in their environment to the agendas of working group meetings. Essentially, they're paying the W3C to have experts on the technology (the working group) solve their problems. And those experts are often quite willing, since work to make one's invention used in more places can appeal to the vanity of the inventor.

He argues that the mobile versus computer standards differences are using up the W3C's efforts:

mobile browsers implement some of the same standards as desktop browsers (HTML, CSS) although generally not as well, and where they implement some different standards (e.g., SVG), perhaps better. The level of interoperability between these two worlds is not high enough to make it easy to develop content that works well in both.... The Web browser community has to stop things in SVG that are incompatible with or inappropriate for the Web, because if we don't stop them we'll never be able to standardize the Web behavior at the W3C. Second, the Web browser community isn't making much progress on standards relevant to the Web because it's spending all of its time fighting the larger Mobile Web community.

Don't think the W3C can continue trying to be both a focused organization and a broad organization. I think it currently tries to be both at the same time, and gets the technical disadvantages of both approaches, the technical advantages of neither, and the financial advantages of the latter. I've come to accept that it's not going to be the focused organization that I'd like it to be. Given that, I think the W3C and the community around it needs to fully accept the consequences of being a broader organization⁸⁰.

Baron adds that:

Around the same time, there has been concern raised by prominent figures in the Web development community about lack of progress within the W3C [and] its lack of concern for the needs of Web developers.

However, the argument that pre-mobile standards were developed in much greater harmony is claimed to be inventing a "Golden Age that never was" by those engaged in the fights between Netscape and Microsoft (Weitzner 2007).

2.4.10 Evaluation

W3C continues to receive some criticism for what one might term being 'a victim of its

⁷⁹ Baron, David (2006) More W3C Controversy (17:58 -0700) Friday 2006-08-18

<http://dbaron.org/log/2006-08#e20060818a>

⁸⁰ This particularly related to the SVG Tiny 1.2 Working Group advancing the specification to Candidate Recommendation, accused of duplicating features of many other Web standards, failing to clarify basic concepts and to not following W3C process, largely duplicating features that already exist in HTML+CSS, and a new script processing model that is incompatible with the one used by HTML on the Web.

own success', with the accusation that it is captured by its corporate clients, and that it is not sufficiently focused on developer needs in the start-up community. Baron accepts the need for diverging and competing standards to merge from W3C's activities:

I used to think that the W3C should focus on things that are compatible ... with what is already on the Web and designed primarily to improve the Web ... the only way this focused model works is if the W3C produces new specifications slowly enough that everybody involved can implement all of them. And that doesn't fit with the W3C's business model ... given the breadth of activity within the W3C, we can no longer assume that all the W3C's specifications are part of a single plan. Groups within the W3C should be allowed to produce specifications whose features overlap with those of other W3C specifications. No members of the W3C should be obliged to implement any specifications, or criticized for failing to do so simply because the specification they do not implement is a W3C Recommendation. Instead, specifications should compete on their own merits among implementors, authors, and users.

In the end, pressure to implement new specifications really needs to come from authors who are using the new features that Mozilla, Opera, and Safari are implementing, which means making these engines more interoperable, making them easier to write for, and getting them more market share.

Ultimately the fate of W3C standards depends on market adoption, based on both their utility and the technical rigour of the standards development process. As W3C grows, it may be that the type of competitive behaviour more familiar to the contested standards of IETF and other standards bodies will become even more routine.

2.5 Labelling (Europe): Internet Content Rating Association

Internet Content Rating Association: ICRA

Researcher: Chris Marsden

ICRA emerged from the RSAC system for computer games in the US, founded in 1994. Filtering and rating of content was seen as an 'end-to-end' solution to content concerns, giving the user control rather than allowing censorship. It developed from PICS, a W3C standard. In 1999, ICRA was named, a not for profit company that is EC-supported with corporate members. It has a small dedicated staff. In 2007, ICRA was absorbed into a relaunched advocacy organisation for rating, the Family Online Safety Institute, and the FOSI board committed itself to the new POWDER interoperable ratings standard process within the W3C. The lack of market adoption of ICRA until now has been attributed in part to lack of incentives for websites unless rating can interoperate with other standards (for instance for trustmarks), or more radically unless rating is made mandatory. It was evaluated in 2006 by independent evaluators appointed by the European Commission.

Table 17: Summary of ICRA Case Study

Was there a government mandate initially?	Not directly: EC funding
What kind of government involvement is there?	None direct
Which other stakeholders are involved and how?	Advisory Board activities
How is transparency ensured?	Web publication of all proceedings
What is the enforcement mechanism, is it effective, at what	Market adoption of standards, rival standards and types of

cost?	classification
What is the relative size of administrative burdens?	Very low for chosen community. Cost of implementing system has led to widespread market rejection.
Is financial independence assured/how?	Growth in size classification 'market' slow, continued dependence on key sponsors.
Which internal factor most impacts success?	Failure to achieve significant market penetration
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: relationship with standards bodies, and content regulation for instance with KJM. Market: adoption of ICRA system. Technology: development of new W3C standard.
Lessons for European policy	Membership approach effective, significant new efforts to address user community with FOSI creation. Failure of market to adopt standard continued glaring omission.

2.5.1 Interests and Policy Needs

Filtering standards have had a prominent role to play in self-regulation of the Internet. In 1994, computer games were first labelled using the RSAC labels. Industry buy-in was initially strong led by the Recreational Software Advisory Council from mid-1994, led by Don Roberts of Stanford University and Stephen Balkam as administrator: as Hoff (2007) explains "RSAC labelling caught the zeitgeist initially."

By 1996, the open standard Platform for Internet Content Selection (PICS) was being developed as a public beta (see W3C case study above)⁸¹. PICS was built into Internet Explorer 3, launched in August 1996, driven by Microsoft to catch up with Netscape Navigator by differentiating its product. When Netscape integrated RSAC in June 1998, the browsers of almost all Personal Computer users had integrated the filtering standard. For standards development see W3C and IETF case studies.

This produced a huge initial boost to the system, but rating standards declined in the market by 1997, especially with the final Supreme Court decision in *ACLU v. Reno* (1997) which meant that though filtering would remain a policy option, it could not be enforced through US courts. Note that in 2004, France introduced a law that does require compulsory filtering though not based directly on ratings.

2.5.2 Design & organisation of the Institution

In response to these developments, in 1999, the EC Safer Internet Action Plan helped to fund the formation of the Internet Content Rating Association (ICRA), partner in a European filtering system developed with AOL Europe, Bertelsmann Stiftung, Cable and Wireless and Thus plc. RSAC ceased to exist in 1999, replaced by ICRA. Ola-Kristian Hoff together with the Bertelsmann Foundation brought ICRA into play in Europe, after the SIAP was established⁸².

The wide publicity and US office (as well as Brighton in the UK) for ICRA ensured that

⁸¹ PNG was the first W3C standard.

⁸² For a summary of early ICRA history and origins, see <http://okhoff.tripod.com/is-tmpl/index.html>

20 very large multinational companies joined ICRA in the first year of operation⁸³. Its aims were to develop filtering as:

- the least intrusive filtering solution upholding the end-to-end argument⁸⁴;
- neutral as to content – as it was to be self-administered by content owners using common taxonomies and descriptors;
- free to end-users through its integration into web browsers;
- global in its reach through partners and developers.

FOSI (2007) explains that⁸⁵:

The system was greeted with enthusiasm by the browser manufacturers with both Microsoft and Netscape including PICS-based content filters in their products that were reliant on ICRA's forerunner, RSACi. Microsoft has retained its PICS-based filter in Internet Explorer since that time, updating it recently in IE7 to make use of ICRA's current system [IE7].

Despite its early promise, labelling and filtering of websites based on those labels has not enjoyed traction and broad uptake. Modern filters are almost all based on large databases compiled by machines that crawl the Web looking for particular characteristics. ICRA labels are very often among the characteristics the crawlers look for but few filters make direct reference to them in their user interface. There are many reasons for this, some policy-related, some technical, but whatever those reasons are, it's clear that the Web has moved on and that ICRA, now part of the Family Online Safety Institute, must move on too.

Labelling has gone out of fashion since that early period for two reasons (Archer 2007):

- microlabelling was inefficient, and
- corporate users such as Disney and others found labelling simply for age verification without interoperability with e-commerce trustmarks (for instance) less than compelling.

He explains that content very often 'screamed out its own context': a single glance at the website established whether its content was adult or not. The European Parliament continued to push for pan-European interoperable quality labels, and a workshop in February 2003 gave impetus to this, organised by the Oxford selfregulation.info project under the Safer Internet Action Plan. Eight years on, ICRA has recently been 'rebranded' as the filtering software element on the Family Online Safety Institute (FOSI). The wider remit is too recent to explore in any detail but is discussed in the reform section below.

2.5.3 Inputs

The executive personnel of FOSI are⁸⁶:

⁸³ See Machill, M., Hart, T. and Kaltenhauser, B. (2003) Structural Development of Internet Self-Regulation: Case Study of ICRA, 4 info 5 at 39-55.

⁸⁴ See most recently Clark, David D. and Marjory S. Blumenthal (2007) The End-to-end Argument and Application Design: The Role of Trust, Paper presented at 35th Research Conference on Communication, Information and Internet Policy, September 29

⁸⁵ FOSI (2007) The Potential of POWDER and the Future Prospects of ICRA labels

⁸⁶ <http://www.fosi.org/people/>

- Stephen Balkam Chief Executive Officer
- Phil Archer Chief Technical Officer
- Samantha Woolfe Director of Development
- Lynn Edwards Operations Manager

The ICRA Board consists of 16 members, including Balkam, chaired by Michael W. McKeehan of large US ISP, Verizon⁸⁷.

There is an independent Advisory Council with nine members, chaired by a thinktank expert on Internet matters which provides FOSI with policy advice. The Council used to be much more active in early ICRA days, and has now 'resurfaced'. Members are:

- Adam Thierer (Chair) Progress and Freedom Foundation;
- Anne Collier NetFamilyNews.org & ConnectSafely.org ;
- John Carr Children's Charities' Coalition on Internet Safety;
- Stephen Carrick-Davies Childnet International ;
- Marie Claire Hernández Family & Society;
- Larry Magid SafeKids.com & ConnectSafely.org;
- Katinka Moonen NICAM;
- Tim Wu Columbia University;
- Jonathan Zittrain Oxford University.

Finances are not in the public domain.

ICRA is a UK charity and submits accounts there.

It has 3.5 full-time employees.

⁸⁷ 2007 Members are:

Dr. Silke Springensguth, Senior Manager Promotion & Planning, AOL Deutschland

Brent Olsen, Assistant Vice President, Regulatory Policy, AT&T

Nick Truman Vice-Chair, Head of Internet Security, BT Retail

Jeff Campbell, Director, Technology and Communications Policy, Cisco

Roger Cochetti, Group Director of U.S. Public Policy, CompTia

Adam Hildreth, CEO, Crisp Thinking

Tom Phillips, Government & Regulatory Affairs Manager. GSM Association

Stephen Balkam, Chief Executive Officer, Family Online Safety Institute

Brandon Watson, Founder, IMSafer

Brian R. Knapp, Vice President, Corporate Affairs, loopt

Mark Ryland, Chief Technology Officer, Mpower

Alistair Allan, President and CEO, RuleSpace

John Gorbett, Sales Manager, Streamshield

Maria Jose Cantarino de Frias, Responsible for Protection of Minors, Telefonica

Ricardo Kuri, Subdirector Atencion via Internet, TELMEX

Michael W. McKeehan Chair, Director, Internet & Technology Policy, Verizon Public Policy & External Affairs

Annual membership is \$30,000 or \$5,000 for non-profits.

There are about 20 members.

Total sites labelled: 100,000 sites and millions of pages. As a percentage of web pages or traffic this is tiny, but according to Archer (2007) “25% of German-based adult sites are labelled” under legislation that established KJM.

2.5.4 Activities

FOSI has given rise to much greater member interest. FOSI is now a lobbying organisation, acknowledging that ICRA was weak at marketing previously. ICRA should always have been an advocate for the system, which is FOSI’s intention. It has created a basis for wider lobbying using:

1. events;
2. online safety research and policy advice;
3. consultancy on child safety for large multinationals;
4. educational work.

ICRA filtering retains the ability to garner controversy, with a cancelled workshop in Washington D.C. in July.

From 2004, ICRA, and particularly Chief Technology Officer Phil Archer, founded the Quatro Project which was intended to finally establish an ‘interoperable system of quality labels’⁸⁸. Archer then chaired the Web Content Label Incubator Activity [WCL-XG] within the W3C and, from February 2007, the full working group for the Protocol for Web Description Resources [POWDER]⁸⁹: the ‘new interoperable ICRA’. Working draft documents have been available since the end of September demonstrating progress in the working group. The end-result is expected to be a full W3C recommendation by March 2008, to withdraw PICS and replace it with POWDER (Protocol for Web Descriptor Technologies).

Archer (2007) claims that this new ICRA will have:

“A role to play in content personalisation, in search, in flagging up appropriate content for your platform choices (mobile, family-friendly, trusted and so on) ... ICRA won’t go away, its still being reinvented in public discussion about content regulation – there’s clearly a desire for it.”

The idea is to make ICRA into a sort of ‘Wiki’ label, which can be applied by anybody. Approval by the board of FOSI for POWDER to be used to replace ICRA was granted in

⁸⁸ The Quatro project rested on two foundation stones: policy and technology. Users, content providers, labelling scheme operators, eCommerce practitioners and relevant industry organisations were consulted on what they wished to see the system achieve and how it fits in with current operations and practices. On the technology side, academics and engineers from different fields reviewed the existing standards and practices. A combination of these two reviews lead to the definition of common platform to support the labels and metadata (RDF-CL). The Quatro Partners were: Coolwave; ECP.NL (Platform for eNetherlands); ERCIM (European Research Consortium for Informatics and Mathematics); ICRA; IQUA (The Internet Quality Agency); NCSR; Pira International; University of Milan; Web Mèdica Acreditada of the Medical Association of Barcelona (COMB).

⁸⁹ Participants are: AOL; Deutsche Telekom AG, T-Com; Family Online Safety Institute (chair); Fundación ONCE; Institute of Informatics & Telecommunications (IIT), NCSR; Opera Software; Segala; TRUST; Università dell’Insubria; Vodafone

September 2007. FOSI expects to use POWDER as its primary labelling technology “around the end of 2007 or early 2008”. It states that:

Subject to final confirmation, the expectation is that rather than asking each webmaster to host their own labels file, as at present, ICRA Description Resources will be delivered directly from our servers (we do this now with Label Assist, part of ICRAchecked). Webmasters will then include a link to their specific DR in the database. Importantly, other people will also be able to generate ICRA DRs for any website and we have plans to publish aggregated, that is, 'average labels.' Steps will, of course, be taken to counter spurious entries in the database, give different weighting to different labels and to highlight labels created by the webmaster.

POWDER is a semantic web technology and is intended to provide the incentive to give the larger media sites such as Disney.com reasons to label. Labels are now called ‘descriptions’. The new standard supports quality labels, trustmarks, mobileOK labels etc. This will require:

1. Registration by user;
2. Possible reputation increase if two or more people agree to reputational ranking. The idea is rather like eBay reputation building. Creators can put a label into their source code;
3. Possible audit by ICRA for its appropriateness;
4. Advertising the presence of the label on the web page.

The POWDER Working Group has published Use Cases and Requirements [UCR] with:

Profile matching: A description of online content is matched with the end user's profile. This breaks down into several sub use cases including adaptive search results, mobileOK, Web accessibility and Child protection.

Trustmarks: Assertions by independent authorities that online resources meet defined criteria. Again, this general use case breaks down into sub use cases that vary slightly in the detail of who is making the claim and who is authenticating it.

Rich metadata for RSS/ATOM: This use case stands alone and motivates the easy application of POWDER to these popular publishing standards.

Expressing opinions: POWDER will allow individuals to express their opinions on other people's work, either using controlled, that is, pre-defined, vocabularies, or user-generated tags which, optionally, can then be linked with other terms and definitions. Disagreement between individuals is, of course, expected!

Scalar classification: This use case requires the provision of Description Resources that in saying, for example, that a website is suitable for everyone over the age of 12 automatically also says it's suitable for people over 18.

Expressing Editorial Policy: Although it is implicit throughout all use cases, this one makes it explicit that POWDER must fit in with work flows and editorial systems of large scale content providers.

They summarise: “POWDER is about content discovery, personalization and trust; highlighting content that meets defined criteria.”

All interviewees agree that it is extremely important that the ICRA system and vocabulary

is interoperable across all media – mobile as well as web pages.

2.5.5 Enforcement

Archer states that there is no point in pretending non-ICRA sites are blocked. As a self-regulatory mechanism, ICRA has to be either market-incentivized or mandated. ICRA resists the latter on principle, hence the use of POWDER to attempt to reincentivize the market. Clayton (2007) explains that:

In 1996, the ratings industry took off – but websites were growing 100 times faster! ICRA can't be scaled to increase the number of classifiers to ensure high quality classification. How many people have been told their self-rating is incorrect? How many have been removed?

As a filtering standard, ICRA is best viewed as an instrument of self-regulation whose success is best measured by industry uptake.

2.5.6 Outcomes

Archer stresses that: “Its essential to ‘get’ the difference between policy and technological standards to understand ICRA’s role.” On that basis the outcome is a standard that needs to be more widely adopted than the original ICRA standards, as well as an advocacy effort. ICRA has listed the type of events and policy intervention it expects on its website.

Ola Kristian Hoff (2007) states that:

“I still believe in what ICRA originally set out to do but I’m not sure they set about it in the most effective way. They missed the window of opportunity in 2000-2001 when they were at the crossroads. ICRA should not have limited itself only to harmful content because webmasters will not bother to actually label their sites if that’s all it does”

He accepts that his preferred option was a higher risk strategy, though notes that ICRA finally changed its opinion in 2004. AOL was involved in Open Directory project of 2000-1 (metadirectory used by Google and others). It was the inflexion moment for ICRA, which may now be revisited by FOSI. ICRA chose not to expand previously due to fears of losing focus and lack of funding. Now they have adopted that practice, and are implementing the solution at W3C.

2.5.7 Outputs

ICRA as a technical system works, but the incentives to adopt the system have not been sufficient to attract widespread market adoption. Carr (2007) sits on the Advisory Council of FOSI – which is holding a meeting in December 2007 in Washington D.C. He states:

“ICRA is a great idea but it will never work – publishers will not get so engaged that they will do what the ICRA system wants them to do A lot of people think that ICRA has been a fig leaf for industry”.

Archer (2007) states: “It is an attempt by the industry to self-regulate by offering an interoperable system which is international and makes no cultural assumptions.” “The paradigm is much more about accurate trusted metadata that is clearly in the content provider’s commercial self-interest.”

2.5.8 Impact

The ICRA role is to some extent followed by IMCB under ICSTIS administration, and

followed worldwide. By contrast, mobile rating is a very crude system – 18 over or under. One might expect that it will need increasing grading of content for different ages. ICRA works with W3C on PICS, is implemented in commercial web browsers, and therefore can be considered the de facto standard for filtering albeit that it is used by very few websites. The competition to this standard might be considered to be the types of age verification mechanisms that are much more widely deployed within individual websites, and which have been far more widely adopted in the market.

2.5.9 Sustainability and Reform

There is a very broad reform of the system within FOSI environment. ICRA is now a brand owned by FOSI – ICRA Data Services. FOSI had hoped for funding from the finances raised in the .xxx gTLD that was proposed to the ICANN Board in April 2007 in Lisbon. The loss of that initiative not only removed a potential funding source for FOSI, it also exposed significant confusion and principled objection to labelling by various parties, not least significant elements in the pornography industry.

2.5.10 Evaluation

There seems agreement that ICRA is a technology that works and was a great idea, but will only work if it moves from self-rating to mandatory rating, as was recently stated in the 2006 SIAP evaluation. This begs the question: would it have worked better if it was more widely funded and recognised in 2001? Will FOSI create a new impetus for success?

ICRA is the example of filtering by website owners that is most often cited as the end-to-end solution that meets the requirements for minimal self-regulation permitting maximum end-user choice. The lack of interoperability with trustmarks (see later case study) and the failure of websites to adopt ICRA ratings broadly after initial interest in the late 1990s, demonstrates the weaknesses of voluntary standards adoption as an alternative to regulation. Whether the combination of a new POWDER standard that is interoperable, a new brand in FOSI and new impetus from the membership will lead to any change in its fortunes is the acid test of this form of self-regulation.

3.1 Hotlines (UK): Internet Watch Foundation

Internet Watch Foundation: IWF

Researcher: Lorna Woods/Chris Marsden

The IWF was founded in 1998 as the UK ISP industry charitable hotline for the removal of child pornographic content. Hotlines are exemplars of user reporting and ISP removal of illegal content. It is claimed as a success in its core remit:- increased number of cases of reported illegal content; driving child pornography out of the UK; involvement in UK government and police initiatives; international support for INHOPE and coordinated police activities. Nonetheless there are serious recurring issues about freedom of expression and access to justice, with the original case-by-case take down notices replaced by the total removal of newsgroups in 2002 and the new initiative, the CAIC blocklist. The implementation of automated filtering based on this list by British Telecom and others encompasses over 90% of consumer Internet users, and the police minister has insisted that if it is not voluntarily adopted in whole, it may be made mandatory. IWF has broadened its funding base to include mobile networks and search engines, amongst others, and there is tension between supporters of its original mission, and an increasingly independent executive management. IWF has undergone a number of governance reviews during its first ten years, both internal and by government (1998).

Table 18: Summary of IWF Case Study

Was there a government mandate initially?	Yes, Home Office and DTI sanctioning
What kind of government involvement is there?	Continued Home Office intense liaison, ECpartial funding
Which other stakeholders are involved and how?	Advisory Board – note Funding Council plays vital role
How is transparency ensured?	Web publication of all proceedings
What is the enforcement mechanism, is it effective, at what cost?	Block list for all members, excellent liaison with police and INHOPE
What is the relative size of administrative burdens?	Very low for chosen community. Danger of over-blocking evident in 'class' blocking of e.g. Usenet groups.
Is financial independence assured/how?	Continued dependence on key ISPs and EU.
Which internal factor most impacts success?	Expanding mandate suits newer members more than old, except BT
Which external conditions impact success/failure (e.g.	Governmental: relationship with Home Office, INHOPE. Market: adoption of 'Cleanfeed' type system. Technology:

competitive situation, technology, etc)?	development of new filtering standards in e.g. ETSI.
Lessons for European policy	Widening membership approach effective, significant new efforts to address user community with blocklist. Danger of market fragmentation in new filter approach and pan-European proposals.

3.1.1 Interests and Policy Needs

As Internet use developed, it became apparent that in addition to the positive aspects of Internet use, there was a potential for misuse. In particular, although child pornography has always existed, the Internet was perceived as giving greater opportunities for the dissemination of this type of material. Certainly during the early 1990s there had been calls for legislative action to check the availability of such material.⁹⁰ The UK industry members became aware that with the possibility of such illegal material, there was a need to protect industry members – specifically UK ISPs – from being ‘abused through the posting and hosting of illegal child abuse images’.⁹¹ More specifically, its establishment followed the London Metropolitan Police sending a letter to all ISPs on 9 August 1996 requesting them to censor Usenet news groups as otherwise the police would find it necessary to prosecute ISPs in relation to illegal material made available via their systems.⁹² Facilitated by the Department of Trade & Industry (DTI), against this backdrop discussions were held between certain ISPs, the Metropolitan Police, the Home Office and a body called the Safety Net Foundation (formed by the Dawe Charitable Trust). This resulted in the “R3 Safety Net Agreement”, where “R3” referred to the triple approach of rating, reporting, and responsibility. In September 1996, this agreement was made between the Internet Service Providers Association (ISPA), the London Internet Exchange (LINX), and the Safety Net Foundation which was subsequently renamed the Internet Watch Foundation (IWF). From the perspective of industry, consumer protection issues (or the public benefit generally) were seen as a side benefit though not the driving force for the establishment of IWF.

3.1.2 Design & organisation of the Institution

The Internet Watch Foundation (IWF), a charity in the form of a corporation limited by guarantee, was founded by industry to provide an online reporting mechanism for content that was alleged to be illegal, a system now recognised by legislation. In fact the objects defined in the IWF’s governing document (its memorandum and articles, amended 30th October 1998, 13th January 2005 and 16th September 2005) state that the objects of the IWF are:-

- ‘(a) The promotion of the care and protection of the health and welfare of the public in particular children and young people by working to minimise the availability of potentially illegal or otherwise harmful content on the internet. (b) The prevention of crimes relating to offences involving exposure to illegal content on the internet in particular by: (i) operating a hotline enabling the public to report such instances; (ii) operating a notice and takedown service to alert hosting service providers of such criminal content found on their

90 Sutter, G., “Nothing New Under The Sun: Old Fears And New Media” (2000) *International Journal Of Law And IT* 8(388).

91 <http://www.iwf.org.uk/public/page.29.htm>

92 Ward, O, ‘Information Technology’ *New Law Journal* 9 March 2001

servers; and (iii) alerting relevant law enforcement agencies to the content. (c) To further such purposes as are recognised as exclusively charitable under the law of England and Wales.’

The IWF has developed institutionally, in that it has set up a subsidiary company, to run in line with IWF’s main objectives and IWF itself has obtained charitable status, registered on 5 December 2005. At the time it was set up, the IWF was a company, but not a charity. The fact that IWF now has charitable status suggests a change of emphasis, as to be registered as a charity a body must meet a charitable purpose⁹³ and have that charitable purpose exclusively.

The role of IWF has developed to include three aspects:-

- To foster trust and confidence in the Internet among current and future fixed and mobile internet users
- To assist service providers to combat the abuse of their systems for the dissemination of criminal content
- To assist law enforcement in the fight against criminal content on the Internet.

The core of its activities is a notice and take down (NTD) system relating to child pornography; and other criminally obscene or criminally racist content hosted in the UK. It is funded by the EU and a wide range of members of the online industry, as well as other corporations who support IWF for reasons of corporate social responsibility.

The relationship of the IWF with a number of other co-regulatory bodies should be noted, as it is not the only body which might be involved in the control of Internet content within the UK. Although there is not a complete or coherent system for dealing with Internet content, if certain means of access for the Internet are used – specifically premium rate phone lines or mobile content ratings – then ICSTIS and IMCB respectively may also have jurisdiction (see Chapter 4). Further, Internet advertising is subject to the general advertising regime in the UK which is the responsibility of the ASA. As noted earlier, a number of other bodies are potentially involved in regulation of content. There are also international ratings schemes for content (ICRA). The IWF has also recognised the need for co-operation and with increased convergence, perhaps increased co-operation) with Ofcom, though during the passage of the Communications Act 2003, it strenuously opposed Ofcom’s involvement with the regulation of the Internet.⁹⁴

IWF has gained recognition from government. Although IWF was not established on a

⁹³ The determination of a charitable purpose has been the subject of caselaw over the centuries. The starting point was the objects set out in the Preamble to the Charitable Uses Act 1601 which contains a list of purposes which were regarded as charitable in Elizabethan times. The courts have developed this list by analogy. It is generally accepted now that there are four heads of charitable purposes:- the relief of poverty; the advancement of education; the advancement of religion; and other purposes of benefit to the community – see *Income Tax Special Purpose Commissioners v. Pemsel* [1891] AC 531. The courts have stressed that the definition of charitable purpose is not static. In determining whether a purpose falls in the 4th head, the Charity Commission adopts a two-step test: whether the purpose is analogous to a purpose previously accepted as charitable; and satisfies the requirement that the purpose benefits the public. The law relating the charitable purposes has been changed by the Charities Act 2006 but this has not yet come into force. A useful discussion of the changes can be found at: <http://www.charity-commission.gov.uk/enhancingcharities/pbanalysis.asp>.

⁹⁴ Internet Watch Foundation (IWF)(2002) 06.06.02 Memorandum submitted to the Joint Committee on the Draft Communications Bill, available: <http://www.iwf.org.uk/government/page.54.150.htm#Top>

statutory basis, following the Sex Offences Act 2003, which amends the protection awarded to children under the Protection of Children Act 1978,⁹⁵ the Chief Constables' Association and the Crown Prosecution Service entered into a memorandum of understanding⁹⁶ about the reporting of such offences which, inter alia, recognises the role of the IWF and states that reports made to the IWF in line with its procedures will be accepted as a report to the relevant authority for the purposes of the Sex Offences Act 2003. According to the IWF this was significant in clarifying the legal status (or more likely the legal exposure) of IWF and its employees under UK criminal legislation.

The scope of IWF activities are limited, concerning limited types of content (essentially child pornography, obscenity and hate speech⁹⁷). It does not cover issues such as paedophile conversations intended to persuade children to engage in illegal sexual acts, a process known as 'grooming' (an offence under the Sexual Offences 2003). Nor do its activities include peer-to-peer services, online games, 'happyslapping'⁹⁸ and torture websites.⁹⁹ Further, although originally the IWF was going to develop a labelling a rating system this is not the responsibility of the Internet Content Rating Association (ICRA), although the basis on which this transfer of responsibility was effected is not clear. Changes in UK legislation may affect the IWF, for example the proposed offence of possession of extreme pornography.

3.1.3 Inputs

Location	Chief	Founded	Directors	Funding
Cambridge	Chief Executive Peter Robbins	1996	10 – 6 independent	Via members in Funding Council; also SIAP

Correspondence address: 5 Coles Lane, Oakington, Cambridge, CB4 5BA, UK.

IWF is a company limited by guarantee and has acquired charitable status since December 2005. IWF holds the shares in Internet Watch Limited and is obliged to run the company according to its articles and memorandum. IWL contributes to the income of IWF.

The IWF is funded by a range of industry members¹⁰⁰ as well as sponsors including

95 Section 45 amends the Protection of Children Act 1978 so that the offences under that Act of taking, making, permitting to take, distributing, showing, possessing with intent to distribute, and advertising indecent photographs or pseudo-photographs of children will now also be applicable where the photographs concerned are of children of 16 or 17 years of age. The same change applies to the offence of possessing an indecent photograph or pseudo-photograph of a child at section 160 of the Criminal Justice Act 1988 (section 160(4) applies the 1978 Act definition of "child"). Section 46 provides a defence in that an individual will not have committed the offence where it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world.

96 <http://www.iwf.org.uk/police/page.22.213.htm>

97 Note guidance on the scope of this: <http://www.iwf.org.uk/corporate/page.49.232.htm> and note changes in UK law which might affect it.

98 The unfortunate term used for mainly teenage gang mobile phone-captured videos of assaults on victims which are filmed and posted on the Internet for their own and others' satisfaction, and victims' ritual humiliation.

99 Grooming, peer-to-peer services and such like fall within the responsibility of CEOP: see <http://www.ceop.gov.uk/>

100 A full list of donors is listed at: <http://www.iwf.org.uk/funding/page.64.htm>

Adobe, Microsoft. The number of companies providing funding has grown from 12 in 2001 to 55 in the 2005-07 Business Plan and 76 mentioned in the 2006 Annual Report. Additionally, IWF receives funding under the Safer Internet Action Plan as well as specific project funding. A profit and loss account for 2006/07 and 2007/08 is available in the Business Plan for 2008¹⁰¹ as well as in the 2006 Annual Report.¹⁰² Income for 2007/08 is £1,061,924, just under half of which goes on salaries. The IWF employs 14 full time staff.

IWF is controlled by a single Board of Trustees of 10 members, comprising six non-industry members, three industry members appointed by an open selection process, and an independent Chair, currently Amanda Jordan, OBE, manage the Board, oversee the organisation at a strategic level, and where appropriate act as a spokesperson for IWF. The Board may set up any such sub-committees as it may think appropriate. In general, there is an executive committee comprising the chair and two vice chairs of the Board. The responsibilities and conduct of all IWF Board members are governed by the provisions of the Board Members' Handbook, available on the IWF website.

The Board's function is to monitor and review IWF's remit, strategy, policy and budget in the light of the IWF's objectives: it does not make content decisions at a case by case level. Board approved policies are available on the IWF website.¹⁰³ This constitution can be amended by decision of the Board, provided that the changes do not conflict with the Memorandum and Articles of Association of the Internet Watch Foundation.

Additionally, there is a chief executive responsible for the day to day running of the IWF and who has a salaried post.

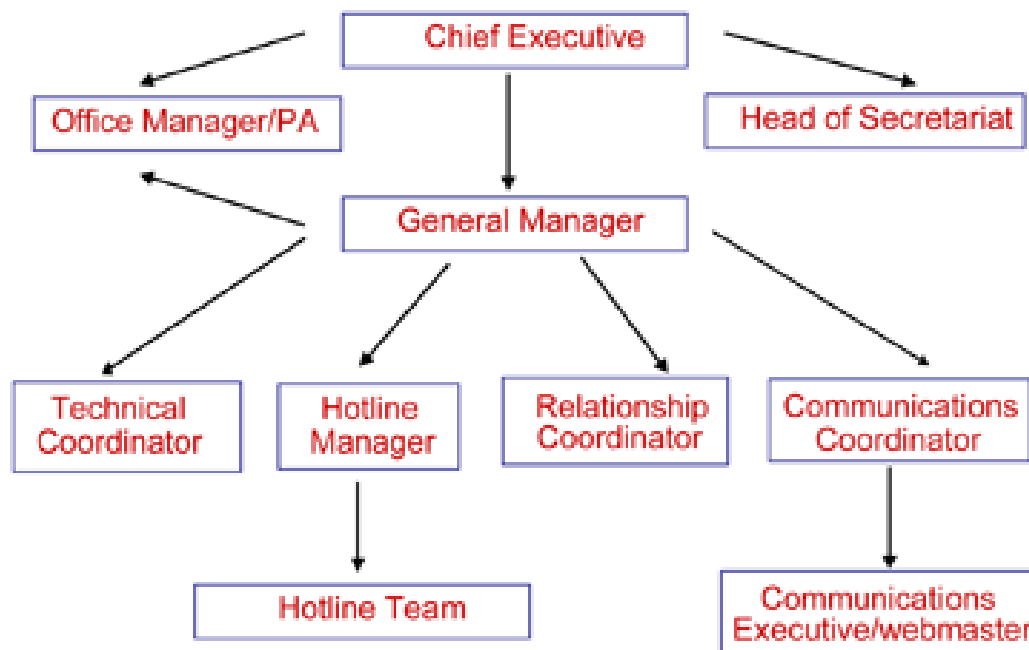
Industry members are determined by the Funding Council. The Funding Council determines its own rules and procedures, to fulfil the following roles:

1. to consider policy issues affecting IWF in order to brief Board representatives with members' views;
2. to provide funds and ensure renewal of funds for the operation of IWF;
3. to advise on and approve the IWF budget;
4. to select members for the IWF board;
5. to advise on and approve the members' code of practice.

¹⁰¹ See IWF webpage: <http://www.iwf.org.uk/corporate/page.142.htm>

¹⁰² The Annual Report is available on the IWF webpage: <http://www.iwf.org.uk/corporate/page.173.htm>

¹⁰³ <http://www.iwf.org.uk/corporate/page.49.207.htm>

Figure 11: Organisational structure (Source: IWF)

As a limited company it is required to comply with legislation regarding the filing of information about the identity of directors and company secretary, filing annual returns and accounts and, since becoming accredited as a charity, is subject to the Charities Commission. To become a charity, the organisation must satisfy the requirement for a charitable purpose as defined by law and have an appropriate governing document. Charities must submit an annual return and accounts and charities with income in excess of £1 million must also submit a summary information form. Annual returns have been submitted to the Charities Commission in respect of 2005 and 2006.

Its mission is:

To work in partnership with internet service providers, telecommunication companies, mobile operators, software providers, the police, Government and the public to minimise the availability of online illegal content, particularly child sexual abuse images.

This mission, as noted, above is fleshed out with three specific aspects of its remit. Although the scope of content dealt with by IWF covers criminally offensive and hate speech, the emphasis on the web site is on child pornography and the protection of children. As indicated by its mission, the IWF co-ordinates with the police and a number of government agencies (such as the Home Office Task Force) and services providers (such as the CAIC list initiative). The Charities Commission website identifies the mechanisms by which IWF achieve its objectives as:-

- Provides human resources;
- Provides services;
- Provides advocacy/advice/information; and
- Sponsors or undertakes research.

3.1.4 Activities

According to the IWF 2006 Annual Report, its team receive training from the police and apply criteria for the categorisation of material in accordance with those set by the UK Sentencing Advisory Council. These decisions are made independent of the board, though within the scope of policies made by the board. Woods reported for Hans Bredow that:

‘Decisions on content are made by the hotline team, who are salaried individuals, and who act in accordance with the policies determined by the Board, although in many instances the role of the IWF is that of passing information on to law enforcement agencies. IWF provides a certain amount of guidance on its website, together with information as to the relevant law in this area. It operates advice in the form of ‘if in doubt, report the material’ policy.’

The IWF offers specific services in addition to the core activity of providing a hotline. These services are in general available to its members and are aimed at facilitating ISPs in identifying illegal material. The services are:-

- The CAIC list: Child Abuse Database Service: List of URLs which have been reported to the police so that an ISP can block the website (the website owner does have a right of appeal but this is uncertain in effect as it is often difficult for the retail ISP to determine whether the wholesale ISP has blocked the site);
- Keyword Service: Certain members are provided with a list of keywords often used by people who discuss illegal acts with children
- Newsgroup Service designed to combat paedophilic content in newsgroups
- Spam alert
- Best Practice Guide.

Technical staff occasionally provide Internet training for police officers.

The IWF publishes parliamentary submissions, debates and questions which are relevant to the IWF's remit. De facto, then, IWF would seem to influence government policy in this area. Civil liberties groups have expressed concerns about the openness and accountability of this process.¹⁰⁴

3.1.5 Enforcement

The hotline depends on individual reports of potentially illegal material being made. Woods states (Hans Bredow 2006):

‘Cooperation and compliance with IWF is mandatory for members of Internet Service Providers Association (ISPA) by virtue of its code of practice. Membership of ISPA is not mandatory, though in practice most UK ISPs are ISPA members.’

Members comply with a code of practice which inter alia requires members to comply with take down notices. Members may make representations to explain why a notice has not been complied with, specifically if they believe that there has been an error in the notice. According to the Code:-

¹⁰⁴ Akdeniz, Y., ‘Who Watches the Watchmen: Part II’ <http://www.cyber-rights.org/watchmen-ii.htm>

'Failure to Comply with the Code of Practice

Following an investigation by the IWF Secretariat, if a Full Member fails to provide grounds for not removing content within a reasonable time, then the Full Member will be deemed to have failed to comply with the requirements of the Code.

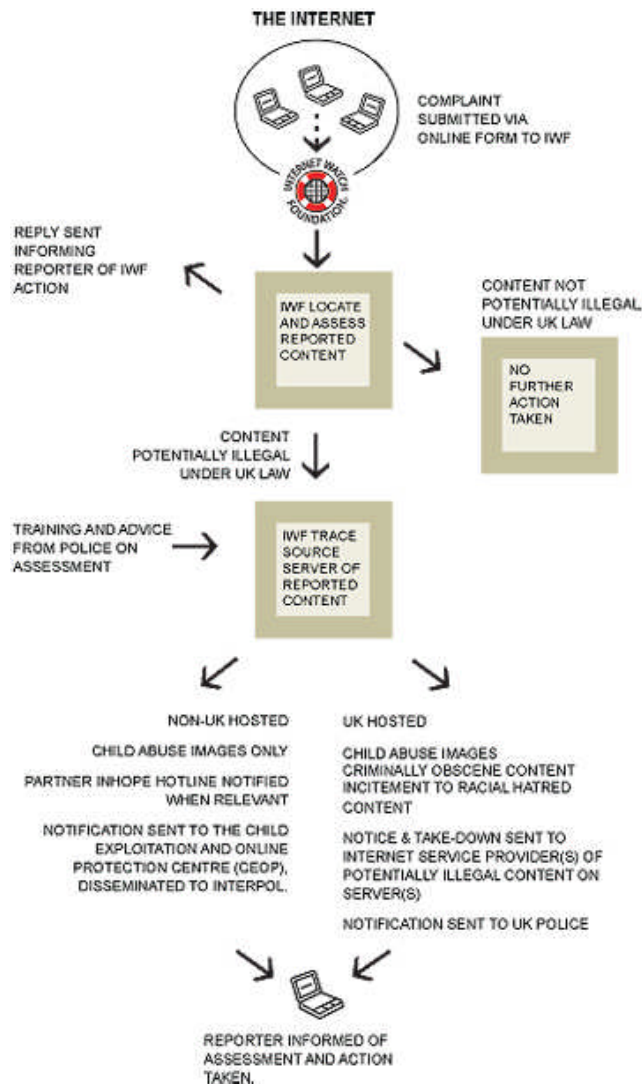
A Full Member that has failed to comply with the requirements of the Code will be reported to the IWF Executive Committee, receive a formal warning and a report may be filed with the relevant law enforcement authority.

Right of Appeal in connection with a Formal Warning

Upon receipt of a warning, a Full Member can appeal to the IWF Board. Notification of an appeal must be made within 28 days of the date of the formal warning.

A sub-committee of the IWF Board will hear all such appeals, and will follow procedures laid out in the Board handbook. The sub-committee will comprise of a minimum of three Board members and will not include members of the Executive Committee.'

Further, '[t]he IWF reserves the right to suspend from membership any Member company that acts in such a way as to bring the IWF into disrepute.' Repeated failure to comply could constitute such behaviour. The code makes clear that the final determination of whether or not content is illegal remains a decision for the law enforcement authorities. Figures for such actions do not seem to be available, perhaps because these procedures have not been used. It is not clear how individuals affected by IWF determinations may make representations.

Figure 12: system in place for dealing with reports (Source: IWF website)

There have been an increased number of reports made to IWF. In 2003, Gringras noted that for the first 6 months of 2002, the IWF's hotline received 8,414 reports of which 25% were judged to be potentially illegal. This was an increase of almost 65% on the previous year's figures.¹⁰⁵ The IWF's Annual Reports likewise show a consistent increase. Thus, 2003 showed a 9% increase in number of reports on 2002, 33% of which were assessed as potentially illegal. Robbins (2007) states that it is "difficult to quantify [effectiveness], complaints are not always of the best quality but provide leads". Furthermore, there is a clear problem with repeat complainants who keep finding illegal sites:

"We try to deter people that are reporting regularly to us quality sites because obviously they are breaking the law – ethically that's the wrong thing to do."

Of the 14,300 reports of suspected child abuse sites were made to the IWF in the first six

¹⁰⁵ Gringras, C., *The Laws of the Internet* (Butterworths, 2003), p. 328

months of 2006 (up 24 per cent on the same period last year), 4,908 were found to have potentially illegal content. According to the 2006 annual report, IWF processed 31,776 reports leading to 10,656 URLs being added to the CAIC.

3.1.6 Outputs

From reviewing the reports on the web site, it seems that the institution has been able to employ more staff over the decade of its operation, suggesting a growing organisation, with certainly an increased case load. Government (and EU) response to IWF has been positive, and there seems to be some developing relationship with the police, the IWF notes that this could be improved. Particular institutional links noted are:-

- Child Exploitation and Online Protection Centre (CEOP)
- Virtual Global Taskforce
- Serious Organised Crime Agency (SOCA)
- The Metropolitan Police Paedophile Unit
- West Midlands Police Hi Tech Crime team
- Greater Manchester Police Abusive Images Unit
- The National Hi-Tech Crime Unit Scotland (NHTCUS).

IWF is involved in international matters, both through funding from SIAP and, indirectly, through the Child Exploitation and Online Protection Centre (CEOP) and its initiatives such as the Virtual Global Taskforce (VGT)¹⁰⁶. CEOP¹⁰⁷ is a much larger enterprise than the self-regulated IWF, with a total budget of about £8million¹⁰⁸. It is part of VGT¹⁰⁹, made up of law enforcement agencies with its aim to build an effective, international partnership to protect children from online child abuse¹¹⁰. Jim Gamble, the Chief Executive of CEOP is the Chair of the VGT. The VGT claims to “delivers low-cost, high impact initiatives that prevent and deter paedophiles from exploiting children online”. In this case study, and given the regulatory nature of the VGT, there is no resource to explore this claim, but note a similar inter-governmental cooperation mechanism is the subject of a case study: the London Action Plan (LAP) Against Spam (see below).

3.1.7 Outcomes

On its website, the IWF comments that the percentage of potentially illegal content assessed by itself and hosted in the UK has been reduced from 18% in 1997 to 1% or less from 2003 onwards: The annual report for 2006 shows that the 1% level for the UK remains broadly steady. As noted in the Hans Bredow report, the web site further lists six cases in which the police have acted on information supplied by IWF and successfully

¹⁰⁶ Internet Task Force for Child Protection on the Internet at <http://www.virtualglobaltaskforce.com/>

¹⁰⁷ CEOP (2007) Annual review 2007. at <http://www.ceop.gov.uk/pdfs/CEOPAnnualReview2007.pdf>

¹⁰⁸ Its Annual review details contributions as: Core Operating Budget (Home Office) £4,500,000 Value of Partnership Resources £3,098,783 Self-Generated Resources (Professional Training Revenue) £300,000 Additional Government Funding Streams (FCO, Home Office) £169,000

¹⁰⁹ <http://police.homeoffice.gov.uk/operational-policing/crime-disorder/child-protection-taskforce>

¹¹⁰ The VGT is made up of: the Australian High Tech Crime Centre, the Child Exploitation and Online Protection Centre in the UK, the Royal Canadian Mounted Police, the US Department of Homeland Security and Interpol.

prosecuted the offenders, though IWF notes that it is not always notified of the outcome in particular cases.¹¹¹ Most recently, the figures for 2006, show that the IWF contributed to 4 arrests and provided 11 evidential statements. Evidence was provided at five trials and a further 11 cases were still under way at the time of the report. The discrepancy in numbers between reports processed and actual arrests/trials is presumably due to the fact that most of the URLs will not have been based in the UK. Further, the report notes that many of the abuse sites have been long-lived, moved domain and consequently changed jurisdiction to avoid prosecution.

The IWF attributes its success in reducing the amount of child abuse images hosted in the UK to 5 factors:-

- Tough laws that prohibit any form of possession or distribution of child abuse images with strong sanctions for transgression
- A sophisticated system to transfer intelligence and information from the IWF to the Police for them to investigate
- A committed and effective Internet Content Service Provider community who remove any potentially illegal content found on their services immediately when notified
- An informed public who report online if they are exposed to potentially illegal online content
- Continued support of IWF by a diverse range of industry funding members.

What impact this has on the provision of such content globally is debatable. The 2003 figures show that child abuse content traced to the US rose by 55% on the previous year and that in relation to Russia, by 5%. The location of much child abuse content in domains found in the USA and Russia was also a constant, as according to IWF's more recent annual report over 82% of content constituting child abuse content were found in these two countries.

Of course much of the effectiveness of the hotline depends on members of the public complaining to the IWF. The KPMG/Denton Hall Review revealed that at that time only 6% of the public had heard of IWF.¹¹² Sutter in 2000 suggested that the increase in numbers of reported sites during the late 1990's could be attributed to growing awareness (and perhaps a measure of its success) of the IWF rather than indicating a rapid increase in the pornography available. More recently, as part of its tenth anniversary, IWF sought to increase public awareness. The campaign seems to have raised awareness amongst the adult internet using population from a baseline of 1% to 10% according to Ofcom's Media Literacy Survey. It has also set up a number of other awareness raising campaigns. There seems to be a certain awareness of the IWF in the mass media: certainly its 2006 Annual Report received press coverage in the major dailies (tabloid as well as broadsheet).

The more recent CAIC blocklist (see INHOPE chapter) is also subject to international

¹¹¹ Details can be found at: <http://www.iwf.org.uk/police/tools.5.20.htm>

¹¹² <http://networks.silicon.com/webwatch/0,39024667,11008420,00.htm>

sharing of the list, considered on a case-by-case basis. This allowed IWF to present itself as a resource for child abuse activities hosted elsewhere outside the UK.

3.1.8 Impact

Although IWF is a charity and therefore must pursue an exclusively charitable purpose, there is a certain commercial value to its activities. Indeed it relies partly on the value of some of its support services for income (and via its subsidiary company). IWF claims to be the only organisation of its type, certainly in the UK.

Within the UK, the IWF now works with several ministries, particularly the Department for Education and Skills on schools filtering; the former Department for Trade and Industry on e-commerce trust; the Home Office on law enforcement; the Justice Ministry on some proposed legislation. Robbins explains that the IWF talks to many policy research bodies internationally, which are typically interested in the co-regulatory partnership. He also reports much US interest. Its 2008 Workplan details its outreach activities:

- 6) build visibility, key messages and profile to the public and other key stakeholders.
 - a. Deliver road-shows in Cardiff, Edinburgh and Belfast by 31st March 2008
 - b. Target a specific group of internet users for a campaign by 31st December 2007
 - c. Engage a PR company to ensure we proactively manage our press relationships within our remit to commence 1st April 2007
 - d. Engage with the media on positive stories for the IWF, including the Annual report launch and other relevant activities
 - e. Seek relevant research opportunities to measure the impact of our awareness raising activities by 31st March 2008

Key activities or outcomes:

- Awareness of the IWF and its remit is raised from Ofcom's research in 2005 of 1% of internet users (Allowing for the assumption that Ofcom will provide contemporary research in 2007/08) by 100% to 2%
- Deliver evaluation research paper on road-shows and campaigns that demonstrate raised awareness of the IWF
- Website visits raised from 20,000 average per month
- Newsletter subscribers show an increase and request for communication material show an increase
- Monitor press cuttings and respond accordingly to maintain media interest in IWF amongst media professionals

8) utilising the additional flexibility and data held by RMSII, develop our unique datasets to improve information and trend reports to our stakeholders and relevant bodies at home and abroad.

- a. Provide regular reports on operational activity to Board and relevant Board committees and Funding Council members
- b. Identify trends and activities and report to relevant stakeholders

Key activities or outcomes:

- Assist our UK and international partners to expedite the removal of potentially illegal child abuse content more quickly.
- Provide reports to CEOP on longevity of websites for consideration by relevant law enforcement agencies abroad
- Provide report to CEOP on Photo-sharing sites and their use by commercial child abuse website operators for consideration by the relevant law enforcement agencies abroad
- Provide report to CEOP on commercial website activity including location and server movement for sharing with relevant law enforcement agencies abroad

10) maintain positive relationships with Government and Law Enforcement agencies

- a. maintain positive relationships with relevant Government departments, MP's and their officials as evidenced by invitations to attend relevant committees and for associated with IWF remit
- b. maintain positive relationships with Law Enforcement agencies.
- c. Represent IWF on Home Secretary's Task Force and its various subgroups
- d. Represent IWF on SUICT and within the educational ICT environment
- e. Represent IWF on the various multi agency such as ICF and CCAI groups
- f. Actively represent IWF at INHOPE and other international forums within our remit

Key activities or outcomes:

- Number of meetings attended
- Communicate developments arising from meetings with relevant stakeholders
- Increasing confidence in IWF as a key partner on relevant issues by undertaking a perceptions audit by 31st March 2008
- Work with INHOPE to deliver a European CAIC database and then extend its activities to include two way reporting functionality.

This last item is particularly controversial, as a European CAIC database has been opposed by EuroISPA and ISPA UK over a long period. We consider this further in the EuroISPA chapter. It demonstrates the degree to which the IWF executive has separated in policy terms from its original fixed ISP constituency in favour of greater intervention and co-regulatory approaches.

3.1.9 Sustainability and Reform

The IWF underwent a governance review commissioned by the DTI in 1998 and carried out by KPMG and Denton Hall. Carr (2007) states that following the 1997 election, Minister Barbara Roche called for the review, on which Carr was a government appointee¹¹³. The review endorsed the notion of self-regulation, so confirmed IWF in its

¹¹³ Carr was also a member of the Policy Board of IWF from 1996, and appointed as Director until 2003.

role in 1998. In December 2000, the UK Government's White Paper following on from the KPMG/Denton Hall Report "A New Future For Communications" summarised—in paragraphs 6.10.1-6.10.8—the current UK self-regulatory model for the Internet based on the work of the IWF and described the IWF as "a model internationally". However, despite the Government's enthusiasm some have expressed further reservations. At the time of the Communications Bill 2003, a board member of the IWF responsible for consumer affairs and whose views differed from the majority, wrote:-

'For the internet, the government appears to be plumping for an industry self-regulatory set-up which does not exist, and which there is no reason to expect to come about spontaneously. In particular, the White Paper's expectations of the Internet Watch Foundation (IWF) are completely unrealistic unless that body is transformed beyond recognition with a new remit and new forms of funding. The IWF does good work in reducing illegal child pornography on the UK internet, but it is currently having troubling financing even this limited activity'¹¹⁴.

He further notes:

It is now reviewing its remit, but there seems little chance of significant expansion.'¹¹⁵

Carr notes that the Home Office became more and more responsible for self-regulation after this review, creating the Home Office Taskforce since 2001, and the Internet Crime Forum, which had a subgroup on chatrooms. In his view, the IWF "is now representative of the consumer and industry but wasn't always". The IWF has to pay close attention to industry's needs and sensibilities, which creates problems regarding conflicts of interest, despite which it seems to work. Moreover, Carr sees the advantage in the UK is that all industry meets on the Home Office Task Force, which creates a co-regulatory forum to exchange information. To his view, part of a US coordination problem on child protection is based on geography, part on anti-trust, but the coordination of the UK Task Force pushed the debate beyond adversarial relations, by which he characterises government-ISP relations in the US.

In the view of Carr (2007), Clayton (2007), Hutty (2007) and Robbins (2007), the major regulatory battle on the board of the IWF was around attitudes to blocking of entire newsgroups and Usenet in 1999/2000. The argument around child porn was maintained very strict and narrow in scope within IWF, if not in Home Office discussions, to avoid any suggestion of E-Commerce Directive liability removal (see further FSM and INHOPE case studies)¹¹⁶. It is of concern and quite understandable that ISPs become nervous in Home Office proposals for anti-terrorist and anti-hate discussions in connection with removal of content and blocklists of proscribed websites.

Peter Robbins was appointed CEO in April 2002, as he puts it he "joined when the IWF was in crisis" with "about a dozen major funders – ISPs". At this point it began taking down whole groups rather than individual posts, against the preferred option of many ISP policy makers who viewed this as a step towards wider censorship of the Internet. In their view, each individual piece of illegal content should be judged on its own merits. By taking

¹¹⁴ <http://www.iwf.org.uk/about/minsbd14-05-02.htm>

¹¹⁵ Antelope Consulting, 'Regulation and the Internet' available at www.communicationsact.gov.uk/responses/Antelope%20Consulting.doc

¹¹⁶ On ISP liability generally see Edwards (2006) and Lemley (2007)

down entire news groups, the IWF was removing many legitimate posts alongside the offending messages. 272 newsgroups have been taken down to date, and newsgroups complaints are now near zero. As a result, IWF analysts are now freed up to deal with web-based content. That decision to take down newsgroups is now seen by Robbins as removing a “resource-intensive futile exercise in view of newsgroup postings going through the roof”. In parallel with the change in policy towards newsgroups, there were new constituencies with more diverse interests than the original fixed ISPs. Together with five major mobile operators joining, search providers also joined¹¹⁷.

As noted in the Workplan for 2008, the IWF has undergone a form of governance review. Charity and operational organisation are now separate. The reform of governance has, according to Clayton (2007), meant the IWF is now less in control of ISPs and more in the charge of the “child protection lobby”, with which Robbins and Carr agree, though from the opposite perspective (they implemented or supported this policy change). The addition of funding from mobiles and search engines has somewhat changed the funding model. Clayton explains that “The mobiles of this world do a lot of blocking, IWF is only a part” and that mobile users until now have not expected to access the whole Internet. Clayton also notes that the SIAP co-funding of hotlines means less financial control lies with ISPs. He contends that the “IWF has a lot of money and not much more to do” though of course a pan-European and UK-compulsory CAIC list would require more resources. The Funding Council stop any move for IWF to change its mandate to distasteful as well as illegal material. The ISP blocking majority there is apparently firm – even with some mobiles on the Council.

Judicial review is possible of IWF procedures and the IWF board asked legal counsel to confirm that IWF is at those times acting in a quasi-judicial capacity. On this basis, blocking by ISPs in the manner of Cleanfeed should presumably be as objective and transparent in process as possible.

The Justice Ministry is currently dealing with legislation that may outlaw cartoon image viewing of child porn and may also be planning to include tracings and drawings (Robbins 2007) which would expand the total amount of illegal content by introducing new categories. Reform on a pan-European basis and through the CAIC list is of immediate interest and is discussed in the case studies on INHOPE and EuroISPA.

In collaboration with members, it will review the Code of Practice by 31st March 2008. It is committed to: “deliver a quality Child Abuse Content (CAIC) service and prepare a discussion document on options for a verification and validation process for members deploying the list.” It also states that it will:

- a. Work closely with members and Licensees to deliver a robust and secure CAIC service upgrading in the light of experience and best practice
- b. Develop policies and procedures to underpin the delivery of the service
- c. Work with IWF Audit committee and external “experts” to audit the processes and

¹¹⁷ An example of service providers extending the remit beyond IWF powers is in search: Google blocks child porn from search results though this is unofficial filtering look on chillingeffects.org which shows the notice in UK. Sites that complain were apparently accused of ‘gaming’ Google: see Wikipedia. Also note Google issues instructions on how to ‘delist’ from being blocked.

polices within the hotline and the CAIC service by 31st December 2007

d. Devise and deliver options and budgets for consideration for the delivery of a validation and verification of the CAIC service with our licensees by 31st May 2007.

It plans to:

“consider options for a new membership funding model for consultation with Funding Council to take account of the diversity of current membership, potential future members and the broader base of our catchment, which includes, ISPs, telcos, filtering companies, search companies etc.”

This would enable it to offer lower-priced CAIC listing to ISPs who claim not to afford the current cost-oriented price (“Supply of CAIC data to ‘small’ ISP’s free of charge or modest contribution viable”) which will be particularly the case should the UK government make CAIC filtering compulsory. Robbins states that the UK CAIC database “list is a dynamic add-removal system at a rate of about 50 a day”. He argues that the block list does not stop paedophiles but stops the general public stumbling upon sites:

Well over 90% of domestic consumers are covered by list ...We would say that there’s approximately 10% of the population that has got alternative ISPs, but the majority of them are covered upstream

by in particular BT Wholesale.

It would be simple but persuasive to characterise a deliberate and quite transparent change during Robbins’ five years as CEO from a self-regulatory ISP-based body to a more co-regulatory police cooperation body. Robbins “see it as a partnership approach” with government. Clayton (2007) argues that:

“Arguably IWF has done what it was set up to do, eliminate child porn from the UK. Now they’re trying to save the world instead of winding the organisation up ...Any right-thinking person would want the sites taken down as soon as possible, but IWF wanted to get them prosecuted”

which involves reporting sites to the police directly, not to ISPs. He reports that many ISPs were very upset at this unilateral action by IWF.

IWF made changes to its constitution and procedures in 2004. Further changes are proposed in the light of the Julia Unwin recommendations, suggesting both the Board and Funding Council Structures will undergo change in the near future.

There is a very sharp difference of opinion¹¹⁸ between Carr and Robbins on the extension of the hotline model of IWF to other countries. Carr (2007) states that:

“Government is still very strongly wedded to the principle of self-regulation ... [it] has worked because of the political culture and traditions of the UK ... a product of necessity as much as choice, if you haven’t got civil servants who knew what the Internet is...if its not broken don’t fix it – so far people trust the IWF”

The conflict of interest is clear – governments have initially to ask industry to explain how Internet self-regulation works, from value chain to technology and points in between.

¹¹⁸ Two directors otherwise notably in favour of greater intervention in the Usenet debates of 1999-2002

Carr's view is that the model is not transferable to many other European countries where "self-regulation is not part of their vocabulary", and instead more legally bound relations between government, police and ISPs are to be found. In answer to the charge that IWF is a 'gold plated' regulator suitable only for the UK, Robbins (2007) responded that:

"On both counts (finance and technical ability) that's rubbish – IWF can be replicated across Europe ... There's nothing particularly technical about any of this".

He believes that training can be done by INHOPE, Europol etc. supported by EC money and CERT/ISP expertise. He believes strongly that combating child pornography more effectively needs a pan-European non-governmental body – a type of super-INHOPE (see below).

3.1.10 Evaluation

The website of the IWF contains much information about the IWF, what it does and to contact it. It would therefore seem to be reasonably open. The IWF is not accountable to Parliament or any other public body. Policy is determined by a board, which has a particular balance so as not to reflect only industry interests. Nonetheless there are concerns. It is not clear how individuals make their voices heard in policy terms, although there is a questionnaire to fill in on the website. Further, although there is an appeal procedure, it is entirely independent as required by the Human Rights Act and by Article 6 ECHR? As the Hans Bredow Study noted, there are questions about whether an individual who wished to challenge a take down notice would be able to bring an action for judicial review; it is not clear whether an individual affected by a take down notice (and not the ISP itself) could challenge that decision within the IWF. There have been comments by NGOs about the problems of using ISPs to enforce the criminal law and the impact not only on access to the courts but also freedom of expression.¹¹⁹ Whilst the UK Government suggested in its 200 White Paper that industry regulation is an improvement on traditional regulation, this assumes that industry interests and those of the citizen coincide exactly, which is not the case. Further, it can be argued that enforced self-censorship is more insidious than traditional censorship, as it is more difficult to detect and challenge. Given both these points, the need to rights of access to the courts for those whose rights have been affected by the IWF is an important point to clarify.

Press coverage of the IWF is unreflective and uncritical; it seems limited to repeating the facts about Internet porn detailed in the IWF annual reports. There is little academic discussion about IWF. The DTI commissioned in 1998 Denton Hall and KPMG to review independently the effectiveness of pornography watchdog the Internet Watch Foundation. The review resulted in a number of changes to the structure of the IWF, as noted. There do not seem to have been any subsequent reviews.

As seen in the INHOPE and EuroISPA case studies, there have been proposals to expand the CAIC list and the technical standards employed to introduce a system of pan-European Internet filtering. Further, legislation to outlaw novel forms of child

Freedom of Expression and Internet Regulation Background paper which aims to draw out the most important questions with regard to Internet regulation and freedom of expression, including access issues, content regulation and monitoring and surveillance. 19/10/2001 See also submission to House of Lords: <http://www.cyber-rights.org/reports/crcl-hl.htm>

pornography imagery is being contemplated, as well as new forms of illegal content such as glorification of terrorism and xenophobic material. The effect of these policies on IWF must be very much an open question as to whether this increases the scale and scope of its activities and a specific evaluation of this policy is to be recommended.

3.2 Hotlines (Europe): International Association of Internet Hotlines: INHOPE

INHOPE

Researcher: Chris Marsden

INHOPE is the pan-European hotline association, formed in 1999, based in Dublin and most recently expanding rapidly to 28 members across Europe and worldwide. It has never represented hotlines from all European Union member states. Its primary role is in training and coordination, and the majority of its funding is guaranteed by the Safer Internet Action Plan, as well as Microsoft. It has 5 full time staff and a budget of under 1 million€ per annum. Recently, members and governments have proposed a pan-European coordinated blocklist similar to the UK CAIC list discussed in the IWF example. This would expand and change the organisation's remit. It is evaluated by the SIAP.

Table 19: Summary of INHOPE Case Study

Was there a government mandate initially?	Yes, EC funding
What kind of government involvement is there?	Continued EC partial funding
Which other stakeholders are involved and how?	General Assembly of members
How is transparency ensured?	Web publication of proceedings – website sparsely updated
What is the enforcement mechanism, is it effective, at what cost?	None currently except expulsion for non-paying members and vetting of new members
What is the relative size of administrative burdens?	Low membership fee, no practical administration currently.
Is financial independence assured/how?	Continued dependence on EU.
Which internal factor most impacts success?	Expanding mandate to create pan-European blocklist critical move towards regulatory impact
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: relationship with EU and national police forces. Market: adoption of 'Cleanfeed' type system. Technology: development of new filtering standards in e.g. ETSI.
Lessons for European policy	Widening membership approach effective, significant new efforts to address user community with blocklist. Danger of loss of extra-European focus in new filter approach and pan-European proposals.

3.2.1 Interests and Policy Needs

INHOPE was founded officially in 1996, but established as an ongoing concern in 1999, funded by the EC Safer Internet Action Plan. It follows previous best practice developed in for instance UK (IWF), Germany (FSM) and Netherlands (a hotline which became NICAM), and acts as a coordinating mechanism for national hotlines to report and take down child pornography on the Internet. The use of European Commission funding for

both partial funding of national hotlines and INHOPE is an example of the ‘soft power’ that can be exerted by the European Commission.

3.2.2 Design & organisation of the Institution

INHOPE is the pan-European hotline association, formed in 1999, based in Dublin and most recently expanding rapidly to 28 members across Europe and worldwide. It has never represented hotlines from all European Union member states. Its primary role is in training and coordination, and the majority of its funding is guaranteed by the Safer Internet Action Plan, as well as Microsoft.

Stakeholder involvement works as follows:

1. Member associations have wide relations with government/law enforcement/industry and others. INHOPE staff make two to three field visits to meet with stakeholders of potential members.
2. INHOPE in 2004 signed a Memorandum of Understanding with EuroISPA – which is example of international outreach.
3. There is no direct outreach with consumer groups as such.
4. Microsoft gives free software and otherwise supports INHOPE.
5. INHOPE has direct relations as Observers in the Interpol ‘Crimes against Children’ sub-group – as also with the Council of Europe and OSCE. Sustainability is difficult in these groups with such a small policy staff.

It has published three activities reports, available at its website¹²⁰.

3.2.3 Inputs

INHOPE has fully audited reports from auditors in Netherlands, which are filed and distributed to members.

It has 5 full time staff based in Dublin, Ireland.

2005 income was 533,692€, 2006 income 397,175€ with 157,992€ due to be paid¹²¹. Therefore, overall income increased slightly. INHOPE has a 30 month contract with the European Commission for 995,000€, which is 80% funding of its total income – the total budget is thus about €1.25m over the period. This expires 28 February 2009.

3.2.4 Activities

It conducts the following activities:

1. Hotlines
2. Training - e.g. for Europol and Interpol
3. Publications
4. Lobbying

¹²⁰ INHOPE (2006) Towards Online Safety: Taking action today, ready for tomorrow, Third Report January 2006.

¹²¹ Source: supplied to RAND Europe by INHOPE; Accounts of Horlings, Brouwer, and Horlings, of Amsterdam (2006) Annual Accounts of INHOPE Association.

5. Advice

INHOPE has 27 members in 25 countries, with six organisations asking to join, 7 having joined in 2005.

Table 20: INHOPE Members mid-2004¹²²

Country	Membership Status	Organisation Name	Web Address	Membership Date
Australia	Full	ACMA	www.au.inhope.org	1999-11-01
Austria	Full	Stoplevel	www.at.inhope.org	1999-11-01
Belgium	Full	Child Focus	www.be.inhope.org	2001-01-09
Bulgaria	Provisional	ARC Fund	www.bg.inhope.org	2006-10-08
Canada	Full	cybertip.ca	www.ca.inhope.org	2005-05-12
Chinese Taipei	Full	ECPAT Taiwan	www.tw.inhope.org	2005-05-12
Cyprus	Full	Safeweb	www.cy.inhope.org	2005-10-19
Denmark	Full	Red Barnet	www.dk.inhope.org	2002-01-05
Finland	Full	STC Finland	www.fi.inhope.org	2002-01-09
France	Full	AFA	www.fr.inhope.org	1999-11-01
Germany	Full	ECO	www.de.inhope.org	1999-11-01
Germany	Full	FSM	www.de.inhope.org	1999-11-01
Germany	Full	jugendschutz.net	www.de.inhope.org	1999-11-01
Greece	Full	SafeNet	www.gr.inhope.org	2004-02-05
Hungary	Full	MATISZ	www.hu.inhope.org	2005-05-12
Iceland	Full	Barnaheill	www.is.inhope.org	2001-01-09
Ireland	Full	ISPAI	www.ie.inhope.org	1999-11-01
Italy	Provisional	HOT 114	www.it.inhope.org	2006-06-19
Italy	Full	STC Italy	www.it.inhope.org	2003-01-23
Japan	Provisional	Internet Association Japan	www.jp.inhope.org	2007-03-01
Malta	Provisional	APPOGG	www.mt.inhope.org	2006-10-04
Netherlands	Full	Meldpunt	www.nl.inhope.org	1999-11-01
Poland	Full	NASK	www.pl.inhope.org	2006-02-16
Slovenia	Provisional	Spletno Oko	www.si.inhope.org	2007-03-01
South Korea	Full	KISCOM	www.kr.inhope.org	2003-10-19
Spain	Full	Protegeles	www.es.inhope.org	2002-01-05
United Kingdom	Full	Internet Foundation Watch	www.uk.inhope.org	1999-11-01
United States	Full	Cybertipline	www.us.inhope.org	1999-11-01

¹²² See www.inhope.org for details.

3.2.5 Enforcement

‘Enforcement’ is essentially by expulsion of membership if members fail to renew and pay their fees. Callanan explains that “Brazil and Lithuania both withdrew, as they didn’t pay their fees. In Sweden, the hotline collapsed and the new replacement hotline chose not to join.” Fees were 6000€ until 2006 and now €6300 (€2000 first year) – half of that can be reclaimed from the EC for European hotlines. Within INHOPE and its members, there are obviously minimalist and maximalist camps: should it help set up pan-European systems or stick to increasing members and training new hotlines? Callanan explained that:

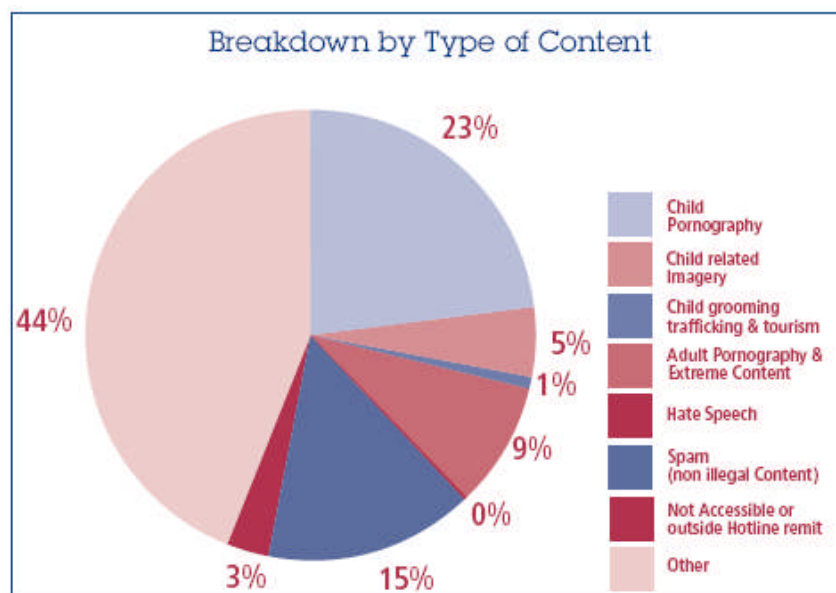
“I am of the opinion that self-regulation has failed, not because it doesn’t work but because no-one believes in it anymore. One because governments see it as a stop gap until they get their own systems in place. Second and more dramatically because its now a commercial advantage to be a self-regulatory organisation – Bebo, Microsoft, Vodafone. Its become a competitive differentiator.”

He outlines the fact that the broadening of the number of key interlocutors in the citizen’s use of the Internet means that filtering and censoring of the Internet could become widespread with “systems that have a dramatic impact on free expression in the Information Society”, which he submits applies to content and application providers such as Google, AOL, Yahoo!, Microsoft, as well as incumbent ISPs. The lack of enforcement for hotline activities, and INHOPE’s role as coordinator of hotlines but not enforcement, is a source of obvious tension between governments and industry.

3.2.6 Outcomes

Reports to INHOPE members in 2005 were collated and analyzed, producing the following breakdown of types of report.

Table 21: Reports by type of content, Source: INHOPE (2006) p11



3.2.7 Outputs

INHOPE contributes to the EC Safer Internet Forum with all the SIAP-funded programs.

There is little industry involvement in the Forum, except UK-based Vodafone, BT, Yahoo!, all of whom have suggesting rolling out their best practices across Europe. He notes that Telefonica has done lots of good child safety work but never turns up to the Forum.

3.2.8 Impact

The 3rd INHOPE Report states the difficulties in applying common standards in different countries, even the then-19 members from the European Economic Area:

In Europe alone, the age of a “child” ranges from 14 to 18 years of age. In some countries knowingly possessing child pornography is also a criminal offence. Sometimes the definition of child pornography includes computer generated or altered images and even cartoon characters¹²³.

The September 2007 INHOPE survey states:

“This report is the first step towards a global action plan to eradicate illegal activity from the internet. It is a landmark publication for policy makers, governments and Industry.”¹²⁴

Its statistics for the period September 2004–December 2006 show the INHOPE members received 900,000 reports from the general public, and in total members processed 1.9 million reports. Only 8% (160,000 reports) were forwarded to law enforcement agencies for action – an average of 5,800 per month. 21% of all processed reports were about illegal or harmful content (20,000 per month). As a result, based solely on reports received, the report claims that child pornography grew by 15% per year; and racism and xenophobia websites grew by 33% per year. It is not clear to what extent this crime reporting reflects the wider population using the Internet and to what extent it reflects the greater success of hotlines in attracting visibility amongst Internet users.

One of the key decisions for pan-European harmonisation of a CAIC-type hotlist is the differing interpretations of “child” for child pornography purposes, and the nature of any crime committed, whether simply by viewing, by purchasing or only by creating child pornography.

Christiansen (2007) suggests that AOL would be an ideal candidate for a pan-national Code of Conduct: with particular contribution to the regulatory interface between France and Germany. He observes that there used to be big cultural differences on anti-piracy e.g. in France, a very different policy to elsewhere. By contrast, the UK has very strong lobbies on child pornography (shared with Scandinavia), but in Germany there is “almost no pressure” politically on child pornography as compared with the hot issue of racism and xenophobia. Framework conditions are therefore very different in these countries. AOL, used to have local decisions on national markets but now is increasingly pan-European in approach. The fact that it is a content provider, an ISP without access business, helps create this new policy.

Callanan also points out the very different moral standards in different countries: in the

¹²³ INHOPE (2006) at 10.

¹²⁴ Callanan, Cormac and Nikos Frydas (2007) INHOPE Global Internet Trend Report at http://www.saferinternet.org/ww/en/pub/insafe/news/articles/0907/2007_inhope.htm

UK, child chatroom ‘grooming’, in Spain adolescent anorexia/bulimia, in Germany Nazi and hate speech, in Ireland stricter pornography rules than the UK, in Norway suicide sites. He therefore believes that “Homogenisation is not an option, best practices are.” He notes the differences between Scandinavia and UK, in that UK filtering systems do not currently allow for police intervention, but Scandinavian models do. The UK model is regarded as most technologically advanced, where the rest of the world uses DNS filtering (including in China). Filtering to block access to child pornography is a debate that’s not properly been had in Ireland. He states that filtering:

“creates its own accountability and transparency issues. It demonstrates a crying need for audit. Filtering is such an enormous policy and social decision in individual countries.”

This concern is shared with other experts Hoff, Clayton and Carr, despite different policy perspectives. Clayton explains that different national legislation affecting child pornography includes that the IWF will list ‘photo realistic’ material (realistic fakes) as illegal – but different countries have different rules. This is a problem that continues from previous harmonisations, for instance on the age of sexual consent when drafting the Cybercrime Convention – differences between 14 and 18 existed in Europe. He argues that:

“If anything the IWF is underblocking in order to maintain legality and its role as honest broker.”

3.2.9 Sustainability and Reform

The Advisory Board to INHOPE provides industry input and most recently pressure to:

- provide a pan-European URL list modelled on the UK CAIC list and Scandinavian equivalents;
- give search engines a list of banned terms in all European languages.

Mobiles and ISPs appear to be pressurizing INHOPE more than governments directly, according to Callanan (2007). He argues that as INHOPE is not an operational organisation but a coordinating organisation, if it took such systems and put them in place, it would fundamentally change.

Robbins (2007) analyzes the problems for pan-European hotline cooperation on lists of banned sites as:

- Resource and in particular finance gaps, often solved by Microsoft and the Safer Internet Action Plan supplying 50% funding each;
- Legal status for different private organisations to share information. UK is pragmatic but others worry about the constitutional position in sharing child porn information across borders, particularly between police forces and civilian bodies.
- Cultural attitude towards civilian hotlines differ – many countries prefer to have statutory law enforcement bodies involved. So that becomes a non-starter, particularly where hotlines are very small and somewhat distrusted by law enforcement: credibility gaps exist between professional police officers and civilian hotline staff.

His analysis is that this is due to the scale of problem – research can be undertaken into

total reports, but duplication must be removed: “We need a European database of these URLs, to check if its been reported or actioned” as hotlines have more data than the police, and there is substantial duplication currently between hotlines. He strongly believes the national hotline effectiveness cannot be accurately measured without pan-European cooperation, and that the metric for effectiveness should be ‘put down’ of damaging content:

“That is meaningful information – but what it requires is international coordination - they’re creating skeleton websites and waiting for people to join ...The only way to cope with the sophisticated criminals is to strip out the quantity and get after the quality”.

UK: the IWF is attempting to assuage criticisms of the blocklist based in inadequacy of appeal against incorrect banning of sites, by developing self-certifying validation and auditing programme for use by ISPs – to confirm deployment of the system. Compliance managers will report to IWF that they have checked. Contractual requirement to audit will follow over next 12 months. Robbins states that:

“Generally speaking there is huge consensus that this is wrong, but when it comes to privacy, copyright, terrorist material, its very difficult to argue (if its legal to look at it) that it should be blocked by government. That’s why we’ve had no remit creep in our work.”

Clayton expresses a policy analysis, that the reason for continued extension of the blocking system despite technical, legal and natural justice concerns is the media climate surrounding child pornography. Hence there is little or no pressure to independently examine whether blocking can work – or how it might be extended. ISPs don’t want to block except the big incumbents who can afford it and want to be seen to be conforming, not least to conform to the expected regime under the AVMS Directive.

Norway: is currently trying to introduce filtering of suicide sites, sites which are actually NOT illegal under Norwegian law. (This refers to the media-described practices of ‘suicide predators’ – aiding and abetting suicide). Hoff suggests that:

“What is really needed is a White Paper on what to block, best practice in filtering, and freedom of speech standards...We are basically eroding freedom of speech from within at a very very disturbing rate if we expand beyond child pornography into sites that display racism, suicide and so on.”

France, Portugal and Australia have specific laws against suicide advocacy which is symbolic legislation with no prosecutions/case law. However, websites have been closed down in Australia¹²⁵.

France: Law n° 2004-575 relating to trust in the digital economy, Article 6 paragraph I – 1 states that¹²⁶:

"Persons whose activity consists in providing public access to online communication services must inform their subscribers of the existence of technical means to limit access to

125 He refers to the cycle of media-induced legislative excitement which is emerging in Norway, with a recent conference on suicide and new media (Internet suicide pacts etc). He was recently commissioned to write a legal opinion written for University of Oslo, in which he stated that it is impossible to stop pro-euthanasia information from being published on the Internet.

126 Naudin, Flor (2007) INSAFE Newsletter: French internet service providers (ISP) obliged to offer free parental control software, 28 September at <http://www.saferinternet.org/ww/en/pub/insafe/news/articles/0907/fr.htm>

certain services or must select and provide their subscribers with at least one of these means".

Naudin states that:

The law has since been reinforced by an agreement between the authorities and the ISPs. On 16 November 2005 the AFA (Association of Internet service providers) represented the latter in, a commitment to the Minister of Family Affairs to supply their subscribers with free-of-charge parental control software before the end of the first quarter 2006. This initiative was the first of its kind world-wide ... the parental control software is tested under the supervision of the Delegation on Internet Usages (DUI) and the Interdepartmental Delegation on Family Matters (DIF).

Benhamou (2007) states that self-regulation is not possible sometimes from a French government perspective, and the public interest has to be protected, but the Internet itself does not have to be regulated. He notes the difference between transparency, multi-stakeholder activism and independence in democratic and non-democratic states. He states that "we must avoid Chinese attempts to censor in advance using Western technologies, and even reinventing technologies that can be re-exported back to the West". He believes that the end-to-end interoperable and neutral Internet must be the aim. A major problem with end-to-end is filtering by ISPs not by end users. To Benhamou: "That's censorship."

Italy: mandatory blocking has been adopted in law but not fully in practice, arguably in breach of Article 15 of the E-Commerce Directive, which prohibits governments from enforcing filtering obligations on content hosts.

Clayton, Callanan and Hoff note that ETSI is attempting standardisation on child protection services. Callanan suggests that:

"Everyone saw the glory that BT got for their solo run on Cleanfeed – and decided to follow as a marketing tool".

ETSI is following this lead, but as major incumbents have already invested and got a lead in technology, there may be resistance. Auditing the outcome of this technological development may well be essential in determining the success (and indeed over-extension) of audit in this area.

3.2.10 Evaluation

The total number of INHOPE members is rising fast, and the diversity of views, subjects and language skills create a potential danger of sclerotic decision making, according to Callanan. Interviewees expressed the belief that INHOPE provides excellent value for money, but should be more committed than ever to transparency, outreach and accountability, and not just to its EC funders but also to stakeholders.

It has had substantial and consistent backing, but also some organisational frustration:

1. Unique commitment by the SIAP has provided regular funding over 10 years.
2. INHOPE as a Non Governmental Organisation not a company creates some unique difficulties in its audit submissions for that funding.
3. Netherlands rules mean only 7500€ per annum can be retained.
4. Computer equipment for people is not allowed by the funding, but servers are.

5. The remaining 20% of budget is raised from membership fees – also some training donations from Microsoft.

3.3 ISPs (Europe): EuroISPA

EuroISPA

Researcher: Chris Marsden/Ian Brown

EuroISPA is the pan-European ISP association, formed in 1999, and based in Brussels. It is a very small (3 person) organisation, has fewer members than INHOPE, and is funded by those members. It opposes any pan-European blocklist, and encourages pan-European ISP cooperation, to which end it signed a memorandum of Understanding with INHOPE in 2004. Several member associations have adopted filtering as a self-initiative (larger UK ISPs) or under co-regulation (France, Germany, Scandinavia). Nevertheless, with varying technical flaws in filtering, EuroISPA's position is to oppose such ISP-based censorship on principle.

Table 22: Summary of EuroISPA Case Study

Was there a government mandate initially?	No – but lobby responds to EC legislative-regulatory activity
What kind of government involvement is there?	Continued lobbying of European institutions
Which other stakeholders are involved and how?	None formally
How is transparency ensured?	Web publication but several members-only sections– public areas of website sparsely updated
What is the enforcement mechanism, is it effective, at what cost?	None currently except expulsion for non-paying members and vetting of new members
What is the relative size of administrative burdens?	Lobbying organisation not SRO
Is financial independence assured/how?	No - Dependent on members.
Which internal factor most impacts success?	Expanding mandate to create pan-European blocklist critical move towards regulatory impact
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: relationship with EU and national police forces. Market: adoption of 'Cleanfeed' type system. Technology: development of new filtering standards in e.g. ETSI.
Lessons for European policy	Widening membership approach effective, significant new efforts to address user community with blocklist. Danger of loss of extra-European focus in new filter approach and pan-European proposals.

3.3.1 Interests and Policy Needs

EuroISPA is a lobbying group working on behalf of national ISP associations and other affiliated bodies (for instance Internet Exchanges such as LINX and the Amsterdam Internet Exchange). The issues it lobbies the European institutions about include: cybercrime; data protection; e-commerce regulation; telecoms regulation; safer Internet use (EuroISPA 2004). As a trade organization, it is technocratic and market-driven but not in itself performing a public function (Hutty 2007). They emphasise that the fact remains that ISPs are typically printers not publishers.

3.3.2 Design & organisation of the Institution

Established 1997, EuroISPA is the pan-European association of European ISPAs. It is the largest ISP association in the world (approximately 1000 ISPs). Nash states its self-regulatory position¹²⁷:

EuroISPA ... shares and supports initiatives aiming at creating a safe environment for minors in the internet both through the establishment of appropriate legal and technological solutions but also through the work of organisations such as the Insafe network dedicated to raising awareness.... EuroISPA considers that the most effective solutions to protect users should be as close to the end-user as possible. This underlines the importance of awareness raising to promote, above all, media literacy...

It is clear that regulation drawn broadly does raise different standards of public scrutiny and inclusiveness/transparency than such a closed lobbying body. A question for any new public role for EuroISPA (see below) would be: how do you decide whether to plum for an industry closed body versus an open SRO with multi-stakeholders and discussions? Obviously different types of purpose will determine the design, and there are hybrids between the fully-fledged regulatory body of the KJM, PEGI or IWF type, and the closed lobbying body of the EuroISPA type.

It is one of a group of such lobbies on Internet network issues, together with the European Telecoms Network Operators (ETNO) association, the European Competitive Telecoms Association (ECTA), the Global System for Mobile (GSM) Association, European Cable Communications Association (ECCA) and EDiMA. Indeed, the four groups have occasionally cooperated on lobbying regarding European laws on content regulation, such as the Data Retention Directive 2006 and the proposed Audio Visual Media Services Directive in the course of 2007. More usually, the different lobbies adopt more contrary positions, reflecting their respective memberships' interests. While a vital stakeholder group in European Internet regulation, one cannot see EuroISPA as a regulatory group in itself therefore.

ISPs and their content hosting partners are the key link between content and end-users and therefore their position as the only feasible point of control for governments who wish to block or filter content that is considered unsuitable for end-users. This places both national and European ISP lobbies in a pivotal policy position. EuroISPA has recognized the development of a European network of hotlines to remove illegal content in its 2004 memorandum of Understanding with INHOPE¹²⁸. Then-President of EuroISPA Michael Rotert announced the MoU as a "formal statement of support" for hotlines, and "a further significant step in this cooperation" with international bodies in combating illegal content.

3.3.3 Inputs

Location	Chief	Founded	Directors	Funding
Brussels	Secretary general Richard	1998	One per member	Via national members

¹²⁷ Nash Richard (2007) INSAFE Newsletter, September, http://www.saferinternet.org/ww/en/pub/insafe/news/newsletter/newsltr_archives/2007_september.htm

¹²⁸ EuroISPA-INHOPE (2004) "EuroISPA and INHOPE lay foundations for cooperation" of 28 January

	Nash		country	
--	------	--	---------	--

Secretariat in Brussels: 3 full-time staff

Structure: Governed by a Council: 1 representative from each country member

The budget of EuroISPA is filed nationally, with statutory filing in Belgium. The Treasurer sees no reason why it should necessarily be transparent given the function it serves: its not a charity, but a lobbying group (Hutty 2007).

EuroISPA Industry Forum

Aims (according to statutes):

- To represent the European ISP industry on EU policy and legislative issues;
- To facilitate the exchange of best-practice between national ISP associations.
- On practical/industry issues;
- On how to deal with difficult policy questions.

The Annual Report is only distributed to members.

EuroISPA has a quarterly council meeting, and an AGM.

3.3.4 Activities

The move towards either national or ultimately pan-European lists of blocked content to be filtered by ISPs before end-users can receive the content is the key to policy making controversy and any potential regulatory role for ISP associations. It is possible to imagine two circumstances which would make ISP associations part of a co-regulatory scheme, where:

- national ISP associations to introduce a binding requirement on their members to conform to an industry Code of Conduct on filtering, and
- government to make membership of such an association a legal requirement to permit ISPs to operate inside their boundaries,
- then a form of co-regulation could be seen.

The first part of such a move could be seen as a form of self-regulation without government intervention except in a potential policy partner role, and this is seen in for instance the UK ISPA requirement that its members join the IWF and support the operation of its child pornography hotline. Arguably, the extension of this hotline function into new areas, as proposed by both the UK government and the IWF executive management, could involve ISPA in an (unbidden) role as part of a wider co-regulatory scheme. Nevertheless, absent any compulsion for ISPs to join ISPA, that would be a very weak form of co-regulation. It is the case that virtually without exception, UK ISPs join ISPA, LINX (the London Internet Exchange) and NOMINET, as a matter of commercial commonsense, and which act as introductions to the industry and an almost de rigueur mark of minimum good faith in inter-ISP negotiations, to the extent that it would be very difficult to imagine an ISP not joining both organizations.

This example is by no means universal in Europe. ISP associations in the majority of European countries have not joined EuroISPA and serve no wider policy function. Where police impose a direct duty on ISPs to filter according to hotlines funded only by non-ISP partners (typically in Eastern Europe joint funding by the SIAP and Microsoft), then direct regulation would be in place. Where no such duty exists, Internet users could report directly to hotlines, and of course ISPs are still under a duty to report potentially illegal sites to the police directly or such a hotline. Nevertheless, without a well-funded and widely accepted hotline supported by industry, the need for an ISP association is a lobbying need. Furthermore, in countries with relatively fewer ISPs than the UK or Netherlands, it may be that those few large ISPs either represent themselves to government and policymakers directly, or through national telecoms and cable associations. Therefore it is not possible to generalize regarding the state of ISPA relations with government. We can note those three models:

1. ISPA funds national hotline and lobbies government on behalf of wider industry;
2. Self-regulatory hotline funded by SIAP and/or individual multinationals with little local ISP management involvement;
3. ISPs required to directly filter through police/hotline resources regulated by law.

There may be other hybrid arrangements but our initial analysis suggests these three models capture the main flavours of ISP-government regulatory arrangements.

ISPs are self-regulating in an environment conditioned by the 1997 settlement of the Recommendation on the Protection of Minors, which recommended governments to ensure they individually or collectively adopt Codes of Conduct on illegal and harmful content. This was supported in the settlement of the E-Commerce Directive. While several major pan-European ISPs as well as incumbent cable/telecoms operators have the resources to develop their own policies individually on a bespoke basis tailored to their market needs (for example, Microsoft, AOL, Yahoo!, France Telecom under its Wanadoo brand, T-Online, British Telecom, Tiscali), where there are many small ISPs, an ISPA formation can make sense in achieving scale and scope economies in designing best practice documents for the industry membership. As Codes of Conduct are in general widely available, it is not a major expense to adapt previous designs for current practice. To this extent, one can describe ISPA as helping members' self-regulatory policies.

The more controversial role of ISPA and therefore EuroISPA relates to potential binding rules on ISPs to filter content according to police requirements, whether the list of banned sites is delivered by the hotline or by the police directly. Since 2004-5 and the BT Cleanfeed/Scandinavian blocklist launches, concerted attempts have been made to persuade EuroISPA of this change of policy, and for as long EuroISPA has resisted such proposals. There are three major reasons:

1. Principled objection on the grounds that EuroISPA is not a regulatory body, nor are national ISPA, and therefore they will not take on such a changed role;
2. Objection to the censoring of content both on freedom of expression grounds and, inter-related but more narrowly, on grounds that it may breach the ECD requirements that governments not introduce laws to filter content;

3. Technical concern that such attempts do not achieve their purpose with sufficient focus and can easily be extended to block other content, while failing to discourage users from adopting technical circumvention of the blocking.

These three arguments are well-rehearsed and have applied for the entire public policy history of the Internet. The E-Commerce Directive entrenches them, and the *Yahoo! V. France* case may have created a precedent for ISP blocking on court order and in accordance with national law, but not for industry-wide schemes absent such clear illegality. What has changed more recently is:

- the strengthening role of ISP hotlines and the wide public and political acceptance of the strength of their procedures,
- the technical solutions offered by BT and others as well as the vendors of filtering systems, and
- the political impetus towards filtering and surveillance of content created since 2000 by both:
 - i. police and anti-terrorist legal requirements, and
 - ii. the continual litigation against Internet content hosts and their users (primarily on copyright and defamation grounds).

Callanan (2007) states:

“Governments have completely abdicated their responsibilities for regulating the Internet, in favour of instructing private companies that can breach the human rights that governments would not do publicly.”

EuroISPA continues to defend its principled objections in the face of these pressures, as do national ISP associations.

3.3.5 Enforcement

EuroISPA is opposed to regulation of illegal content via compulsory blocklists for ISPs. What follows is an analysis of national enforcement schemes, industry self-regulation schemes and their costs and benefits.

Several European states have laws against Holocaust denial, while many ban materials promoting racial hatred. These prohibitions have been harmonised in a 2003 protocol to the Council of Europe Cybercrime Treaty of 2001. Signatories must criminalise the making available of:

“any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as pretext for any of these factors...[and] ...material which denies, minimises, approves of or justifies crimes of genocide or crimes against humanity” (Council of Europe, 2003).

Brown (2007) states that:

In a piecemeal fashion, courts and governments in France, Germany, Switzerland, Finland, the UK and Italy have ordered ISPs to filter their users’ access.... However, the application of such restrictions to Internet Service Providers has yet to be tested against European law

that generally protects ISPs as “mere conduits” of information and limits EU member states’ capacity to regulate ISPs (Hutty, 2007).

France: The Superior Court of Paris in 2000 ordered Yahoo Inc. to block the sale of Nazi items to French users. The court found that by providing access to French citizens, Yahoo US was subject to French law; that nothing in the 1st amendment prevented Yahoo from being selective about its auctions; and that blocking access to French citizens was technically difficult but not impossible (Reidenberg 2001). Yahoo has attempted to comply, but also obtained a Californian court declaration that ruling had no effect on a US corporation. Court experts gave evidence that Yahoo could block French users from certain auctions with 70-80% efficacy, but one of the three experts later amplified his reasoning as follows:

My answer was, in essence, this: no, compliance is impossible. But I was not allowed to leave it at that; remember that if it was not possible to comply completely, I was asked to say to what extent compliance is possible. The best that can be achieved is a rather flakey guess at nationality, using IP address or domain name (we estimated this was around 80% accurate for France, with some obvious huge exceptions, like AOL subscribers). Failing that, one can simply ask the websurfer whether she’s French, and, if so, plant a cookie to that affect.

Of course, both of these can be trivially circumvented. The first by using an anonymizer, for example <http://www.anonymizer.com/> (note that I am in no way recommending this particular one, it just happens to be the first I found, after 10 seconds of searching), or by signing up for AOL. The second can be avoided simply by lying. (Laurie, 2000)

Germany: The district of Düsseldorf in Germany in 2002 ordered 78 Internet Service Providers in North Rhine-Westphalia to block access to two US-hosted Nazi websites (Privacy International, 2003, p.79). A series of contradictory rulings in lower courts led the higher court in Münster to uphold the order, which is being appealed to the German Supreme Court (Dornseif, 2003).

Scandinavia: The Finnish government has encouraged ISPs to implement a “voluntary” system that blocks access to secret list maintained by the police of IP addresses hosting websites suspected to contain child pornography. Unlike similar systems in neighbouring Sweden and Norway, users will not have any choice whether their access is filtered; but the Finnish constitution would make it difficult for an openly mandatory system to be imposed by the government (Lehdonvirta, 2005). Save the Children, ISPs and the Danish police have cooperated to set up a blacklist of sites which are “voluntarily” blocked once police validate that a site should be on the list and notify this fact to ISPs (Jorgenson, 2006).

A Norwegian legislative study group decided against a proposed solution, to have filtering supported by the legal system, so every domain or computer to be filtered will have a fair trial in a public court. Norway has ratified the European Convention of Human Rights, so courts will not be able to block political sites in violation of free speech. One of the members in the study group said: “[If we pass this as law], we will send a signal that Norway want to be outside the information society, and not take part in the Internet

economy.”¹²⁹ Sandberg states¹³⁰:

This is a volunteer solution that some of the large ISPs are using. This filter is maintained by the police (Kripos) and is mainly targeted at sites that accept money for material that shows maltreatment of children. The proposal will actually make this filter less intrusive, as the courts, not the police, will decide what to filter. That will probably make the filter less effective, too, as a trial will take a lot of time.... the majority of the Panel (4 out of 6 members) is to not require any filtering by law. The majority's view is actually thoroughly described in the proposal, where arguments about lack of effectiveness, conflict with free speech and the principle that ISPs should not take the cost for filtering is included.

The study group reaches consensus that total effectiveness is not possible nor expected:

“The minority agrees with the majority that a measure of this type will not give 100 percent effect, as there exists technical by-passing possibilities. Still, at the same time, this is the case for most measures in the struggle against computer criminality. Even if the effect will not be 100 percent with a filter, it can be considerable. If one can stop most of the illegal traffic with a filter, a lot will be achieved.”

UK: In the UK, British Telecom and other large ISPs block customer access to sites that have been identified as containing child pornography by industry self-regulatory body the Internet Watch Foundation (Clayton, 2005). In May 2006 a Home Office minister told Parliament that other ISPs would be required to implement similar controls:

It is clear from the various meetings that Ministers have had with the ISPs, that the industry has the will to implement solutions to block these websites. Currently, all the 3G mobile network operators block their mobile customers from accessing these sites and the biggest ISPs (who between them provide over 90 per cent. of domestic broadband connections) are either currently blocking or have plans to by the end of 2006.

We recognise the progress that has been made as a result of the industry's commitment and investment so far. However, 90 per cent. of connections is not enough and we are setting a target that by the end of 2007, all ISPs offering broadband internet connectivity to the UK general public put in place technical measures that prevent their customers accessing websites containing illegal images of child abuse identified by the IWF. For new ISPs or services, we would expect them to put in place measures within nine months of offering the service to the public. If it appears that we are not going to meet our target through co-operation, we will review the options for stopping UK residents accessing websites on the IWF list. (Hansard, 2006)

The Home Office has stated that filters could be extended to other topics such as the “glorification” of terrorism:

At present, the government does not propose to require UK ISPs to block content and our policy is to pursue a self-regulatory approach wherever possible. However, our legislation as drafted provides the flexibility to accommodate a change in Government policy should the need ever arise. (Hutty, 2006)

129 Norwegian Parliament study group on Internet filtering law proposal at NOU-2007-2: <http://www.regjeringen.no/nb/dep/jd/dok/NOUer/2007/NOU-2007-2/6/13.html>

130 Sandberg Simen E. (2007) Subject: Re: [IP] The Great Firewall of Norway " Date: February 13, 2007 11:34:56 AM EST To: David Farber dave@farber.net Interesting People discussion list.

Filtering Technologies to Block Websites

The Internet was designed to allow the efficient transmission of information between networks around the world. Its basic functionality does not include censorship. Internet Service Providers required to block access to specific websites have therefore relied on three crude mechanisms:

- IP address filtering,
- Domain Name System poisoning and
- keyword searching (Dornseif, 2003).

A fourth possibility is to use a hybrid which combines two or more of these systems.

IP address filtering: The simplest filtering mechanism is for ISPs to block traffic to and from lists of websites specified by their Internet Protocol address (a numerical identifier such as 128.16.64.1). Any packets of data with a destination or source address on this list will be dropped by the routers within ISP networks, especially those that exchange traffic with overseas networks. Skilled and determined users can evade such filters by accessing blocked sites using overseas Web proxies, intermediate machines that retrieve Web pages on behalf of users for a number of purposes such as increased efficiency and privacy protection¹³¹.

Less advanced and motivated users find their access curtailed by IP address filtering. Because Web servers typically host many (sometimes many thousands) of individual sites, a block on one of those sites will mean none of the other sites hosted on that server will be accessible. When in 2003 the Indian government ordered ISPs to block access to a specific Yahoo! Group, many simply blocked access to the entire domain, cutting access to around 12,000 groups (Deibert and Villeneuve, 2005). Pennsylvania's Internet filtering law was struck down in 2004 partially because of such overblocking. The blocking of 400 sites had prevented access to over 1.1 million other sites, whilst being easy circumvented. The Court found in *CDT v. Pappert* (2004) no evidence that the Act "has reduced child exploitation or abuse".

Domain Name System (DNS) poisoning: DNS servers translate human-readable domain names such as www.ucl.ac.uk into the numerical IP address equivalent (in this case, 144.82.108.183), allowing web browser software to connect directly to web servers. Internet Service Providers can remove or change the addresses for blocked sites on their own DNS servers, and block user attempts to connect to DNS servers elsewhere on the Internet (Zittrain & Edelman, 2003b). Like IP address filtering, DNS poisoning will lead to overblocking of sites that share domain names (such as Yahoo! Groups and YouTube videos). It can also block access to non-Web services on the targeted domain such as e-mail and chat. It is trivially circumvented using proxies, and by users requesting web pages using IP addresses. Dornseif (2003) found that ISPs in Germany ordered to block access to hate sites had used DNS poisoning but almost all had made mistakes in their implementations.

¹³¹ Anti-censorship activists have also developed proxies that individual users can run on their home and office PCs anywhere in the world, making it extremely difficult for governments to block access to every last proxy (Feamster et al., 2002).

IP address filtering and DNS poisoning both need government-compiled or backed lists of servers that should be blocked. Given the speed at which new content appears on the Internet, this is a time-consuming process.

Forbidden keywords: Routers and government-run Web proxies can filter individual pages based on lists of forbidden keywords such as “falun” in the case of China (Clayton, Murdoch & Watson, 2006). Search engines have also been pressured by China to filter search results that contain certain keywords such as “free Tibet” (OpenNet Initiative, 2004). The quantity of pages blocked by keyword filters is unlikely to be acceptable outside totalitarian states. However, they can also be used to block access to specific web pages (rather than entire websites, as with IP address filtering and DNS poisoning). This type of filtering is much more resource intensive than IP address filtering. Keyword filters in routers can be circumvented using proxies that encrypt data sent back to the requesting user, avoiding their detection (Feamster et al., 2002). Clayton, Murdoch and Watson (2006) also found that the specific mechanism used in Chinese networks to block access to pages based on keywords could simply be ignored by Web browsers and servers.

Hybrid Filters: Hybrid filtering systems have been developed that combine one or more of the filtering techniques described above. British Telecom’s “Cleanfeed” system redirects requests for web pages on a list of specific servers to a keyword filter that blocks access to specific web pages hosted on those servers. This combines the efficiency of IP address filtering with the precision of keyword filtering applied to specific pages. However, Clayton (2005) showed that the BT system could be used to search out child pornography contained in pages on the secret filtering list.

Non-Web Traffic and Freedom of Speech Concerns

A further problem with most filtering technology is that it is targeted at content distribution systems, particularly the Web, that are becoming decreasingly popular in terms of total Internet traffic. Peer-to-peer (P2P) systems such as BitTorrent are estimated to carry up to 60% of data on large Internet networks (CacheLogic, 2006). Many P2P systems are designed in response to music and movie industry attempts to block the sharing of copyrighted works, and are hence much more robust in the face of censorship¹³². All of these systems avoid reliance on single machines that can be shut down or blocked, and on DNS names that can be poisoned; and are able to exchange encrypted files that cannot be keyword-filtered by intermediaries.

Phishers, identity thieves, spammers, and child pornographers are in control of at least 100 million systems globally. There seems widespread agreement that 100million is the right order of magnitude -- and this ‘botnet’ (hijacked and remotely controlled broadband-enabled robot computer) problem is getting worse¹³³. Kulawiec states the common perspective amongst many network architects¹³⁴:

You can’t block by protocol, because those same protocols are used for lots of other things. (And even if you did, someone would just invent another protocol.) You can’t block by

¹³² Other systems such as the Eternity Service (Anderson, 1996) and FreeNet (Clarke et al., 2000) are explicitly designed to resist censorship.

¹³³ Cerf Vint (2007) estimates 140million at: <http://arstechnica.com/news.ars/post/20070125-8707.html>

¹³⁴ Kulawiec, Rich (2007) Date: February 13, 2007 2:06:47 PM EST Subject: Re: [IP] Re: The Great Firewall of Norway? Interesting People discussion list.

content, because no software method is even remotely close to reliable enough and all the ones involving humans are either biased, slow, or both. Besides, it's easy enough to encrypt traffic. And so on. [Blocking] will have a temporary, minor effect. It might even help authorities find a few of the stupider criminals. These arrests will be announced as "proving" the success of the measures. Some of them will be of innocent victims whose computers were hijacked and used without their knowledge. But within a relatively short time, none of it will matter. The people who wish to profit by providing this material will have figured out very effective ways to bypass the filters.

3.3.6 Outcomes

To date, the EuroISPA position has been to oppose repeated attempts by government and its ISP members to introduce more general filtering of Internet content that is deemed to be illegal. What all filtering regimes have in common is that filtering technologies are difficult and expensive to impose for any reason; but once introduced they can extremely easily encompass new areas of content (Edelman, 2001). Even where more precise hybrid systems such as BT's Cleanfeed are put in place, determined users can still bypass filters using proxies and P2P systems. New websites and keywords can be blocked as easily as they can be typed into filtering lists. Blocks on access to child pornography can be trivially extended to restrictions on "hate speech," "glorification" of terrorism and from there to political debate and information on minority rights, alleged defamation (Rauch, 2003), purported copyright infringement (IFPI, 2007) and the "sacred texts" of cults such as Scientology (Lippard & Jacobsen, 1995). The technically savvy and the determined are easily able to circumvent Internet filters, and content is increasingly being accessed using peer-to-peer systems that are even more difficult to police.

A proposal for a pan-European ISP Code of Conduct that was floated in 2004-5 to be co-funded by the SIAP and national ISPA members of EuroISPA failed due to a combination of financial concerns and principled objections to such a scheme and the formal introduction (via funding, evaluation and policy discussion) of the SIAP into ISPA policy deliberations. The idea was revised in 2006 as 'ISPNet' with more than 50% SIAP funding. EuroISPA would probably have accepted a policy forum even though it would be expensive and time-consuming but not with the additional measure to control membership of body and offer it to all SIAP members. The overall plan was seen as EuroISPA to be rather co- and not its traditional self-regulatory approach, as well as being strongly partisan to European Commission sponsors with norms that would be likely to be disagreeable to ISP associations (Hutty 2007). This contrasts with PEGI's embrace of such an SIAP role.

3.3.7 Outputs

Lobbying papers, conference speeches, member coordination.

3.3.8 Impact

Public outreach comes through the contribution of its officials to conferences. EuroISPA has a strong voice in Brussels "even though it only has a shoestring budget".

3.3.9 Sustainability and Reform

Individual companies are choosing to go further than EuroISPA's position of supporting only self-regulation for illegal content removal. Christiansen (2007) states: "My belief is that every provider says they don't do things, but they do secretly – to avoid liability [E-

Commerce Directive] and for fundamental PR reasons.” He suggests the European Commission should give member states more freedom on liability rules when they revise the E-Commerce Directive: “Liability rules are clearly a counter-incentive to achieving more.” The AOL approach is that “Any step a provider can take is a limited resource”.

The new management of INHOPE, the renewed SIAP+ and the moves by larger ISPs and their national governments in Northern Europe towards blocking systems is likely to put ever greater strain and pressure for pan-European systems, despite the objection of EuroISPA. EuroISPA accepts that classic regulatory capture with raised barriers can result from larger companies introducing filtering, content regulation, in that it makes ISP operations more expensive for all smaller ISPs, and puts large ISPs in a position of potentially greater competitiveness (as they can design the system and have greater policy and technical resources to shape it in their favour). EuroISPA asks why should ‘free riding’ (refusal to filter) by smaller ISPs should be a problem? Why does the Home Office want a single universal approach to filtering, for instance? This may form the basis for a European policy evaluation similar to that conducted by Hoff in Norway.

3.3.10 Evaluation

EuroISPA is avowedly opposed to regulation via mandatory filtering, and the success of the organisation can be evaluated by its success in representing its members’ wishes in this and other areas. As a privately funded and extremely small lobbying group, any more detailed evaluation does not appear sensible.

A comment with respect to technical aspects of filtering should be made, as it is here that evaluation may prove useful. Web users’ access to information will be most affected by filtering systems. Some governments have accepted this, and claim that their aim is merely to stop users “accidentally” viewing blocked information (Lehdonvirta, 2005). In the U.S., former Attorney General Richard Thornburgh headed a study committee sponsored by the National Academy of Sciences that produced a report¹³⁵ that concluded that a combination of media literacy and the use of voluntary filtering tools was the best approach to protecting users from undesired content. There is a danger that states with a commitment to freedom of expression are putting in place an unwieldy and ineffective censorship infrastructure that could easily be abused by future governments and repressive regimes. Evaluation of such systems should be encouraged.

The role, effectiveness and impact on ISP competitiveness of filtering is also essential to the roles of NTD regimes under the 1997 and 2006 Recommendations and the E-Commerce Directive. The suggestion that other interlocutors, notably search engines and P2P systems, provide alternative routes for users to share potentially illegal or harmful content, raises the issue of the reform or amendment of the regime to embrace these categories of content intermediaries.

3.4 Content Co-regulation: KJM

KJM: Kommission für Jugendmedienschutz

Researcher: Lisa Klautzer

135 Thornburgh et al (2004) “Youth, Pornography and the Internet” available at http://books.nap.edu/html/youth_internet/

Founded 2003, KJM's creation was motivated by the 2002 Erfurt shooting and the perceived failure of self-regulation. There was a strong political sense that 'something must be done'. It works according to the German principles of regulated self-regulation: 'Prinzip der regulierten Selbstregulierung'. Its technical expertise has been found particularly useful by some ISPs, as well as its media literacy knowledge. It is a large, well-resourced and politically powerful co-regulator. It has been evaluated in October 2007 by JMM and others for the German authorities.

Table 23: Summary of KJM Case Study

Was there a government mandate initially?	Yes
What kind of government involvement is there?	Continued monitoring, liaison and evaluation
Which other stakeholders are involved and how?	Multiple
How is transparency ensured?	Web publication of proceedings, website and other efforts
What is the enforcement mechanism, is it effective, at what cost?	None currently except non-ratification and criticism and vetting of new schemes
What is the relative size of administrative burdens?	Low except in the case of high media literacy costs.
Is financial independence assured/how?	Continued dependence on government.
Which internal factor most impacts success?	Expanding mandate beyond regulation of FSM activities
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: relationship with police force and Parliament. Market: press and public relations. Technology: development of new means to co-regulate content.
Lessons for European policy	Formed by perceived failure of self-regulation, supported by public and increasingly by larger Internet companies. Impact on competitiveness of entrepreneurs needs monitoring.

3.4.1 Interests and Policy Needs

The Commission for the Protection of Minors in Media (Kommission für Jugendmedienschutz, KJM) is the central state supervisor for the protection of minors in the media. It was established in 2003 in accordance with sec. 20(2) of the Interstate Treaty on the Protection of Minors in the Media (Jugendmedienschutzstaatsvertrag, JMStV).

The KJM makes all decisions regarding the protection of minors to ensure a consistent application of the JMStV, it acts thereby as an organ of the state media authorities (Landesmedienanstalten). The execution of the decision remains, however, with the state media authorities.

Although the KJM plays an important role in respect to the broadcasting media as well as in respect to the telemedia, in our study we are only focussing on the latter. The FSM separate case study provides additional information in respect of the German co-regulation scheme.

With the new regulation a 'co-regulatory' scheme was introduced, this scheme strengthens the supervision of SROs while leaving the certification of such institutions ('Einrichtung der Freiwilligen Selbstkontrolle') and their supervision to the KJM. In this case study we examine the co-regulatory scheme and the role the KJM play in it, and also outline briefly the general activities of the KJM in respect to the protection of minors in the telemedia.

2002 Debate: In spring 2002 the German states and the Federal Government agreed in general on the basic principles of a coherent legal framework for the protection of minors in the area of broadcasting and electronic online media. Until then, the overall regulations and the supervisory competencies were fragmented. Subsequently, two new laws were adopted:

- Act for the Protection of Minors (Jugendschutzgesetz, JuSchG) at federal level
- Interstate Treaty on the Protection of Minors in the Media (Jugendmedienschutzstaatsvertrag) at state level

The German debate in 2002 was strongly impacted by a mass murder: a heavily armed 19 year old had entered a school in Erfurt (Germany) killing 16 people (teachers, administrative staff, and school children). This had prepared the ground for a general public debate on the influence of violent media (in particular so-called ‘ego-shooter’ computer games and violent movies) on the development of minors.

The laws came into effect on 1 April 2003. They established that the supervision of broadcasters and online service providers lies within the responsibility of the state media authorities (Landesmedienanstalten), and founded the KJM. Competence for regulation in this area had been debated between the states and the federal government for some time, the (federal and states’) governments having previously agreed on leaving the supervision of internet content with the states while adopting a more self-regulated approach at federal level. With this concept in mind, existing SROs (e.g. the FSM) would be certified by the KJM and take over a stronger role in the assessment of content and enforcement of the regulation after 2003. The KJM acts as an organ of the respective state media authority. To ensure that coherent decisions are taken, the responsibility for this lies solely with the KJM, while the state media authorities execute the respective decisions.

The idea behind the establishment of a central supervisor scheme and supervision authority for the private broadcasting sector and telemedia was to unify regulation and prevent ‘double jeopardy’: that the same content could be governed by diverging laws depending on what medium was used.

3.4.2 Design & organisation of the Institution

The KJM has been established in accordance to the provisions of the JMStV and is a state supervision body; it is an organ of the respective state media authority. Its activities are regulated by law and cover the supervision of the protection of minors in the media (both broadcasting and telemedia).

The central provision of the JMStV governing the co-regulation scheme is Article 20(5) JMStV, which states that:

‘If a telemedia provider has affiliated to a certified organisation of voluntary self-regulation as specified in this Interstate Treaty or subjects himself to its statutes, said organisation shall be involved prior to the KJM in the case of alleged infringements against the provisions governing the protection of minors, except for infringements of Article 4 (1). Measures pursuant to (1) above by the KJM against the provider shall be permitted only if the certified organisation of voluntary self-regulation has exceeded its legal discretionary

power with its decision or lack thereof.¹³⁶

In practical terms this regulation establishes a ‘shield effect’ given that the decision-making is left to the SRO, the FSM (as long as a provider is part of the FSM or subjects himself to its statutes), and the KJM can only intervene if the FSM exceeds its discretionary power. Furthermore, the KJM has to transmit complaints against such providers to the FSM unless the complaint regards illegal content listed in Article 4(1) JMStV. The provision of content listed in this norm via the internet is absolutely prohibited, while for adult content listed in Article 4(2) the telemedia service provider can make this content accessible, as long as he has ensured that it is only accessible for adult persons (closed user group).

It should however be noted that the provisions in the JMStV that concern the ‘self-regulatory shield’ can be terminated each year.

3.4.3 Inputs

Location	Chief	Founded	Directors	Funding
München, Erfurt	Chair Prof. Dr. Wolf-Dieter Ring	October 2003	12 independent	- Via state media authorities

The KJM has two locations:

KJM-Stabsstelle in the offices of the Bavarian media authority: Heinrich-Lübke-Str. 27, 81737 München (from October 2003). Responsibilities: content related issues, preparation of issues of fundamental importance, and public relations.

KJM-Geschäftsstelle: Steigerstraße 10, 99096 Erfurt (from December 2003). Responsibilities: organisational and coordination issues.

The Chair is Prof. Dr. Wolf-Dieter Ring. The KJM’s expenditure is covered by funds allocated to the state media authorities, which in turn are financed by a share of the broadcasting licence fees.

The KJM consists of 12 members, six delegated by the directors of state media authorities, four by the supreme state youth authorities in charge of the protection of minors, and two by the supreme federal authority in charge of the protection of minors. At least four of the members shall be qualified for judgeship. In their activities within the KJM the 12 members are independent.

The KJM members meet in general monthly; in the second report period (April 2005 – March 2007) they met 19 times. The KJM has also established several working groups to deal with specific topics (consisting of representatives of the KJM, the state media authorities, and external experts); these working groups may be standing working groups or working groups with only a temporary mandate. One of the working groups deals with telemedia, according to the second KJM report the working group telemedia (‘AG Telemedien’) had 23 registered activities within the reporting period (April 2005 – March

¹³⁶ Interstate Treaty on the protection of minors – JMStV; English version available at: <http://www.kjm-online.de/public/kjm/downloads/JMStV2007-englisch.pdf>

2007) including several meetings with representatives from the industry to discuss issues such as the ‘closed user group’.

The KJM closely co-operates with the Jugendschutz.net (www.jugendschutz.net) an institution founded by the state authorities responsible for the protection of minors in 1997. The JMStV established that the Jugendschutz.net should assist the KJM by monitoring telemedia content and, if infringements of the JMStV are found, informs the provider, the FSM (being a certified body of voluntary self-regulation) if the service provider is a FSM member, and the KJM. The Jugendschutz.net is organizationally linked to the KJM.

In respect to individual decisions on telemedia content the procedure applied by the KJM is strongly based on the preparation of the case by the assessment group (Prüfgruppe), constituted of 5 experts appointed by the state media authorities, the federal supreme authority in respect to the protection of minors, the BPjM, the Central Federal Institution for Political Education (Bundeszentrale für politische Bildung), as well as by the Jugendschutz.net. To preserve coherence in respect to the decisions four chairs of the meetings of the assessment groups (Prüfgruppensitzungsleiter) have been appointed.

KJM co-operates with the BPjM in particular in respect of whether content should be listed as harmful or illegal.

3.4.4 Activities

It should be noted that the KJM’s activities refer also to broadcasting, however, in our case study we are only looking on the KJM’s role in respect to telemedia. This includes the following tasks:

- monitoring the application of the provisions of the Interstate Treaty,
- certifying organisations of voluntary self-regulation and taking back or revoking the certification,
- assessing and licensing an encryption and blocking technology,
- certifying technical systems for the protection of minors and taking back or revoking the certification,
- providing assessments on listing applications presented by the Federal Review Board for Media Harmful to Young People, and filing applications for listings with the Review Board,
- deciding on administrative offences pursuant to the Interstate Treaty.

In respect to content KJM distinguishes between illegal content (falling under criminal law), and content that may be provided if security measures are taken to ensure that only adults have access¹³⁷. The latter category includes for example pornography, which is labeled as content that ‘impairs the development of minors’.

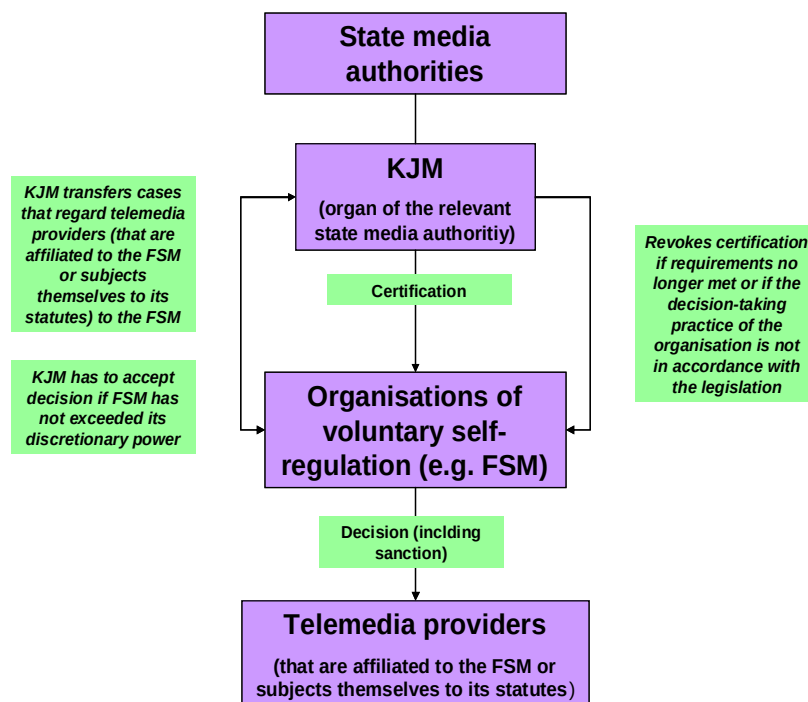
To be granted certification an SRO has to fulfill the following conditions:

¹³⁷ In detail: ‘making access and perception of the content impossible or very difficult for children or adolescents of the respective age group via technical or other means’.

- independence and competence of the appointed examining staff, and staff representatives of relevant social groups who specifically deal with issues relating to the protection of minors,
- adequate resources ensured by a large number of providers,
- instructions in place concerning decisions to be taken by the examining staff, suited to warrant the effective protection of children and adolescents in the decision-taking procedures,
- rules of procedure in place which provide for the scope of control¹³⁸, and which specify possible sanctions and provide for a review of decisions at the application of organisations for youth support under state law,
- providers concerned are heard prior to a decision, the reasons for the decision are given in writing to the parties concerned, and
- a body for dealing with complaints is set up.

Such a certification can be granted for four years but revoked if the SRO is not acting according to the law; the certification is renewable. If telemedia service provider follow decisions taken by the certified SRO (in this case FSM) the state media authorities cannot impose sanctions as long as the SRO does not exceed its discretionary powers (membership in FSM is not required).

Figure 13: German co-regulatory scheme for the protection of minors in internet services



3.4.5 Enforcement

Hans Bredow (2006) states:

¹³⁸ In the case of broadcasters also for the obligatory presentation of content.

‘The enactment of the JMStV in 2003 extended the responsibility of non-state bodies and their scope for decision-making. In order to secure compliance with the aims of the interstate treaty, it established a certification requirement for non-state bodies. Freiwillige Selbstkontrolle Multimedia-Diensteanbieter (FSM, Association for the Voluntary Self-Monitoring of Multimedia Service Providers) gained certification with regard to the Internet sector.’¹³⁹

In January 2004 the FSM had filed a request to be certified. In February 2005 the KJM provided the certification, however, only under suspensory conditions (the provision of a code of procedures to be approved by the KJM) and therefore not immediately applicable. Eventually the FSM was certified for four years starting from 11 October 2005. The principles and guidelines to be adopted by the FSM for the decision on cases have been subsequently discussed with the KJM and the respective documents were revised by the FSM. Since then the FSM has actively participated in the co-regulation scheme as a certified SRO.

The KJM has addressed several issues in meetings with the FSM (such as issues related to internet chat, and net rules) and is trying to improve the protection of minors in the telemedia in cooperation with FSM and other relevant stakeholders. KJM and the FSM have diverging opinions on some specific issues. One such issue relates to the certification of age-verification systems. The FSM has requested to amend the law and entrust the FSM also with the assessment and certification of age-verification systems (‘Alters-Verifikations Systeme’) that aim to guarantee closed user groups. The KJM opposes this, emphasizing that such an assessment and certification belongs into the sovereignty of the public authorities and touches on a sensitive area of the protection of minors that cannot be delegated to an SRO.

KJM (2007) criticized aspects of the FSM proceedings, in particular:

- FSM Complaint Commission only starts assessing the content if the provider has not rapidly followed the request to adjust the content - also the case for providers who consciously commit infringements. KJM argue this does not provide for a real sustainable remedy.
- Cases transmitted to FSM by KJM are treated as regular complaint proceedings (with the KJM as the complainer), while KJM argues these cases should be part of a special supervisory proceeding category.

So far the KJM has certified one SRO, the FSM, and only one case occurred in which the KJM - in accordance with § 20(5)1 JMStV - transmitted a complaint (regarding an FSM member) to the FSM, and initiated a proceeding against the member under the FSM procedures.

In 2006 the Complaint Office of FSM dealt with 1959 petitions, 1585 of which were complaints and 374 requests in respect to the protection of minors in the media; this is 14% more than in 2005. 12% of the complaints regard FSM members.

¹³⁹ Hans Bredow Institute (2006) page 51.

3.4.6 Outputs

Within the second reporting period (April 2005-March 2007) the KJM's activities in the area of telemedia included:

- Dealing with more than 240 supervision proceedings
- Final decision of about 70 proceedings (around 60 of which were decided to be founded on the basis of an infringement of the JMStV)
- Providing assessments on listing applications presented by the Federal Review Board for Media Harmful to Young People (BPjM) in about 290 cases (of which about 240 were supported by the chair; about 25 % of internet content was not accessible anymore at the time of the assessment)
- Filing of about 150 telemedia applications for listings with the Federal Review Board for Media Harmful to Young People.

KJM certified 17 age-verification systems (to March 2007).

3.4.7 Outcomes

The KJM is an organ of the state media authorities, and states: 'Although the state media authorities are independent of the state governments, they can be seen as state regulators as they are constituted by law and bound to a legal remit which lies in the supervision of broadcasting and media services.'

Christiensen (2007) sees the KJM philosophy as: "it is not enough to block harmful content because you are simply frustrating kids – you must offer the alternative". There was not enough pedagogic knowledge previously to understand kids' views in companies, and he believes that KJM brought that insight. KJM has developed much more expertise in information communication for parents-children than industry previously. The result is Net4kids, an industry-funded content area for children, which gives kids their own content, even though its very expensive. It is not funded by single company but as a common good by the industry.

The software solutions are still seen as inadequate, nevertheless clarity of youth protection incentives has much increased". He sees that in Germany public pressure for youth protection is "so strong compared to UK or France" – AOL employees unprompted consider it first, even allowing for AOL's family-friendly brand position. Therefore there appears to be broad public and political support for KJM at this early stage in its development.

3.4.8 Impact

In accordance with the JMStV the KJM has to submit a biannual report on the implementation of the provisions of the JMStV to the state and federal authorities responsible for the protection of minors (the second report covered the period from April 2005 to March 2007).

The second report (KJM 2007) states that, although some major market players have joined the FSM, the members still only make up a proportion of intermediaries, and many providers are not interested in joining the SRO. KJM feels that the system of co-regulation this only applies to part of the internet.

The activity of the KJM may contribute to increase trust in the internet, which in the long term might enhance its competitiveness. Per Christensen of AOL (2007) explains that his experience of KJM is quite positive, in that the KJM background stimulated activity in FSM and industry. KJM influence was based on their credibility in the face of industry hostility – who felt forced to cooperate.

“My experience was very good ... very technical and strategic thinking, incredible source of knowledge – very surprising ... my main criticism is that KJM will never say a youth protection system is OK, because no system can be 100%”.

Because KJM must publicly declare their assessment of FSM, there can be a suggestion of criticism. But there is a perception that KJM needs FSM to be seen as a ‘success story’. FSM itself was perceived to want to be entirely self-regulated like press councils – but co-regulation may ensure that content providers have to act more responsibly, in Christensen’s view. Before KJM Christensen (2007) explains that: “there was law but no enforcement – it was completely riskless to break the law”. Now there is still lack of enforcement but KJM created an:

incentive for one to start and others to follow. The system convinced the competition that we should take part in the FSM project.

The KJM continues to advise the public service broadcasters ARD and ZDF, though they have no statutory obligation to enter into KJM schemes or heed KJM advice. Partly as a result of their constitutional independence of government, they are fiercely independent.

3.4.9 Sustainability and Reform

In its second report on the application of the provision of the JMStV (in accordance with § 17(3) JMStV), covering the period from April 2005 to March 2007, KJM (2007) objects to critics’ comments that the cooperation between the different constituencies represented in the KJM would be cumbersome, the report stresses the smooth and successful cooperation of the KJM members.

KJM issued reform proposals, as it does not expect that the volume of cases will decrease because of FSM effectiveness (one of the reasons for this being the so far limited membership at in the FSM). The KJM expects the FSM to actively promote membership and increase the number of members, as this might eventually lead to a decline in cases to be dealt with by the KJM.

The KJM perceives the current rules governing membership and proceedings, explicitly based on seconding experts, as inadequate with the high volume of individual decisions to be taken. It had already in its first 2003-5 report requested an amendment of the legal instrument in this respect and provide a stronger support level for the KJM, and reiterates this. If such a legal amendment were not, the KJM provided alternatively the solution to adhere to the process applied in the majority of (simple) cases of individual decisions:

- the ‘Präsenzprüfung’ (assessment under personal attendance of the members) will occur in the Assessment Groups (‘Prüfgruppen’),
- while the written procedure (‘Umlaufverfahren’) is used for the Assessment Committee (‘Prüfausschuss’) and the plenum.

However, this procedure has been criticized by FSM; this has also led to litigation in court.

Amendment to the legal basis would clarify the use of process. Currently, 'Präsenzprüfung' by the Assessment Committee is only applied to cases of fundamental importance.

KJM (2007) also states that it intends to address new questions in the area of telemedia, including: the development of mobile, online games, the responsibility of platform providers, IPTV and in particular convergence (interface between traditional media and new distribution channels). Emphasis is also put on the need of international standards and the self-regulation of the service providers ('net rules'), as well as establishment of technical protection measures.

3.4.10 Evaluation

JMM prepared the evaluation of the German co-regulation scheme which terminated in October 2007. ASSESSMENT TO BE ADDED

3.5 Search Engines (Germany): FSM

FSM: Verein Freiwillige Selbstkontrolle Multimedia-Dienstanbieter e.V.

Researcher: Lisa Klautzer

FSM was founded in 1997 but co-regulated from 2003 by KJM. However, in the specific subject of search engine self-regulation, it continues a self-regulatory model. This novel self-regulatory approach started in 2005. It was designed to address specific German constitutional content issues, especially neo-Nazi concerns. Note the 2004 Protocol to the Council of Europe Cybercrime Convention requires governments to find solutions to preventing hate speech online. The self-regulatory solution has also been suggested in Netherlands and elsewhere (notably by van Eijk). The filtering solution raises the question of inclusion of search engines in the Electronic Commerce Directive (EC/2000/31) – as different states choose to include or exclude search providers. A wider research question is the fairness of search results in countries without explicit filtering. We note chillingeffects.org and associated research. FSM was evaluated as part of the Hans Bredow/JMM study.

Table 24: Summary of FSM Case Study

Was there a government mandate initially?	No
What kind of government involvement is there?	KJM creation means continued monitoring, liaison and evaluation
Which other stakeholders are involved and how?	Primarily industry-led SRO
How is transparency ensured?	Web publication of proceedings, website and other efforts
What is the enforcement mechanism, is it effective, at what cost?	Expulsion of non-conforming members
What is the relative size of administrative burdens?	Low.
Is financial independence assured/how?	Continued dependence on industry parties.
Which internal factor most impacts success?	Expanding mandate beyond KJM regulated activities – particularly search engines
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: relationship with KJM and Parliament. Market: press and public relations as well as potential new

	initiatives.
Lessons for European policy	Perceived failure of self-regulation, but new role and increasing membership by Internet companies. Impact on competitiveness of entrepreneurs needs monitoring, as FSM did not perceive its own failure.

3.5.1 Interests and Policy Needs

The FSM (Freiwillige Selbstkontrolle Multi Medialer Dienstleister e.V.) is a registered SRO in Germany, which was founded in 1997 by e-commerce alliances and companies dedicated to the protection of the youth and minors. With the 2003 reforms and the recognition by KJM that FSM could be certified as an SRO in 2005, the FSM also took over a role in the German co-regulatory scheme established for the protection of minors (see previous case study). In this case study we focus on the FSM's self-regulation mechanism in the area of 'search engines' which was taken on board in 2005, not at the FSM and its co-regulatory role. With recognition by the KJM in 2005 it became part of the co-regulation framework in Germany.

In February 2005 the major providers of internet search engines in Germany (AOL, Google, Lycos, Yahoo etc.¹⁴⁰) establishment – under the umbrella of the FSM – the Selbstkontrolle Suchmaschinen by signing a newly prepared self-regulatory code of conduct (Verhaltenssubkodex für Suchmaschinenanbieter der FSM (VK-S)¹⁴¹). This was the first – and so far only - initiative worldwide in which the search engine industry obliged itself to adhere to common rules aiming at the improvement of the consumer protection and the protection of minors in relation to the use of search engines. The code of conduct includes several obligation such as the commitment to the provision of information on the functioning of the search engine, transparent design of the search engine (e.g. the labeling of advertisement), implementation of technical provisions to protect minors from dangerous content, strengthening of the protection of minors in the internet, and in particular the blocking of webpages to be found on the index established by the Federal Review Board for Media Harmful to Young People (Bundesprüfstelle für jugendgefährdende Medien (BPJM)), an official administrative authority of the German government, which monitors media (e.g. internet sites) developing an index listing objects considered harmful or dangerous to minors due to their trend to endanger the process of developing a socially responsible and self-reliant personality.¹⁴²

The debate about the responsibility of internet search engines was triggered in 2003 by a project of the German Bertelsmann Stiftung;¹⁴³ this initiative focused on the responsibility of internet search engines as "gatekeepers", and stressed the need for a transparent and high quality service. Amongst others it was stressed that children and minors were still confronted with content that may put them at risk in their development, and the authors of the study asked for a code of conduct for search engines. The FSM took account of the

140 For a comprehensive list of the associated companies see: http://fsm.de/de/Selbstkontrolle_Suchmaschinen.

141 For the codes see: http://fsm.de/inhalt.doc/Verhaltenssubkodex_SuMa.pdf.

142 For general information on the BPJM see: <http://www.bundespruefstelle.de/bmfsfj/generator/bpjm/information-in-english.html>

143 Marcel Machill, Carsten Welp (Hrsg.): Wegweiser im Netz. Qualität und Nutzung von Suchmaschinen.

Verlag Bertelsmann Stiftung, Gütersloh 2003.

debate and started to engage with the most important German search engines to lay the cornerstone of such a code of conduct.

A year earlier (2002) a 19 year old had run amok in a school in Erfurt (Germany) killing 16 people (teachers, administrative staff, and school children), which had prepared the ground for a general public debate on the influence of violent media (in particular so-called 'ego-shooter' computer games and violent movies) on the development of minors.

In 2005 the German Hans Bredow Institute published a study assessing the role of search engines as gatekeepers of public communication against the background of the German framework in particular looking at the area of media and anti-trust law. Although coming from a different angle, the study also provided impetus for the debate on self-regulation of search engines.¹⁴⁴

In this climate the feeling that something needed to be done was strong, and although no direct political pressure was exerted, the industry decided to adopt the code of conduct for search engines under the umbrella of the FSM.

To prevent a debate on censorship the industry agreed not to undertake the content rating on its own but to leave the decision on the content to a federal administrative authority, the BPjM (Federal Review Board for Media Harmful to Young People), and block web sites that are put on the index established by this body. The BPjM applies a procedure that guarantees the owner/distributor the right to defend his product against the charges of youth-endangering content, and appeal against the decision to a court.

3.5.2 Design & organisation of the Institution

The FSM has 36 registered regular members (including AOL Deutschland, Deutsche Telekom, etc.), 7 supporting members, and 5 indirect members. It was initially established by media and telecommunications' associations, and companies providing online services. Currently, members include internet content providers, search engines, host and access providers, and mobile service providers.

The Board of Directors consists of 7 experts in and representatives of the sectors, who are elected by the FSM members. Currently, Gabriele Schmeichel holds the chair of the Board of Directors; since 2006 she is responsible for the protection of minors at the Deutschen Telekom AG. The Board meets about 3 times a year, and telephone conferences are organized in addition if needed.

The mission of the FSM is to '*promote both protection and education of minors and general consumer protection in the multimedia sector*', which it aims to achieve via the following objective:

- 'Setting up a voluntary self-monitoring organisation to implement the principles set out in the Code of Conduct for the Voluntary Self-Monitoring of Multimedia Service Providers and to observe its rules.
- Informing the general public about its work, use of protection technologies and responsible use of telemedia.

¹⁴⁴See: Schulz, W.; Held, T.; Laudien, A. (2005): Search Engines as Gatekeepers of Public Communication: Analysis of the German Framework Applicable to Internet Search Engines Including Media Law and Anti-trust Law. In: German Law Journal, vol. 6, no. 10, S. 1419-1431.

- Representing members' interests on national, European and international committees, at conferences, in panel discussions, at hearings and in legislative processes.
- Pursuing ongoing dialogue with the Commission for the Protection of Minors from Unsuitable Media Content (KJM), the various Länder (state) media institutions, and other state agencies, institutions and self-monitoring organisations at national, European and international level; the ultimate aim being to cooperate with these various institutions.
- Providing a forum for critical social discourse on issues involving the protection of minors from unsuitable media content and the promotion of voluntary self-monitoring based on the FSM Code of Conduct and its underlying principles.
- Operating a complaints office according to its Complaints Policy to fulfil in particular FSM obligations in voluntary self-monitoring under Germany's Interstate Treaty for the Protection of Human Dignity and the Protection of Minors in the Media (JMStV).
- Protecting the basic rights of telemedia and media service providers.
- Taking account of youth protection needs and other protection needs under the JMStV by implementing the Code of Conduct and its sub-codes for specific member groups.
- Supporting members by monitoring compliance with the FSM Code of Conduct; prior to publication, members may opt to present any youth protection-related content for independent review by the Review Commission.'

FSM staff includes the Managing Director and 10 employees (including legal advisor working in the Complaint Office); one of the FSM consultants ('Referent') is especially dealing with the initiative of search engines, and is assisted if needed by other staff members. The FSM can call upon an expert commission made up by a legal expert, an expert from the area of media studies, and a representative of a relevant societal group. This composition guarantees the involvement of civil society stakeholders. In 2006 such an expert committee has been called upon 3 times. Another body related to the FSM is the Complaint Commission; it is established by three independent experts, and its composition is changing depending on the issues dealt with. Currently, the pool of experts for the Complaint Commission included 33 experts.

To preserve coherence in respect to the decisions of the different Complaint Committees, a Joint Committee is founded. This Joint Committee shall be appealed to when:

- a Complaint Committee intends to deviate from another Complaint Committee's decision or from the decision of the Joint Committee with respect to a legal matter.
- it is appealed to by an Appeal Committee with respect to a decision on appeal that is of fundamental importance and in the interest of the members of the FSM.

The FMS itself feels that it is very successful in fulfilling its mission in the 'classic' internet area, while providing the necessary flexibility to adapt to the quickly changing needs of the internet.

3.5.3 3. Inputs

Location: Spreeufer 5, 10178 Berlin, Germany

Managing Director: Sabine Frank

Staff: 11 full time equivalents

The FSM 'acts on behalf and in the interests of the public both exclusively and directly, and in some cases indirectly, in accordance with Section 57 (1) 2nd sentence of the German Tax Code (Abgabenordnung) and within the meaning of the section on 'tax-exempted purposes'. The Association is a not-for-profit organisation.'

It is financed by membership fees, cost allocations, donations, federal subsidies, expense related cost allocations of the examination bodies and other funds. Financial information on the annual budget is not available but accounts are filed with the tax office. Regular membership fees range from 4000 to 32000 € depending on the company's revenues.

3.5.4 Activities

The FSM is operating a hotline (in accordance with the provisions established by the FSM's Complaint Rules) that deals with reports on illegal or harmful web content. Furthermore, the FSM provides information and advice on media youth protection, related technologies and responsible media usage, available to the public. In 1999 it has co-founded an international association of internet hotline providers (INHOPE).

Currently, INHOPE has more than 20 members; these are internet hotlines dealing with illegal use and content of the internet, which are partly located in Europe, partly outside Europe. INHOPE aims to facilitate and coordinate the work of its members.

Furthermore, the FSM has in co-operation with eco (Verand der Deutschen Internetwirtschaft e.V.) launched a common Complaint Office (www.internet-beschwerdestelle.de).

Within its information activities, the FSM has co-founded an information web-portal for kids (www.internauten.de) and prepared a kit preparing children for their use of the internet (so far 3000 kits have been distributed).

The annual audit is provided to the FSM members and also to the KJM, but not made public. There are no other reporting requirements to be fulfilled (apart of the filing of the accounts at the Tax office).

3.5.5 Enforcement

On the FSM website (www.fsm.de) a standard complaint form can be found. Any natural person or legal body (in particular the youth welfare service promoters under German Federal Law) is entitled to file a complaint against internet content or other publicly accessible online services at the Complaint Office.

The Complaint Office

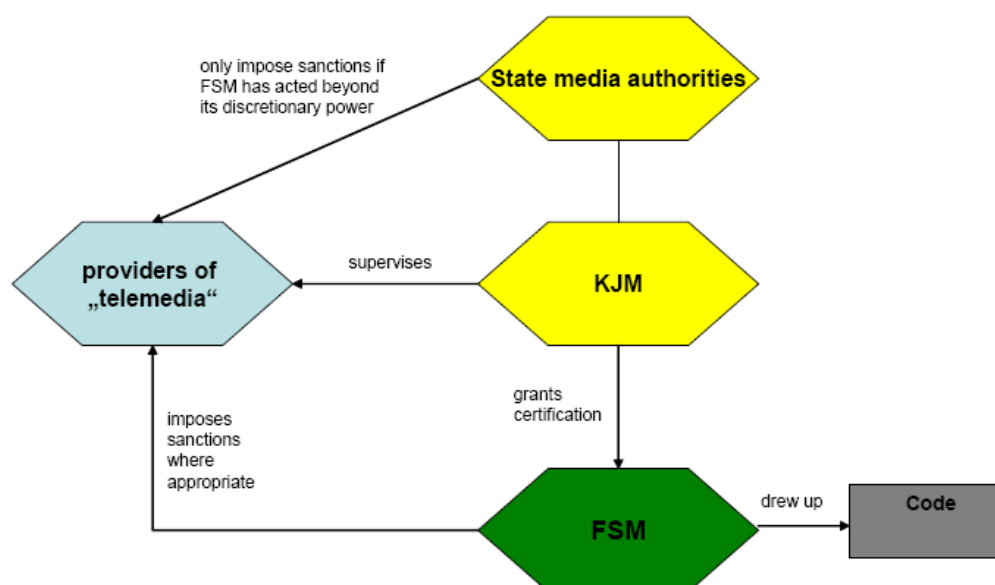
Represents a complaint office as provided under the Inter-State Agreement on Youth Protection in the Media, § 19, Section 3, Clause 6. Furthermore, the Complaint Office may also take action against one of its members on its own initiative.

The Complaint Office is a self-responsible and independent body as provided under the Statutes of the FSM, § 12, associated to the organisation of the FSM. The organisation and steering of the Complaint Office is being carried out by the Head of the Complaint Office.

The complaints are dealt with on the basis of the Statutes of the Association, these Complaint Rules, the Code of Conduct adopted by the members of the Association, the examination principles of the FSM, the JMStV [Agreement on Media Services between the Federal Länder in Germany] and the corresponding Statutes and Guidelines passed by the KJM [Commission for Youth Protection in the Media].¹⁴⁵

Figure 14: German protection of minors in internet services

- **Medium:** so called Telemedien (telemedia), mainly internet services
- **Public policy objective:** protection of minors
- **State regulator involved:** Landesmedienanstalten (State Media Authorities), Kommission für Jugendmedienschutz (KJM, Commission for the Protection of Minors in electronic Media) and jugendschutz.net
- **Non-state organisations involved:** "Einrichtungen freiwilliger Selbstkontrolle" (Organisations for Voluntary Self-Regulation): Freiwillige Selbstkontrolle Multimedia-Diensteanbieter (FSM, Association for the Voluntary Self-Monitoring of Multimedia Service Providers)
- **Task of non-state regulation:** enforcement of rules for the protection of minors based on state law (Jugendmedienschutzstaatsvertrag (JMStV, Interstate Treaty on the Protection of Minors in the Media)) and non-state codes
- **Legal connection: state act:** JMStV; certification of "Einrichtungen freiwilliger Selbstkontrolle"
- **Regulatory resources used by the state to influence the outcome of the regulatory process:** certification of "Einrichtungen freiwilliger Selbstkontrolle" if they fulfil certain legal requirements
- **Enforcement, sanctions:** FSM: notice and request for changes; reproof; contract penalty; exclusion from membership; backstop power by state media authorities and KJM



Source: Hans Bredow Institute (2006)¹⁴⁶

The FSM's Complaint Office is responsible for complaints against content providers or those providing content to call as far as these are seated in Germany, offer their services from Germany or if their services are explicitly targeted to the German market. Subject

¹⁴⁵ Complaint Rules for the Association Freiwillige Selbstkontrolle Multimedia e.V. (as of 4th May 2004), § 1 The Complaint Office.

¹⁴⁶ Hans Bredow Institute (2006) Final Report: Study on Co-Regulation Measures in the Media Sector; Study for the European Commission, Directorate

Information Society and Media Unit A1 Audiovisual and Media Policies (Tender DG EAC 03/04; Contract No.: 2004-5091/001-001 DAVBST) June 2006; page 51

matter shall include cases where an infringement of the Code of Conduct by a FSM member is not obviously excluded.

In the case of complaints against foreign content providers or against those who provide such content to call in foreign countries the Complaint Office informs – if known - the competent institution. If foreign content at first examination appears harmful to youth. it informs the Bundesprüfstelle für jugendgefährdende Medien. The Complaint Office may transfer complaints against German telemedia providers not being FSM members to the competent state media authority (Landesmedienanstalt).

The Complaint Office is undertaking a preliminary proceeding, to:

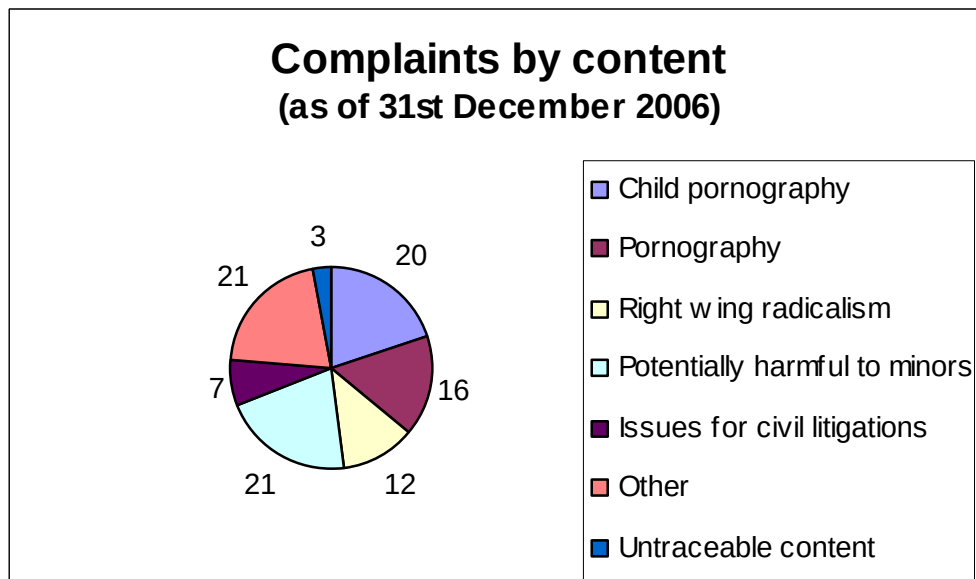
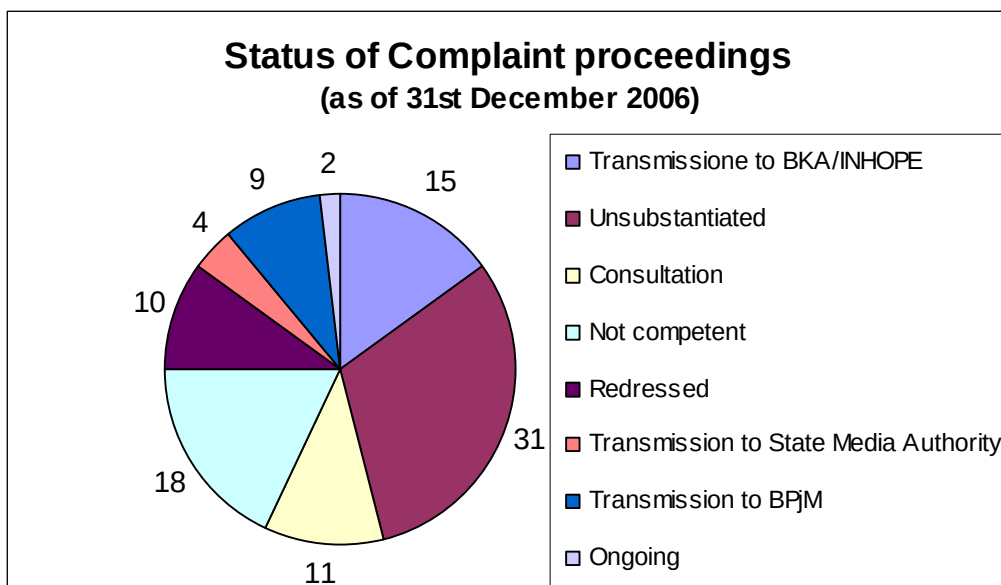
- prepare the case
- identify complaints for which the FSM is not competent and transmits them to the competent body
- requests a response by the complainee
- anonymises complaints against non FSM members and transmits them to the competent body.

The Complaint Commission is an independent body; if it decides that the complaint is founded, it has the following options:

- request for change
- reprimand
- association penalty
- exclusion from the FSM

§ 11(7) of the Complaint Rules establishes that: 'Should the complainee fail to have complied with the issued request for remedy within the statutory delay, the Chairman of the Complaint Committee shall issue a reprimand with reference to the fact that in case of non-compliance with the remedy request within the following two weeks an Association penalty may imminently be imposed. In founded cases of exception the delay may be extended, depending on the decision passed by a staff member of the Complaint Office.'

In 2006 the Complaint Office dealt with 1959 petitions; 1585 of which were complaints and 374 requests in respect to the protection of minors in the media; this is 14% more than in 2005. 12% of the complaints regard FSM members.

Figure 15: Complaints filed in 2006 by content (source: FSM Annual Report 2006)**Figure 16: Status of Complaint proceedings (source: FSM Annual Report 2006)**

So far only one case occurred in which the KJM - in accordance with § 20(5)1 JMStV has transmitted a complaint (given it regarded a FSM member) to the FSM, and initiated a proceeding against an FSM member under the FSM procedures. This was the first time the co-regulation mechanism was triggered.

3.5.6 Outputs

The annual meeting is normally attended by about 90% of the members; external participants are not invited. The FSM management feels that the activities are well known to the FSM members, who also receive a monthly newsletter plus a presentation at the annual meeting by the Board and the managing director. The awareness on the FSM activities among internet users seems on the other hand rather low. The FSM would desire

more press coverage. However, it should also be mentioned that the FSM rather targets intermediaries than users directly, so that the FSM is well interlinked and users can easily find it if they need it.

There are currently no reform proposals; however, when the reform of the statutes and the codex was necessary the members were very much involved and unanimity was required for the vote.

The agenda is decided on by the Board but mainly prepared by the Managing Director, taking in account member recommendations as well as the political developments.

3.5.7 Outcomes

The FSM has been growing sustainably over the last years. Most of the membership increases have been linked to the integration of new self-regulation sub-codices (such as the mobile radio area, and the search engine area). Such a natural growth is also foreseen for the future and will depend on the expansion into new areas.

With the recognition of the FSM as an institution of voluntary self-control by the KJM, and its takeover of a role in the co-regulatory scheme it has in this way become closer to the government.

The FSM is so far not responsible for international liaison with other Internet self-regulatory bodies (in its specific areas the FSM also seems to not have counterparts in other countries, e.g. the FSM initiative is the first one in the area of search engines), but would like to get into contact with newly created ones as soon as they are established. It is however, interacting with other NGOs, ISPs, etc. The FSM's responsibilities in the area of voluntary self-monitoring may be expanded to include other sectors as agreed by the General Assembly.

Christiansen (2007) considers that in FSM search engine regulation, it was a major achievement getting Google to agree. As regards self-regulation under the scheme, he notes the potential that the FSM and search providers have set a precedent for pre-filtering of content hosted on German sites of YouTube (video) and Flickr (photo) as well as other sites. He believes that every provider says they don't do things, but they do secretly, to avoid liability [E-Commerce Directive] and for fundamental PR reasons. He further believes that ECD liability rules are clearly a counter-incentive to achieving more.

3.5.8 Impact

Although the FSM is a not-for profit association, there may be a certain indirectly value to its members or even (not affiliated) companies¹⁴⁷ that follow the decision of the FSM. Such a benefit might arise from the shield effect of the FSM (the FSM decides on sanctions, not the state media authority, and the FSM sanctions are regularly much lower than the maximal sanctions of the regulatory authority); the state media authorities are only allowed to impose sanctions if the FSM has acted beyond its discretionary power. Furthermore, the FSM offers the service of providing a central appointee for the protection of minors, a post

¹⁴⁷ See: Hans Bredow Institute (2006) Final Report: Study on Co-Regulation Measures in the Media Sector; Study for the European Commission, Directorate Information Society and Media Unit A1 Audiovisual and Media Policies (Tender DG EAC 03/04; Contract No.: 2004-5091/001-001 DAVBST) June 2006; page 53. Available at: http://www.epsplus.net/epsplus/media/files/coregul_final_report_en.

required by law, which can help small companies save money by not having to employ someone on their own (companies with more than 50 employees or more than 10 million monthly hits on average are obliged to employ their own appointee); about a third of the FSM members made use of this service in 2006.

FSM aims at fostering trust in the internet, which in the long term might enhance its competitiveness.

FSM is also providing for additional media and political presence (e.g. invitations to panels) for its members. The FSM is not aware of any competition against its institution or its function. The activities of members (such as AOL and Google, see above) are complementary to the activity of the regulator itself. The market size of the FSM could be defined by looking at the size of the market players that are members of the FSM (e.g. in a press release of the Hans Bredow Institut it was stated that over 75% of all requests via search engines were starting at Google).¹⁴⁸

Table 25: German use of search engines 2007¹⁴⁹

Google	89.0%
Yahoo	3.2%
T-Online	2.0%
MSN Web-Suche	1.4%
AOL Suche	1.2%
Lycos	0.3%
WEB.DE	0.3%
suche.freenet.de	0.2%
ask.com	0.2%
Altavista	0.2%
search.com	0.1%

3.5.9 Sustainability and Reform

The FSM's responsibilities in the area of voluntary self-monitoring may be expanded to include other sectors as agreed by the General Assembly. Besides the sub-code for search engines, in summer 2006 the main service providers of services provided via mobile (e.g. E-Plus, O2, T-Mobile, Vodafone D2) that had agreed in 2005 to a code of conduct, have joined the FSM establishing the "Self-control - mobile ". Currently the debate of integrating another new area under the FSM scheme by adopting a third sub-code is ongoing.

Other than in respect to the general area of multimedia service providers of the FSM (and its role in the sub area of mobile), the Selbstkontrolle Suchmaschinen is a mere self-

¹⁴⁸ Projekt „Suchmaschinen als Gatekeeper in der öffentlichen Kommunikation“

Zusammenfassung für die Presse; available at: <http://www.hans-bredow-institut.de/presse/Suchmaschinen.pdf>

¹⁴⁹ Source: Web Barometer at www.webhits.de, distribution of 42900 searches; as of 30th August 2007.

regulatory initiative, there is no co-regulation aspect and institutions such as the KJM or the Landesmedienanstalten do not play any role in this area.

FSM feels that the initiative is a success and that this is also perceived as such by the other interested parties, so that currently no reform considerations are on the table. The only area in which the FSM would see space for improvement – but which is outside of its own activities – is the further optimization of the process of checking whether a certain content should be listed at the index, as this process could be speeded up.

The FSM has grown in a sustainable way, and significant membership increases have mainly been linked to the integration of new areas of self-regulation (such as mobile content, and search engines). Such growth is also foreseen for the future and will depend on expansion into further new areas. The FSM innovates insofar as it provides new means to tackle the problem of the protection of minors in the internet. One initiative launched in this respect by the FSM (in cooperation with the Deutsches Kinderhilfswerk, and MSN Deutschland) is an internet information portal for kids (available at www.internauten.de). The latest reform – deciding to play a role in the KJM co-regulation scheme – was an externally driven one, given the introduction of the new regulation. However, the management is providing ideas to the Board which in turn decides on the strategy; this strategy has of course to be supported by the FSM members.

Christiansen (2007) explains the AOL approach: “Any step a provider can take is a limited resource” – the question is how to legitimately allocate those resources? Currently its first-come-first-served based on legal requirements, notably copyright material take-down. But as there is no limit on liability, ISPs must claim a more fundamental defence. He believes that the optimal vision would be: if a search or content provider uses resources wisely to block as extensively as possible – following the KJM list for instance – to stop individual suits by companies/individuals, but where KJM could make decisions that others cannot – e.g. not to block child porn as it will re-emerge elsewhere, or to permit a historical academic site about Nazis but not a phishing site.

van Eijk (2007) confirms that Google has 94% market share in Netherlands, as well as positions of dominance in Germany, France, UK in excess of 80%. In his analysis, the bottleneck is both in indexing of web by search, and development of the mathematical algorithm to analyse search questions. He is concerned at three types of manipulation:

1. By search engineers;
2. By information providers;
3. By hackers.

Furthermore, given the commercial importance of as high ranking on Google, he is concerned at three mechanisms for enhancing page rating:

- By payment to intermediaries to increase ranking for websites¹⁵⁰;

¹⁵⁰ He notes that information providers can offer: Search Engine Optimisation; Spamdexing; Link farming; Pagejacking; Doorway pages. However, Google can remove sites that manipulate: e.g. BMW was removed from its artificially high position in search. He also notes ‘Google bombing’ by amateurs: e.g. John Prescott as a search term produced extremely offensive results in 2006 – but Google has overcome these recently.

- ‘Googlewashing’ – in which information simply disappears from public view if its not popular (especially given potentially millions of relevant search results per search);
- Censorship – under conditions which pertain to Germany, China and other countries with specific legislation, but also the evidence that Google even manipulates in countries without such laws (see Zittrain 2003, 2004).

Furthermore, van Eijk raises several emerging issues that affect search engine self-regulation in areas other than their direct impact on the e-commerce providers that aim to attract viewers.

1. Does data expire on Google? Google has recently offered the Article 29 Working Party to delete data older than 18 months, in order to satisfy privacy concerns that anonymity could be threatened for users of Google’s ubiquitous services. A further issue that is currently dealt with by DG Competition, and the Merger Taskforce in particular, is that of vertical integration: between Google and DoubleClick, but
2. van Eijk suggests that other services such as Google Earth and YouTube leverage Google’s market power and are potentially regulable, as are the new databases created by Google: GoogleBooks and Google Scholar.

He also shares Christiansen’s principled concern regarding the uneven treatment of search providers across Europe under the E-Commerce Directive. He suggests a variety of regulatory approaches and principles to apply to search providers:

1. Under the E-commerce Directive, as an information service.
2. As an Electronic Programme Guide that is analogous to an E-Commerce Directive information provider, but in his view this may be unwise, as EPGs are by definition required to set content preferences, and are therefore not technology-neutral, whereas information intermediaries under the ECD are arguably expected to provide neutrality.
3. Information accessibility is contiguous to Article 10 of the European Convention of Human Rights requirements for freedom of expression, and as such is a vital service for citizens seeking to access a wide range of material online – in this sense, search is the very opposite of the content-agnostic information provider under the ECD, and is a media service of vital citizen and government interest.

This is in addition to the privacy and merger concerns raised above. As a result, van Eijk considers that the German form of self-regulation may prove a model for the rest of Europe, reflecting broad social and political concern at the role of search providers in general, and dominant providers in particular.

By contrast, Juan Delgado (2007) explained that Yahoo! relies on users flagging up content, especially in its recently acquired UGC networks Flickr and Bix, where dynamic user-generated content creates a necessity to rely on user reports. For these reasons, Yahoo!’s user support team addresses individual concerns. In broader policy terms, it aims to address build cross-industry consensus if possible on solutions. He believes that it is “really early to judge” whether a pan-European solution is worthwhile. Boyle (2007) worries that the discussion can be centred on US companies “finding innovations that

people have signed up to” and achieving a more durable monopoly than others – due to excellence in purchasing innovative start-ups. He asks “Should that ever be regulated i.e. should Google’s position be allowed to endure?”

3.5.10 **Evaluation**

The Hans Bredow Institute is currently preparing the evaluation of the German co-regulation scheme; the study should be terminated in October 2007. In the meantime the FSM has asked a university to externally evaluate its processes; this study was unavailable at time of investigation.

FSM feels that the search engine initiative is a success and that this is also perceived as such by the other interested parties. The FSM has grown membership mainly inked to the integration of new areas of self-regulation (such as mobile content, and search engines). FSM innovates insofar as it provides new means to tackle the problem of the protection of minors in the internet.

While the decision whether to extend search regulation models is primarily a political one, it is clear that the further assessment of the impact of search in its core mission and as part of the wider bouquet of services offered by search engines is an important agenda for both Member States and the European Commission. It can be expected that the merger cases in 2007-8 involving both Google and Yahoo! will provide substantial new interest and empirical research that can permit further policy development in this field.

CHAPTER 4 Content Filtering/Rating Case Studies

4.1 Premium Content: ICSTIS/PhonePayPlus

Researcher: Chris Marsden

ICSTIS (renamed in October 2007 as PhonePayPlus) was founded in 1986 as the co-regulator of premium telephony services in the UK, recognised by then-regulator Ofel. It commits members to its Code of Practice which is now in its 11th Edition. It is the paradigmatic regulator of the world's largest premium services market, of about £1.2 billion per annum. In 2007, with its new co-regulatory partner Ofcom (since 2004) a strategic review was put underway, with particular attention to the governance structure and regulating the new markets for mobile, broadcast quiz shows and national-local rate (0871) numbers (from 2008). It co-founded the international coordination mechanism: IARN. It is funded by a levy on service providers which is collected by network operators. There are fines and administrative charges collected from service providers who breach the Code of Practice, of up to £250,000 or disqualification from providing services. Its budget and strategy is ultimately approved by Ofcom which evaluates the organisation annually.

Table 26: Summary of ICSTIS Case Study

Was there a government mandate initially?	Yes
What kind of government involvement is there?	Ofcom oversight with continued monitoring, liaison and evaluation; Parliament joint appearance before Select Committee; Ministerial statements
Which other stakeholders are involved and how?	Primarily industry-led SRO – several non-industry board members
How is transparency ensured?	Web publication of proceedings, website and other efforts
What is the enforcement mechanism, is it effective, at what cost?	Very powerful financial penalties available and frequently used
What is the relative size of administrative burdens?	Lower than Ofcom but sizeable
Is financial independence assured/how?	Budgets approved by Ofcom
Which internal factor most impacts success?	Expansion of scope to non-geographic numbers and mobile; proof of effective regulation of TV phone-in quizzes
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: relationship with Ofcom, minister and Parliament. Market: press and public relations as well as potential new initiatives with industry.
Lessons for European policy	Perceived failure of co-regulation, but new role and increasing membership. Unclear that any alternative except

merger into Ofcom exists. Clear need for tough regulation against rogue operators, including very large players.
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4.1.1 Interests and Policy Needs

ICSTIS (Independent Committee for the Supervision of Standards of Telephone Information Services) was founded in 1986 to co-regulate the premium telephony industry with the support of the regulator, Oftel. It is now known as PhonePayPlus (since October 2007), and the regulator is now Ofcom. In this case study ICSTIS is the reference used, as it was for the first 21 years of its existence.

Premium rate services have recently become common as a means of payment for information and other commercial transactions. Their use has grown to encompass applications as diverse as SMS voting for popular reality TV shows to obtaining visa information from foreign embassies. Mobile operators are adapting to this existing market as well as to the potential growth of premium rate services to encompass graphics and video messaging. Already with 2.5G mobiles, content can be purchased per number of downloads, and consumers need some form of protection that ensures that they are getting what they are paying for¹⁵¹. Applications are also being developed which will enable the use of a mobile phone account to pay for a broad range of micro-transactions. Whilst the latter may be causing headaches for network operators in terms of the need to comply with financial legislation such as the e-Money directive¹⁵², for consumers, and in particular child consumers, the opportunities to spend large amounts of money via mobile handsets should also be regarded with caution. More generally, issues of advertising may also require attention.

European broadcasters, fixed and mobile operators increasingly use premium services to fund interactive television 'reality' and quiz programmes, such as Gross Bruder/Big Brother/Gran Hermano. In the UK, mobile premium texting is doubling in value each year, and was worth £200million/€300million annually in 2003¹⁵³. Total premium voice calls were worth €1billion in 2003, with mobile about 10% of that total. Directory enquiry calls were worth €400million. The entire UK premium rate industry – the largest in Europe – was worth €1.7billion. The biggest increase in complaints were for adult, text message and dating services. Interviewees have explained that many complaints and especially telephone enquiries relate to adult services, which are in fact spurious based on family members discovering breaches of callers' anonymity.

4.1.2 Design & organisation of the Institution

ICSTIS was established in 1986 by the telecoms incumbent, BT, the regulator, Oftel (until 2003), and the government (Department of Trade and Industry). At that point there were 16 service providers using BT's network. Following early scandals (especially related to

151 For ICSTIS consumer guidance, see http://www.icstis.org.uk/icstis2002/pdf/consumer_guide.pdf

152 Note the e-Money Directive enforcement guidance from the Commission was changed in January 2005 after lobbying by the mobile industry to permit such transactions to continue. See http://europa.eu.int/comm/internal_market/bank/e-money/index_en.htm#suivi and for a summary of the expected changes, see <http://www.thefeature.com/article?articleid=101509> accessed 7 April 2005.

153 Source: IAPCODE estimate based on ICSTIS 2003 figures.

chatlines, which were banned in 1992 and reintroduced in 2003), the forerunner to the Competition Commission in 1989 recommended that a Code of Practice be made compulsory for such services, subject to a single regulator. Oftel delegated ICSTIS to be that regulator (ICSTIS 2006: 7-8).

ICSTIS is responsible for creating a Code of Practice, which all premium rate service providers must follow, and for enforcing compliance with that Code. The premium rate industry is complex, with many parties involved in the value chain. Customers pay their telecoms provider for all their calls. The telecoms provider in turn pays other networks to connect the customer's calls, either to the individual or organisation they have dialled or to special services such as premium rate. Companies offering premium rate services collect a share of revenue from their network providers who have in turn been paid by the telecoms provider who is charging the customer. The ICSTIS Code of Practice applies to any company offering premium rate services in the UK. These companies are responsible for ensuring that the content and promotion of their premium rate services comply with the Code. ICSTIS has a range of sanctions it can impose if it finds that the Code has been breached. The Code also includes general requirements for network providers to assist ICSTIS in its regulation of companies offering premium rate services.

ICSTIS established a funding level from the industry (with a levy on turnover introduced in 2003), a compensation scheme and an adjudication procedure, backed from 2001 by an Independent Appeals Tribunal. The Code of Practice to which PRS members must agree is the cornerstone of ICSTIS regulation, and companies can be investigated and fined for non-compliance. The Code is in its 11th edition in 2007, with 7 editions from 1987-95, and more regular updates until the 10th Edition in 2004. In 1995, ICSTIS co-founded IARN, the international 'club' of premium rate regulators.

Ofcom's stated aims in co-regulation are:

"approving the ICSTIS Code and the ICSTIS budget, where it is satisfied that these enable Ofcom to meet its obligations under the Act; using its powers to ensure compliance with ICSTIS Directions; and carrying out sufficient oversight, and using its backstop powers where necessary, to make sure that regulation is effective."¹⁵⁴

The basis on which Ofcom delegates its powers under the Communications Act to ICSTIS are:

"in keeping with the principles of co-regulation and with the arrangements in existence before the enactment of the Act and the creation of Ofcom ... Ofcom will only approve a code if it is satisfied, amongst other things, that there is a person who has the function of administering and enforcing the code. It follows, therefore, that approval of a code effectively signals the approval of an "enforcement authority" to regulate PRS."¹⁵⁵

Ofcom has statutory back-stop powers in relation to premium rate services. It is responsible for approving the Code of Practice and, under Section 121 of the

¹⁵⁴ See the Memorandum of Understanding of August 2005 between Ofcom and premium rate co-regulator ICSTIS:

http://www.icstis.org.uk/pdfs_news/OfcomICSTISMou05.pdf

¹⁵⁵ See further on advertising co-regulation, Dacko, S. And Hart, M. (2005) Critically Examining Theory and Practice: Implications for Coregulation and Coregulating Broadcast Advertising in the United Kingdom, *Int.J. on Media Management* 2005, Vol. 7, No. 1&2, pp2-15.

Communications Act, for setting the conditions under which premium rate service providers can operate.

Ofcom (2004) in late 2004 completed its first review of ICSTIS' practices and made several recommendations for strengthening ICSTIS powers:

- Customer refunds: Customers pay bills to their telecoms providers for calls including those to premium rate services. Telecoms providers pay the relevant network providers' charges for connecting the calls. Network providers should NOT share these call revenues with companies offering premium rate services for at least 30 days, to allow ICSTIS sufficient time to assess complaints and potential fraudulent activity. These call revenues should also be frozen during any additional ICSTIS investigation that is necessary, and if necessary for a further three months after an investigation is complete, to fund any customer refunds that ICSTIS concludes are appropriate.
- ICSTIS investigations: The ICSTIS Code should require network providers to support ICSTIS by providing detailed information on:
 - o the identity of the companies offering premium rate services with which they do business and taking all reasonable steps to ensure that information is accurate;
 - o call traffic and revenues where a complaint has been received.
- Fines: The DTI should consider increasing the maximum fine which can be imposed for a breach of the ICSTIS Code of Practice. Under Sections 121 and 123 of the Communications Act 2003, the current maximum is £100,000. The Code of Practice should also be amended to enable ICSTIS to fine network providers as well as service providers, where the network providers fail to meet their obligations.
- Customer service and consumer information: The ICSTIS Code should require companies offering premium rate services to have effective customer service and refund policies in place. Telecoms providers should be required to make practical information on premium rate services available to their customers, including information on call barring facilities for example. ICSTIS should consult on guidelines that target effective provision of consumer information on premium rate services.
- ICSTIS governance: ICSTIS should proceed with proposed changes to ensure appropriate accountability to industry stakeholders. These changes include the conversion of the existing ICSTIS Committee into a Board including members with industry expertise, and the establishment of an advisory committee of industry stakeholders.
- ICSTIS and Ofcom roles: The two organisations should agree a Memorandum of Understanding (MOU) which clarifies the roles of the two organisations in relation to premium rate services regulation, and ensures appropriate accountability to Ofcom.

Note that changes to the rules require both notification to and consultation with stakeholders under both EU legislative and UK legislative conditions:

- ICSTIS public consultation on changes to the Code of Practice, including statutory three month consultation with European Commission and Member States required under the EU Technical Standards Directive¹⁵⁶;
- Ofcom consultation on amendments to requirements under General Condition

¹⁵⁶ Technical Standards and Regulations Directive 98/34/EC as amended by Directive 98/48/EC.

14 and related guidance designed to improve consumer information offered by telecoms companies on premium rate services.

Ofcom in 2006 reviewed and approved the 11th ICSTIS Code:

1.4 Section 121(1) of the Act provides that Ofcom may approve a code of practice which has been made by another person for the purpose of regulating PRS. Ofcom approved the ICSTIS Code of Practice (10th edition) on 29 December 2003. On 4 August 2005, Ofcom published its Notification of approval of an emergency code amendment to the ICSTIS Code of Practice (10th edition). The amended Code (10th edition, as amended) ('the approved Code'), and Ofcom's approval of it, remains in force.

1.5 On 8 June 2006 Ofcom published a consultation document which set out that, having given preliminary consideration to the provisions of the draft Code, Ofcom was minded to approve the draft Code on the basis that it was satisfied that:

- a) the Code contains provisions for regulating, to such extent as Ofcom thought fit, the arrangements made by the providers of PRS for promoting and marketing those services (the test in section 121(1) of the Act);
- b) that all of the requirements in section 121(2) have been met (these tests are set out further below); and
- c) that, having regard inter alia to the provisions of the Code, it is appropriate for Ofcom to approve it.¹⁵⁷

The Ofcom Review was undertaken as a result of a formal request from the Department of Trade and Industry (DTI). This followed discussions between DTI, Ofcom and ICSTIS relating to growing concerns about fraudulent and misleading use of premium rate services (typically numbers beginning 09), including 'rogue' internet diallers which re-route dial up internet connections onto premium rate numbers without customers' knowledge or consent.

4.1.3 Inputs

PhonepayPlus (formerly ICSTIS: Independent Committee for the Supervision of Standards of Telephone Information Services)

Non-profit making company.

Clove Building

4 Maguire Street

London

SE1 2NQ

Chair: Sir Alistair Graham

Chief Executive: George Kidd

Board: Ten members including Sir Alistair as Chair, with seven independent of the premium rate industry. All part-time. Formally renamed Board instead of Committee

¹⁵⁷ Ofcom (2006) Approval of the ICSTIS Code of Practice (11th Edition)

A statement and Notification on approval of the ICSTIS Code of Practice (11th Edition) at <http://www.Ofcom.org.uk/consult/condocs/icstiscode/statement/>

following the 11th Code of Practice implementation 4th January 2007. Meets bimonthly. Non-industry members have further responsibilities in relation to adjudications and special licensed services.

Industry Liaison Panel: established 2006, chair Nicola Robbins (BT). 15 members including one ICSTIS member.

Budget (£)¹⁵⁸: 2007: 3.459m/ 2006: 3.612m

Note that ICSTIS reduced its levy on turnover for service providers from 0.3% to 0.2%, reflecting its policy of setting the levy to reflect ongoing costs. Fine income in proportion to levy income varied between 45% (2007) and 265% (2006), a high variance. Historically ICSTIS has imposed fines of over £12.5m¹⁵⁹. The growth of the premium rate market in relation to ICSTIS' fixed costs means that the ICSTIS budget is about 0.25% of the total market, whereas it was about 0.5% in 2000.

4.1.4 Activities

ICSTIS handles 11,000 complaints per year, out of 131,089 calls made to the contact center in 2006/7. ICSTIS strategy is to move from responsive mode (waiting for complaints) to proactive mode (monitoring licensed services and opening own-initiative investigations). Previously it received 20,000 complaints or more in 2003-5, many related to the 'rogue dialler' issue, in which a user's computer modem was redialed automatically without their full knowledge to a premium rate number (even an international premium rate number) (ICSTIS 2006: 14).

4.1.5 Enforcement

As a result of the new proactive strategy, ICSTIS opened a record 1,759 new investigations in 2006/7, against previous numbers between 500 and 1100 historically (2000-6). The investigations resulted in 131 cases coming to formal adjudication, with 128 breaches of the Code of Practice discovered. 40% of breaches related to mobiles, just above the proportion of the premium rate market. 9 services were shut down using the emergency procedure, which withholds revenues from the network operator, which is instructed not to pass the revenue on to the service provider. This was a very large (90%) drop from the emergency use in 2005/6. Service providers were barred as a result of 73 adjudications, with fines issued in a total of 112 breaches.

The interdependency between ICSTIS and Ofcom is somewhat complex, with both broadcasters as service providers and telecoms operators in their network operations responsible to Ofcom. Telecoms operators as wholesalers of premium services to premium service providers are responsible to ICSTIS. It is therefore possible that the following links in the value chain be liable:

- Broadcaster (as provider of premium phone vote competitions – to Ofcom)
- Network operator (for integrity of their network – to Ofcom)
- Network operator (as wholesaler to service providers – to ICSTIS)

¹⁵⁸ ICSTIS (2007) Annual report, at pp24-25, year to 31 March. Budgets exclude 'Other costs', which varied significantly between the two years due to fine income.

¹⁵⁹ ICSTIS (2006) ICSTIS 1986-2006, A celebration, at p4.

- Service providers (as subcontractors from broadcasters – to ICSTIS).

Until 2006, there was little doubt that the ‘first response’ regulator should be ICSTIS, as it had powers to fine up to £50,000 for each breach of its Code of Practice. It also has the ability to refer a persistently fraudulent operator to either City of London police or in the case of a network operator to Ofcom for removal of its Conditions of Entitlement¹⁶⁰. In 2006, the Communications Act was amended to permit Ofcom to fine service providers up to £50,000 for persistent misuse of the network, though its powers to fine broadcast licencees remained unlimited¹⁶¹.

Before Parliament the regulators submitted their philosophy of outcome-led regulation (Ofcom 2007)¹⁶²:

Ofcom’s view is that detailed prescriptive rules are generally not well suited to matters of content regulation. In applying the general standards set out in the Communications Act 2003, Ofcom’s focus is primarily on outcomes – what is broadcast – rather than the process of achieving that outcome. Rules based on process may not be applicable in all cases: compliance with a set of rules, no matter how detailed, may still not achieve the desired outcome. The burden of compliance, including the editorial processes involved, should rest unambiguously with the broadcaster. (at para 16)

ICSTIS has made clear, publicly, that where evidence of fraud or other criminal practice comes to light, it will not hesitate to pass on that information to the police. (at para 22)

ICSTIS and Ofcom faced a crisis of unprecedented proportions in spring-summer 2007, as it emerged that public service broadcasters and their subcontracted service providers had committed fraud on a very widespread basis, by rigging the results of competitions and even awarding prizes to non-entrants. The power to impose unlimited fines on broadcast licencees was exercised in a fine of £2,000,000 (over 2.7m€) against the largest breakfast television operator, GMTV. Other broadcasters suspended their competition activities or asked auditors to examine their activities to ensure probity could be restored. As part of this process, Whiteing (2007) explain that research was co-commissioned with Ofcom on 14 international premium markets. It will be published with the subsequent Ofcom review of Premium Rate Services regulation in autumn 2007. The regulators rebut the idea that the co-regulator ICSTIS be folded into formal regulator Ofcom:

we do not share the Committee’s view that a single point of complaint would be in the best interest of consumers. (at para 34) Ofcom also has the power to impose statutory sanctions (including fines and revocation of licences) against broadcasters for repeated and serious breaches of its codes. ICSTIS can also fine telephone operators of PRS up to £250,000. Both regulators stress that they are quite prepared to use the full range of sanctions should it be warranted. (at para 12)

160 In early 2007, representative case bulletins show ICSTIS upheld fines of £45,000 and £50,000, against Zamano and Atlas Interactive Group Ltd respectively, for unsolicited reversed billed SMS joke services dismissing appeals from both parties. WIN (Wireless Information Network) was fined £5,000 for unsolicited SMS (content and/or promotion were provided by 2Comm Ltd). This was the 23rd adjudication against WIN in 30 months, resulting in fines totalling £213,000. WIN had not been referred to Ofcom.

161 The maximum financial penalty Ofcom can impose under section 130 of the Act is £50,000 per notification under the Communications Act 2003 (Maximum Penalty for Persistent Misuse of Network or Service) Order 2006.

162 Ofcom and ICSTIS (2007) 23 March 2007 Joint Ofcom and ICSTIS response to Culture, Media & Sport Committee report on call TV quiz shows

which they have demonstrated with the £2m fine of GMTV by Ofcom and the £243,000 total fines imposed by ICSTIS on one operator.

The regulators explain (Ofcom 2007) that:

ICSTIS published the results of its recent monitoring and research into Call TV quiz shows on 29 January 2007 (at para 7) ICSTIS also met with broadcasters on 8 March 2007 to discuss ongoing concerns regarding the use of Premium Rate Services in all participation programming, not just Call TV quiz shows. Following this meeting ICSTIS set out a range of actions aimed at restoring public trust and confidence in these services and ensuring consumers are protected. This included:-

- Asking all broadcasters and their partners to carry out a review of their current and forthcoming participation TV programming to ensure there is no risk of consumer harm. Responses are to be provided to ICSTIS by 26 March 2007.
- The introduction of systematic monitoring by ICSTIS and inspections to ensure services are being run as they should.
- An expectation that providers would publish complete, accurate and easily understood rules for all competition services.
- The introduction of a licensing regime for all premium rate service providers operating participation TV services within three months. Such a licensing system will define where responsibility for compliance with the ICSTIS Code of Practice lies so that viewers can have absolute confidence in services. As part of establishing a licensing regime, ICSTIS will explore with the industry the benefit of introducing a trust mark or quality standard to build long-term public confidence in services. (at para 9)

– but note that reviews and consultations are ongoing, and the sector in crisis has therefore been under review for a year continuously.

4.1.6 Outcomes

The premium rate market has seen two substantial changes as it has grown since 2002. The first is for mobile services, which are now 33% of the market (total about £1,200million). The remainder is directory services (15%), and the 09-prefixed numbers (which includes the majority of broadcast revenues). Mobile services have proved problematic especially in regard to under-age premium service purchase (including ringtones such as *Crazy Frog*, and partially nude photographs which are non-obscene)¹⁶³.

The second development (some of which are mobile voting) is broadcast premium services, at 22% or over £270m. In 2006 these ‘phone-in quiz’ contests caused great controversy when Big Brother voters complained in large numbers (almost 25% of total complaints) at a expelled out-voted contestant being allowed to rejoin the show. In 2007, further controversy emerged as many votes were shown to be badly administered or fraudulent.

Further markets will be brought inside ICSTIS’ remit when 0871 (national calls at local rate) number ranges are regulated from 2008, passed over from Ofcom. That market size is a further £300m, and the primary consumer concerns relate to excessive call waiting and automated answering services, as well as misleading advertising relating to total call time

¹⁶³ ICSTIS launched the website www.phonebrain.org to educate and to address concerns of 10-13 year olds at premium services.

and price transparency¹⁶⁴.

4.1.7 Outputs

ICSTIS runs a complaints hotline which received 131,000 calls in 2006/7. 50% of callers to ICSTIS were under the impression that they were calling British Telecom (BT), not the regulator. ICSTIS also empowers users to check premium rate numbers – 785,183 such checks were made in 2006/7. There were 326,040 unique visitors to the ICSTIS website in 2006/7¹⁶⁵. New online registration for services has resulted in 617 service providers registering online. ICSTIS also publishes ICSTIS Quarterly, a magazine with news of ICSTIS ongoing work. It holds a co-regulatory Forum each quarter (replacing the Industry Committee which met until 2002), reflecting its wider engagement with users. It has convened the Forum in Manchester and Birmingham as well as two meetings in London in 2006/7.

4.1.8 Impact

In addition to the website, which was relaunched in 2006/7, the Industry Support Team is responsible for consumer and industry outreach. It had over 100 meetings in the year, as well as issuing the Mobile Monthly Newsletter, and sharing information on alerts under the Memorandum of Understanding for Consumer Harm on Premium Rate Services and High Toll Numbers.

ICSTIS is a member of the International Audiotex Regulators Network (IARN), the European (and Australian) self-regulatory network for premium services. Operating since 1995, the 15th meeting in November 2002 has been followed by a long period of inactivity¹⁶⁶. Member self-regulators have indicated that continuing support for IARN depends on resumed activity. If IARN were to fail, that would signal decreased pan-European coordination in premium services, at a critical time when the mobile industry needs such a co-ordinatory network.

4.1.9 Sustainability and Reform

In August 2005, as an end-result of its review for government of ICSTIS begun in 2004, Ofcom announced a revision to the ICSTIS Code of Conduct to require network operators to retain monies for 30 days following payment. It stated¹⁶⁷:

The revision will prevent network companies who connect premium rate calls from sharing call revenues with providers offering premium rate services for at least 30 calendar days after calls have been made by consumers. The 30 day rule will allow ICSTIS important additional time to assess complaints and detect misleading or potentially fraudulent activity. Call revenues may then be frozen during any additional ICSTIS investigation that is necessary.

This change is a key recommendation from Ofcom's report to DTI on improving premium rate regulation, and accompanies the new agreement between ICSTIS and Ofcom:

¹⁶⁴ ICSTIS (2007) at 15.

¹⁶⁵ ICSTIS (2007) at 8-9.

¹⁶⁶ See <http://www.iarn.org/> last visited 3 March 2004, and interviews with national self-regulators February-March 2004.

¹⁶⁷ Ofcom (2005) 04/08/05 Ofcom approves amendment to ICSTIS Code of Practice

Ofcom and ICSTIS have also published details of a new Memorandum of Understanding (MoU) between the two organisations. The MoU will support this co-regulatory model, providing a clear division of responsibility between the two organisations. The MOU covers a range of important issues including:

- New Key Performance Indicators (KPI) for ICSTIS, to be agreed with Ofcom and published every year. These will cover all aspects of ICSTIS contact with consumers and industry. ICSTIS will report publicly on its performance against these KPI every six months;
- Continuing the joint approach on enforcement of ICSTIS directions. Ofcom will work closely with ICSTIS to strengthen effective enforcement processes. The two organisations will seek to ensure a culture of compliance throughout the premium rate industry.

As they explain (Ofcom 2007):

It is important to stress that Ofcom already has general oversight of ICSTIS's activities. ICSTIS regulates premium rate services (PRS) under a Memorandum of Understanding with Ofcom, which approves its Code of Practice, budget and annual activity plan, including an assessment of its performance and the prioritisation of its strategic direction. On a day to day basis, therefore, there are well established arrangements between the two regulators that cover such matters as broadcasting, telecoms investigations and general strategy. Separately, Ofcom is currently undertaking a broad review of the scope of regulation of premium rate services. The aim of the review is to consider whether current PRS regulation meets the needs of consumers while supporting an innovative and growing PRS industry. Both regulators are keen to ensure the most effective regulation of PRS in the converging media landscape. (pars 31-32)

By autumn 2007, suggestions were made that ITV be fined far above the initial £2m that GMTV was penalised¹⁶⁸, and the government minister James Purnell responsible asked the head of Ofcom to report back to him on how and where consumer protection might be strengthened in communications regulation¹⁶⁹. Purnell stated:

"It's my role to ensure the policy and regulatory framework is effective enough and I am writing to [the Ofcom chief executive] Ed Richards today asking him to give us advice on whether the powers at their disposal are sufficient, what the implications for the policy framework are, and whether the regime is stable ... The priority has to be viewers. It was clearly unacceptable for millions of phone calls to be made, people to have paid for them and not to have a chance of winning. We need to make sure that the policy framework is robust enough to make sure it doesn't happen again... If the conclusion from this work from Ofcom will say that the regime is not sufficient we would need to look at that very seriously.

Most recently, Dr. Tanya Byron's review in to computer games and internet safety reports jointly in to DCMS and the Department for children, schools & families (DSCF) and was announced on 20 September 2007 by the Prime Minister¹⁷⁰. The review examines how to

168 Owen Gibson and Richard Wray (2007) ITV faces £70m fine after viewers cheated out of millions on premium phone-ins, The Guardian October 19 2007 at <http://www.guardian.co.uk/media/2007/oct/19/1>

169 Tryhorn Chris (2007) Purnell: TV may face tougher regime in Guardian Unlimited October 25 2007 <http://www.guardian.co.uk/media/2007/oct/25/television>

170 See http://www.culture.gov.uk/what_we_do/Creative_industries/cvg.htm#byronreview and

http://www.culture.gov.uk/Reference_library/Press_notices/archive_2007/Byron_Review_Statement_DrTanyaByron.htm

help parents and their children get the best from new technologies while protecting children from inappropriate or potentially harmful material. It uses multimedia in its approach including her pages on *Bebo* and *MySpace*¹⁷¹, designed to increase user participation. Posters told her amongst other things to focus on BBFC not PEGI, as it was the regulatory as opposed to advisory standard, and to examine multiplayer games, and virtual communities such as *SecondLife*¹⁷².

4.1.10 Evaluation

Headline issues for evaluation are:

- Government scrutiny has reached a very high level, with Ofcom oversight with continued monitoring, liaison and evaluation; Parliament joint appearance before Select Committee; Ministerial statements.
- Financially, budgets are approved by Ofcom, enforcement is through very powerful financial penalties which are available and frequently used;
- The major continuing success factor internally is the robust continuation of the mission and the growth of the overall market, with separation of the diligent complying members, from rogue traders.
- Internal factors affecting the immediate future are expansion of scope to non-geographic numbers and mobile; proof of effective regulation of TV phone-in quizzes; and the rebranding as PhonePayPlus.
- The main external conditions impact success/failure are:
 - Governmental: relationship with Ofcom, minister and Parliament.
 - Market: press and public relations as well as potential new initiatives with industry.
 - Civil society: user confidence in the co-regulatory model used.
- Lessons for European policy are that a successful co-regulator over 20 years has a recent perceived failure of co-regulation, but a new role and increasing membership. It is unclear that any alternative except merger into Ofcom exists. There remains a clear need for tough regulation against rogue operators, including very large players.

The phone-in quiz scandal demonstrates exactly the cracks in the ICSTIS co-regulation model: the regulator Ofcom is seen to have devolved even those powers it retains to the co-regulator. The co-regulator itself is of the view that it should have intervened more aggressively earlier to ensure that the industry's own practices were audited more effectively. It invited groups of stakeholders to meetings with the Chair and Chief Executive of ICSTIS to open-ended discussions on the future possibilities for co-regulating the industry, including the most effective means of preventing widespread fraud not simply

¹⁷¹ <http://www.myspace.com/byronreview>

¹⁷² <http://www.Bebo.com/byronreview>

in the broadcasting area but more widely¹⁷³. The market's rapid growth evidently led broadcasters and their service providers to engage in widespread illegal practices. As a result the market for phone-in quizzes has taken a substantial amount of damage and retrenchment. Despite this, ICSTIS proved over 21 years a 'light touch' co-regulator in a fast-growing liberalised industry sector that rapidly became the largest globally. The extent to which 'light touch' remains an effective philosophy is openly questioned internally as well as externally by the ICSTIS executive, and further changes may be anticipated in response to both its ongoing review with Ofcom, and the Ministerial and Parliamentary investigation of parts of the market.

4.2 Mobile Content: IMCB

IMCB: Independent Mobile Classification Board

Researcher: Chris Marsden

With the growth of the Internet market accessed by mobile devices, the UK mobile network operators announced a Code of Conduct in February 2004. The Code committed them to rating adult (18+) content, backed by a rating body. A tender resulted in the appointment of a subsidiary of ICSTIS established for the purpose, the IMCB. After prolonged legal negotiation it began operation in 2005. It is a self-regulatory body which for administrative purposes is set up as a subsidiary of ICSTIS (which has a Golden Share). It has no formal relationship with Ofcom. IMCB follows the NICAM/British Board of Film Classification model. Further European self-regulatory models have been rolled out in other jurisdictions (co-regulation in Germany). An agreement for a Pan-European Framework was announced 2007. The Codes in place cover adult content providers contracted to the network operators. No formal independent evaluation has taken place.

Table 27: Summary of IMCB Case Study

Was there a government mandate initially?	No
What kind of government involvement is there?	Informal liaison
Which other stakeholders are involved and how?	Primarily industry-led SRO
How is transparency ensured?	Very limited – section in annual ICSTIS report
What is the enforcement mechanism, is it effective, at what cost?	Expulsion of non-conforming members
What is the relative size of administrative burdens?	Very low. Major costs on members directly.
Is financial independence assured/how?	Dependence on industry parties.
Which internal factor most impacts success?	Smooth relationship between industry members and ICSTIS parent SRO
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental perception of effectiveness. Market: knowledge of SRO to interested public and industry players outside MNOs.
Lessons for European policy	New pioneering role and increasing membership with potential template for other European countries. Impact on competitiveness of entrepreneurs needs monitoring, as

¹⁷³ Inviting researcher Marsden to one such meeting: 25 June 2007, chaired by Sir Alistair Graham, Chair, ICSTIS.

	dominated by vertically integrated MNOs and allies.
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4.2.1 Interests and Policy Needs

The ability to access the Internet via mobile devices and mobile phone networks is a recent European development, dating to the roll-out of third generation (3G) networks in the period since 2003 (earlier networks had very clunky slow delivery of data and were expensive, therefore raising fewer general consumer problems). In response, mobile operators in the larger and earlier developing European countries have developed Codes of Conduct, mobile ratings classification schemes, and in 2007 a pan-European framework committing themselves to ensure workable schemes are in place by February 2008. In this case study, we examine the first such schemes, in the UK – driven by pan-European operators – as well as the initiation and drafting of the pan-European Framework. Borthwick (2007) establishes the basis for intervention:

“as you move into offering commercial content, some proportion of content ... is only appropriate to supply to adults ... that general commercial positioning gives rise to wider societal and stakeholder interactions”

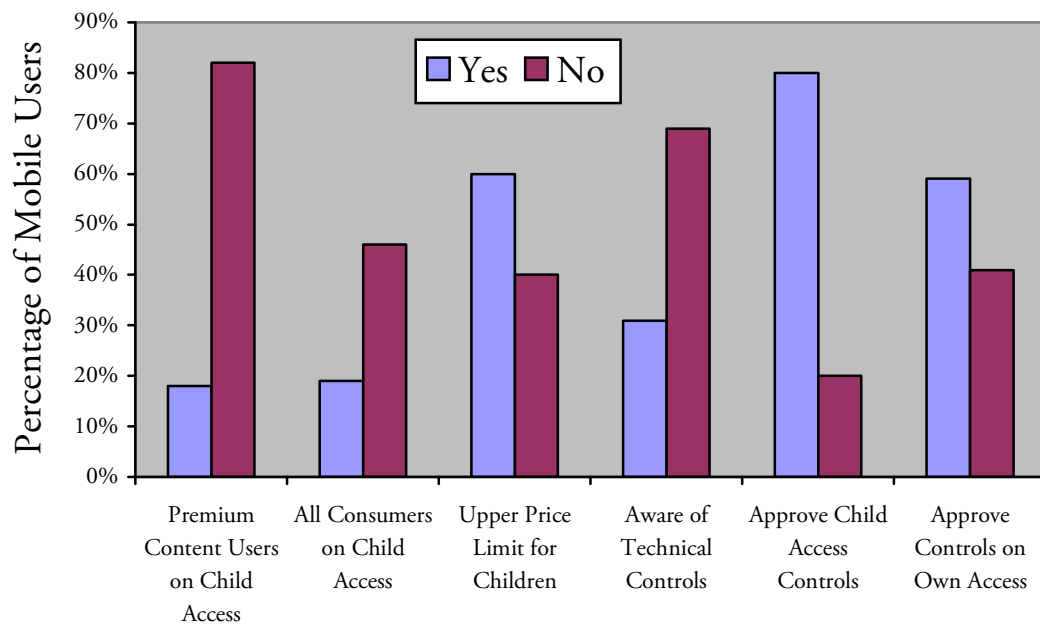
Some countries will of course be more developed in either public policy or market or both – he gives as examples the UK, Germany, Ireland, New Zealand, Australia. He confirms an important design issue to eliminate free-riders:

“what is the structure of the underlying industry? The mobile sector characterised as a series of national oligopolies ... for self-regulatory structures, that is a very promising starting point – compared to an industry which is more heterogeneous”

such as the fixed ISP market, with thousands of players. Moreover mobile network strategies are similar – voice and text moving towards walled garden ‘multimedia content services’, with a market-driven view that “If its legal we want to be able to sell it...even if not in a branded proposition”.

ICSTIS and Vodafone commissioned research in 2003 to identify consumers’ attitude to premium rate mobile services. It demonstrates overwhelming approval for child access controls, and own-access controls¹⁷⁴.

¹⁷⁴ Beaufort International (2003) Premium SMS Services Research, at p5, at http://www.icstis.org.uk/icstis2002/pdf/SMS_RESEARCH_REPORT_MAY03.PDF

Table 28: Consumer Attitudes to Mobile Content 2003 (ICSTIS/Vodafone)

4.2.2 Design & organisation of the Institution

The UK Code was drafted by a committee including all six UK network operators and virtual operators (3, Vodafone, Orange, T-Mobile, Virgin Mobile, O2 [now part of Telefonica]). Informal consultation with content providers, infrastructure and handset suppliers and government at national and European Commission levels took place¹⁷⁵.

The Code itself was written in the ‘regulatory vacuum’ of 2003 as the new super-regulator Ofcom was being established, against a background of discrete coordinated lobbying by mobile networks, and pressure for self-regulation from Parliamentary debate during the Communications Bill 2002-3. There was therefore a combination of regulatory commitment (fostered by cooperation in 2002-3), resource freed by the handover period from existing regulators to Ofcom (second half 2003), and political pressure to establish a workable regime prior to the broad 3G launch in 2004. Carr (2007), a representative of child safety charities, states that the Code was the outcome of long discussions between companies and stakeholders. As Carr explains, the entry barriers create the trivial costs of regulation:

“Its all down to that one single fact: durable consumer-facing oligopoly – there were a lot of arguments we didn’t have to have with them”.

As to whether the market and incentives for mobile networks are unique he states:

¹⁷⁵ Dialogue continued after the launch of the Code: European networks, content providers, consumer groups and regulators met in London 29-30 January 2004 for the ‘Delivering Adult Mobile Content Responsibly’ conference which IAPCODE chaired for Total Telecom. Network operators were also present at the Safer Internet Action Plan’s Safer Internet Day event on 6 February.

“If you could get MSN, Google, Yahoo, AOL, Dell, HP to agree on a certain approach to the Internet as a whole, you’d get pretty near ... a decisive influence on the Internet as a whole – but they don’t because of their competitive nature and fear of anti-trust suits.”

He argues that initiatives such as the Microsoft anti-spam plan nicknamed the ‘pennymail’ were hampered by this coordination problem.

A draft of the Code was presented for public consultation prior to the full publication of the Code in January 2004. The Code itself is unremarkable, but its ex ante adoption, prior to many adult services being known to the general public, is exceptional and reflects high awareness in the sector both of potential harms and of the value of self-regulation. In part, this can be attributed to the market size and regulatory resources of the giant companies behind the drafting.

The main points of the code are:

- All commercial content unsuitable for under-18s will be classified as “18”, and will only be made available to customers when the networks are satisfied that the customer is 18 or over.
- The classification framework will be comparable to those applied to other media, and will be created by a body independent of the mobile operators.
- Chat rooms available to under-18s will be moderated.
- Parents and carers will be able to apply filters to network operators’ Internet access service to restrict the content available via a particular phone.
- Mobile operators will work to combat bulk and nuisance communications.

In addition, the Code observes the same ‘notice and take-down’ requirements with regard to illegal material as those applying to fixed-line ISPs. Thus Section 3 of the Code states:

“Mobile operators will work with law enforcement agencies to deal with the reporting of content that may break the criminal law. Where a mobile operator is hosting content, including web or messaging content, it will put in place notify and take-down provisions.”

There are, however, limitations on what the Code covers. The UK Code explains that:

“The Code covers new types of content, including visual content, online gambling, mobile gaming, chat rooms and Internet access. It does not cover traditional premium rate voice or premium rate SMS (texting) services, which will continue to be regulated under the ICSTIS Code of Practice.”¹⁷⁶

Nor does it cover wider Internet content not directly supplied by third parties to the mobile operator. Responsibilities here mirror those of fixed-line ISPs. However, the Mobile Entertainment Forum (MEF), a trans-Atlantic grouping of over 70 content providers, has issued its own Mobile Code of Conduct, dealing with premium content. This may prove a precedent for a Code dealing with adult content¹⁷⁷. The code also fails to cover issues which have already stimulated media concern such as the use of camera phones

¹⁷⁶ UK Code at p2.

¹⁷⁷ The Code was launched in the UK on 19 January 2005, and worldwide on 15 March 2005: see <http://www.m-e-f.org/news032005.html>

and Bluetooth technologies for content creation and distribution that does not require downloading from a website, or other forms of P2P file-sharing.

The Code itself required an SRO to implement decisions regarding adult and age classification of content. Details of the Code's implementation (see below) were announced on 7 February 2005 with the launch of the Independent Mobile Classification Body (IMCB)¹⁷⁸. The UK body responsible for setting content rating guidelines, the Independent Mobile Classification Body was launched in February 2005.

4.2.3 Inputs

IMCB: Legal subsidiary of PhonepayPlus

Clove Building

4 Maguire Street

London

SE1 2NQ

Chair: Sir Alistair Graham

Director: Paul Whiteing (ICSTIS Director of Policy and Innovation)

Board: Four members drawn from ICSTIS board, meets annually at least.

The contract to run the IMCB was awarded by the mobile networks in open tender. The shadow IMCB board negotiated with Paul Whiteing who led the bid by ICSTIS to establish a separate company, with interesting frictions from outset in terms of the independence of IMCB, not least because there were six legal teams from the six mobile operators. Whiteing (2007) explains that:

“Its merely a self-regulatory body which for administrative purposes is set up as a subsidiary of ICSTIS (which has a Golden Share). Actually its not a co-regulatory body as it has no relationship with Ofcom.”

Commentators who associate the IMCB as a co-regulator because of its parent ICSTIS being a co-regulator would do well to examine the nature of the board. Answerable to its network operator constituency, it is a rather ‘pure’ form of self-regulator. Whiteing (2007) claims it “vigorously defends its independence from government”, and claims to be a sort of ‘insurance policy’ for the mobiles. Board members as independent members represent the consumer.

4.2.4 Activities

Initially, the content production industry is empowered to label their services correctly, but it is mobile operators who are ultimately responsible for ensuring the appropriate rating of the content they carry. It remains to be seen how this relationship will pan out in the medium-term but such a contractually required labelling system for “commercial” content coming from third parties should work, because inappropriate content is to be filtered out at the “gateway” between the network operator and the provider. This approach covers

178 See Classification Framework at <http://www.imcb.org.uk/assets/documents/ClassificationFramework.pdf>

most of the potential areas of concern for parents, and demonstrates to government that the industry has taken its corporate responsibility seriously, but does still leave unanswered some important questions. The code is heavily dependent on age verification procedures, which are still far from fool-proof and are open to fraud.

The extent of likely Internet filtering by mobile operators is somewhat unclear. Under Section 4, operators pledge to ‘continue’ to take action against spam – they already have prevented much content arriving on-net. To at least this extent, then, Internet content is to be filtered. Further, although the Code committed each operator to introducing an adult content filter only Vodafone fulfilled its commitment initially, with the UK’s other operators missing their agreed end of 2004 deadline.

In the year before IMCB was formed, the mobile networks had self-classified content in advance – and had done so since before the Code was introduced. Mobiles have since trained with the IMCB and experts in self-rating –there are only occasional problems. One of the original issues was whether partial nudity should be classified as ‘adult’? In context of video, the answer in the UK has been: yes. Paul Whiteing explains that the scheme used two key examples, the BBFC and PEGI – particularly the BBFC. IMCB used BBFC reviewers to train IMCB staff in classification. The IMCB standard talks a great deal about context – and in particular educational context – in deciding on suitability of material.

The six operators have the Code on their websites, though navigation to the Code requires a specific search¹⁷⁹. Encouragingly, the need to ensure brand awareness is not tarnished by adverse press and publicity is likely to make this a central element not only of a minor compliance budget (as with mobile phones and child exposure to radiation) but part of the massive marketing budget of the operators. The involvement of consumer groups in implementing redrafts and implementation of the Code is not known.

It is also worth noting that age verification procedures to be applied by the mobile industry are clearly only of use where a phone is being purchased or a new contract established; in so far as many children may just inherit or borrow phones from other family members or friends, it is vital that the code and the child protection measures available are publicized as widely as similar measures for PC-accessed Internet. In other words some responsibility must lie with parents and carers, and not just government and industry.

Borthwick (2007) sees the costs of providing adult services as an element of multimedia content costs, as substantial (perhaps several million euros per operating company, a few percentage points of total content marketing costs). This could create problems arising in that these are fixed costs which become non-trivial in small operating companies/markets (e.g. Malta, Estonia/Cyprus). Is the answer there not to support the adult services? Sometimes to protect wider brand such as Vodafone, that option does not exist, even if it may not be a problem for smaller/less brand-identified companies (gambling etc.). However, smaller unaffiliated companies do not always prefer deregulation: Go! Mobile in Malta wanted to be in the framework in order to prevent competitive disadvantage with mainstream market.

¹⁷⁹ See for instance http://www.orange.co.uk/about/regulatory_affairs.html - the Code is the first download item in the middle of the page.

4.2.5 Enforcement

The UK Code for Content does not have a central arbitrator for disputes: “Each mobile operator may choose or need to use different organisational and technical solutions to enable it to meet aspects of the Code.” The content scheme is an opt-in self-classificatory scheme overseen by an independent classification body¹⁸⁰. Content is classified as ‘18’, adult content, or not – with optional interim ratings for younger children (in Section 7). Enforcement of the Code is formally dependent on individual operators and it is unclear how this will be recorded and publicized: “Each mobile operator will enforce the terms of the Code through its agreements with commercial content providers.”

IMCB has not been required to enforce any decisions on rating. It received 49 requests from industry for classification advice in 2006/7, of which 11 referred to user-generated content, premium rate advertising or access controls, all of which are outside IMCB’s scope. The 38 requests inside scope mainly concerned content that may be harmful, but the majority concerned partially nude female images. The single consumer query regarded the latter issue – as IMCB advises on adult (18+) content, it informed the parent who inquired that partial nudity could be viewed by under-18s.

In Borthwick’s (2007) view the difference between content regulation such as PEGI and mobile is that mobile access relies on national classification. For mobile, the differences at national level between e.g. Germany and UK need to be respected. Savings in economies of scale for pan-national regulation would be outweighed by different market types and commercial preferences for using descriptor standards – even with different age standards in different markets.

“Where you don’t have sensible regulation and effective implementation, [MNOs] turn down the volume of content sold, to manage the risk of discontinuity.”

Therefore the value of effective self-regulation is explicitly recognised as a direct addition to the overall market size.

Note that mobiles already engage in several content self-regulatory practices by network. Vodafone filters Internet using the IWF list or a customised version (where available) – so does not need to use the BT Cleanfeed system. Filters can be switched on at parental request, and block a great deal more than just child porn. Mobile SNS are subject to providers’ own policies, and in 2007 are minority interest sites, though this will change. The social network experience on mobiles is basically the same HTML site, but with graphics and some capabilities modified for rendering. Other regulatory requirements on mobile telephony content include:

- Intercept, Integrity and Surveillance: Networks must comply with network integrity and security measures to ensure surveillance is possible, that the European emergency number 112 is accessible.
- Mobile Handset Theft: Mobile networks also have systems to deactivate the SIM card of phones reported as stolen.
- Number Portability: Further measures to monitor phone use include a Home

¹⁸⁰ See <http://www.imcb.org.uk/>

Location Register (HLR) in each Member State, to permit mobile numbers to be ported by subscribers from one network to a new subscription on a different network.

- **Spam Blocking:** In several Member States, unsolicited commercial messages (spam) are regulated by, for instance, the UK Telephone Preference Service (www.tpsonline.org.uk/) and E-Mail Preference Service, again in common with fixed telephony. Mobile networks also undertake unilateral action.

4.2.6 Outcomes

The negotiation of the IMCB contract in all occupied May-December 2004. Therefore, the IMCB launched over a year after the Code was launched in January 2004. In the meantime, the “3Gs” of ‘girls gaming and gambling’ which suggested a very substantial industry would develop, became a less contentious public issue, as the premium market did not develop as expected.

The major outcome has been the development of a robust set of classification schema that the industry – a small tightknit group based on the MNOs – has operated without major incident.

4.2.7 Outputs

The outputs in terms of the reporting to the wider public have been left entirely to the mobile operators and other members of IMCB, which given their very large marketing budget and the IMCB’s role, appears appropriate.

4.2.8 Impact

The Irish market has followed the UK example, with RegTel (the premium regulator) doing the work, and is launching in 2008. The IMCB and UK approach is seen as very much the ‘Gold standard’. There is no relationship with a type of ‘umbrella’ international body as there are only 2-3 other national bodies similar to IMCB (notably Ireland and Germany’s FSM).

4.2.9 Sustainability and Reform

Issues include how to build a relationship of cooperation between mobile operators and commercial content providers, particularly smaller non-MEF members, raising awareness of the code and the role of retailers. Here, we focus in particular on the pan-European framework for a Code developed between operators and the European Commission in 2006-7.

Richard Swetenham, of DG INFSO, confirms the coordinating role of the European trade association GSM Europe, though Rob Borthwick of Vodafone led the EU industry scheme set up after the 2005 Safer Internet Forum, with a public consultation finished in January 2007. A High Level group was established with three ‘sherpa’ (preparatory) meetings. Signature of the agreement occurred in May 2007, which committed signatory companies to national implementation in all 27 countries by February 2008. This may prove very difficult to implement in all member States, particularly newer members with less tradition of child safety self-regulatory bodies. Issues in the negotiation of the agreement appeared to include competition law concerns at an appearance of collusion, and in Ireland initial proposals that parents check their children’s bills, which may be

contrary to human rights and data protection legislation.

Borthwick states that at European level “it should be acknowledged that the catalyst was DG INFOSOC”. Competition concerns arose for him only in that there was no mention of Internet access in the agreed Framework, whereas it is in several national Codes. The reason is that industry could not agree on whether Internet access should be available, or device capability etc. It is to be expected that “competitive divergence” will arise on levels of implementation – the role of the Framework group was to agree on high level principles that allow different competitive positions/differentiation. Note the degree to which this makes the Framework very much a self-regulatory tool, despite its initiative stemming from the European Commission and the continuous discussion in its formulation. The approach could be described as ‘enlightened regulatory withdrawal’, in that once the Commission was satisfied that the Framework achieve its ends in its establishment, it can then adopt an observational rather than direct involvement in the implementation of the Framework at national and network operator levels.

Borthwick (2007) notes that, by billing inclusively for their premium content partners, mobile companies have a point-of-sale chokepoint. Service providers – e.g. Jamba – did join, and there is no principled point why other third party transaction specialists such as PayPal could not join, if they wish. There is no joining fee but there are compliance costs, which obviously founder members set as the conditions.

Potentially all regulation raises entry barriers – but self-regulation sees itself as lower cost option. This group of conditions are adult-oriented and designed to be as low cost as possible, with broad similarities to other approaches. In his view, self-regulation shares agreed principles with regulation, but implementation is left to the more dynamic flexible market-oriented actors. The six operators include all four of the largest pan-European operators¹⁸¹.

Incentives for the pan-European framework can be seen as encompassing broader concerns than simply the Safer Internet Action Plan and Recommendation, in particular the revised Audiovisual Media Services Directive, which will regulate mobile media video content from approximately the start of 2010. Borthwick (2007) states that mobile operators are:

“aiming to use the Framework as our implementation tool for the AVMS – we see these two things as quite linked, obviously national legislators and regulators will need to decide ... [we are] hoping to prove the effectiveness before the AVMS is implemented”.

However, he notes that the timing of the European Framework was prior to final agreement between European institutions on the revised AVMS proposal, and confirms that it never emerged in discussions with the European Commission.

In terms of further developments, UK interviewees discussed the self-regulatory ‘Cross-Media Content Information Group’, a labelling initiative run by Vicky Read at the Broadband Stakeholder Group. BSG is funded by government, and this group is apparently run by BSG on behalf of Ofcom. It comprises the entire spectrum of content providers – across broadcasters, ATVOD, ISPs, BBFC, MySpace, Yahoo!, video games,

181 56% of the 2000 European subscriber market was O2, Vodafone, T-Mobile and Orange – TIM and Telefonica Moviles, with less significant interest outside their domestic markets, are small in pan-European terms. See Ahlert et al (2003) at p4.

mobiles, online etc. It has no public website, and is non-transparent. Its role is apparently to formulate a Code of Conduct, which will then be implemented individually.

Dr. Tanya Byron's review in to computer games and internet safety reports jointly in to DCMS and the Department for children, schools & families (DSCF) and was announced on 20 September 2007 by the Prime Minister¹⁸². The review examines how to help parents and their children get the best from new technologies while protecting children from inappropriate or potentially harmful material. It uses multimedia in its approach including her pages on *Bebo* and *MySpace*¹⁸³, designed to increase user participation. Posters told her amongst other things to focus on BBFC not PEGI, as it was the regulatory as opposed to advisory standard, and to examine multiplayer games, and virtual communities such as *SecondLife*¹⁸⁴.

4.2.10 Evaluation

Headline issues for evaluation are:

- Financially, IMCB is dependent on its parent ICSTIS for office space, and the MNOs for funding.
- The major continuing success factor internally is its minimal cost and easy scope extension from ICSTIS' main work.
- The main external conditions impact success/failure are:
 - Governmental: acceptance of this light touch self-regulator.
 - Market/technology: more involvement by content providers not affiliated with the MNOs as well as continued MNO buy-in.
 - Civil society: media literacy and knowledge of the SRO through (presumably) MNO-funded publicity efforts.

It still remains to be seen just how successful content rating systems will be. Content on the open Internet will pose larger problems. Therefore, it is likely that the most effective approach will be to combine the utilization of filtering software, content labels, and URL block lists¹⁸⁵.

Lessons for European policy are that the IMCB offers a new pioneering role and increasing membership, with a potential template for other European countries. The impact on competitiveness of entrepreneurs needs monitoring, as IMCB is currently dominated by vertically integrated MNOs and allies.

The problem in instituting the Framework is likely to be where operators are local, and

¹⁸² See http://www.culture.gov.uk/what_we_do/Creative_industries/cvg.htm#byronreview and

http://www.culture.gov.uk/Reference_library/Press_notices/archive_2007/Byron_Review_Statement_DrTanyaByron.htm

¹⁸³ <http://www.myspace.com/byronreview>

¹⁸⁴ <http://www.Bebo.com/byronreview>

¹⁸⁵ Zittrain, J. and Edelman, B. 2004. 'Documentation of Internet Filtering Worldwide', pp137-148 in Hardy, C. and Moller, C. eds *Spreading the Word on the Internet : 16 Answers to 4 Questions*, Vienna, OSCE.

there are low content concerns – e.g. some of the Baltic republics, with small markets and few apparent market entry barriers. Further, child protection at this level of coordination could be perceived as ‘Anglo-Saxon regulation’ with few grassroots civil society/consumer groups lobbying for this activity (it was even suggested that those concerned might be seen as EC creations, funded by SIAP).

4.3 Multimedia Content Rating: NICAM

Nederlands Instituut voor de Classificatie van Audiovisuele Media: NICAM

Researcher: Stijn Hoorens

NICAM grew from the 1990s concern with satellite/cable TV growth, leading to a consensus decision on a pan-media system of self-regulation to replace the state regulation model in place. It is mandated by Parliament, and reports to Parliament. It has been widely praised as an entirely transparent and widely adopted system. The training system is also widely praised, for its ongoing attention to audit of company classifiers. The consensus and industry/political buy-in to the NICAM system is the result of a long negotiated outcome typical of Dutch politics. This is not necessarily replicable but the system is used elsewhere and NICAM assisted in the creation of pan-European games rating system PEGI. It is evaluated periodically by law.

Table 29: Summary of NICAM Case Study

Was there a government mandate initially?	Yes
What kind of government involvement is there?	Parliament ensures continued monitoring, liaison and evaluation
Which other stakeholders are involved and how?	Primarily industry-led SRO
How is transparency ensured?	Web publication of proceedings, website and other efforts
What is the enforcement mechanism, is it effective, at what cost?	Expulsion of non-conforming members
What is the relative size of administrative burdens?	Low given scope of classification.
Is financial independence assured/how?	Yes through costs of implementation on ‘pay per play’ basis.
Which internal factor most impacts success?	Expanding mandate to provide a service for PEGI – potential adoption in other countries
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: relationship with Parliament. Market: potential new initiatives outside Netherlands.
Lessons for European policy	Perceived failure of state regulation, new role highly successful. Extension of non-written classification into other sectoral or pan-sectoral schemes as in PEGI.

4.3.1 Interests and Policy Needs

The Netherlands Institute for the Classification of Audio-visual Media (NICAM) is the institute responsible for the classification of media content in the Netherlands. It is coordinator of the ‘*Kijkwijzer*’ scheme, through which media content providers code their programming according to fixed categories of content type. More than 2,200 companies and organisations are affiliated to NICAM, either directly or through their sector

organisations.

The formation of NICAM and Kijkwijzer¹⁸⁶

As early as the beginning of the 1980s, politicians were pressing for self-regulatory measures within the audio-visual world, aimed at protecting young viewers against possible harmful effects. New impetus was given to this discussion with the explosion of the supply of audio-visual media through video cassettes and multi-channel cable and satellite programming, prompting the European Television Without Frontiers Directive EC/552/89 (Bekkers 2007). This resulted in the 1997 government policy document 'Niet voor alle leeftijden' ['Not for all ages']¹⁸⁷ calling for an integrated effort towards tackling harmful content abandoning the sectoral approach via censorship. The document argued for the establishment of an independent body, which would act as the national support group for self-regulation within the audio-visual sector.

A range of representatives of the audio-visual sector responded to this call from the government. It was then decided in consultation to bring about such a self-regulatory body. This led in 1999 to the establishment of NICAM. The development of this initiative is in line with the 'Nordic school of thought' that proclaims awareness building and education to protect children from harmful content rather than a more punitive regime of blocking and filtering that prevails in Southern Europe (Bekkers 2007).

The institute was set up in close cooperation with the Ministry of Education, Culture & Science (OCW), the Ministry of Health, Welfare and Sport (VWS) and the Ministry of Justice. In turn, NICAM played an initiating and coordinating role in the development of *Kijkwijzer*, the new classification system that warns parents and educators about a television programme or film which can be harmful to children of different ages.

The legislative proposals that paved the way for *Kijkwijzer* were passed by a large majority in parliament in 2000. Most members of parliament expressed a preference for self-regulation and a belief that the audio-visual sector is capable of bearing the responsibility for this. In addition, NICAM's plans to provide information on the content of audio-visual productions, alongside the age recommendations, also met with appreciation. On 22 February 2001, the new legislation passed into law. This replaced the Film Censorship Act 1977, heralding the end of film censorship.

Initially, the intention has been to slowly phase out the involvement of the government in NICAM. However, after the first evaluation of NICAM conducted by the Ministry, NICAM and OC&W concluded that a pure self-regulatory body was not desirable for classifying audiovisual content. It was decided that the Commissariat for the Media would exert close (meta-)supervision and the Ministry of OC&W would continue to contribute financially. For this reason, the NICAM initiative can be classified as co-regulation rather than pure self-regulation (Bekkers 2007).

4.3.2 Design & organisation of the Institution

More than 2200 organisations and companies are affiliated with NICAM. Umbrella

¹⁸⁶ Copied from <http://www.kijkwijzer.nl>

¹⁸⁷ See: http://www.minvws.nl/kamerstukken/djb/niet_voor_alles_leeftijden.asp

organisations from the audio-visual sector that participate in NICAM include: Netherlands Association of Producers and Importers of Picture and Sound Carriers (NVPI), Netherlands Video Retailers Organisation (NVDO), Netherlands Association of Gramophone Record Retailers (NVGD), Netherlands Cinematography Federation (NFC), Netherlands Broadcasting Corporation (NOS) representing all national public service broadcasting organisations, and the Association of Satellite Television and Radio Programme Suppliers (VESTRA) representing all commercial broadcasting organisations in the Netherlands.

NICAM's mission is:

“to inform, in a uniform way, consumers and especially parents of growing children on the possible harmfulness of audiovisual products: TV programmes, cinema films, DVDs and content available via mobile phones (Bekkers 2007)

The responsibilities of NICAM (Betzel 2005) are:

- setting up of and further development of the classification of audiovisual material of its members;
- drafting regulations for classification and the time of broadcasting on TV;
- information to the audience;
- supervising compliance including the handling of complaints;
- imposing fines, if necessary. The maximum fine has recently been lifted to revoking the NICAM-membership, only in the case of very severe or repeated offences against the code.

Secondary objectives include those: to maintain and disseminate expertise in harmful media content; to operate the classification system for interactive games; to function as a contact point for new sectors interested in content classification; and maintain a role in international policymaking.

NICAM consists of a general and an executive board plus a bureau. NICAM's board consists of representatives of both public and commercial broadcasters, film distributors and cinema operators, distributors, video rental shops and retailers. The independent chair of the board is Ms Hedy d'Ancona. The actual implementation of Kijkwijzer is in the hands of the audio-visual institutions and companies.

There are three committees that have specific responsibilities related to NICAM's mission. The members of the advisory committee include experts from the areas of media, youth, education and welfare, representatives of parents' organisations and other social organisations, as well as of the companies participating in NICAM. NICAM is supported in the performance of its duties by an Advisory Committee. Two other committees are independent: the complaints committee which handles complaints about classification from both individuals and organizations and imposes sanctions ranging from warnings to substantial fines; and the appeals committee (Betzel 2005).

The legislation adopted with the introduction of NICAM has replaced the Film Censorship Act. This legislative safety net has been made more punitive by increasing the sanctions for violation via the criminal law (Van Dijk 2007). An independent regulatory

authority, the Commissariat for the media (*Commissariaat voor de Media*), is the safety net for NICAM's co-regulation initiative.¹⁸⁸ It has the responsibility to supervise the absolute prohibition on broadcasting content that can cause serious damage to minors. This is laid down in the article 52d, paragraph 1 of the Media Act. Furthermore the Commissariat has to stop non-NICAM members from broadcasting any programmes that could be harmful to minors. Every broadcaster that becomes a NICAM member should submit a written declaration of membership to the Commissariat. NICAM informs the Commissariat regularly on broadcasters that have become members.

Recently the Commissariat has obtained the task to perform so-called "meta supervision" of the NICAM. This means each year NICAM will have to report to the Commissariat on how it will safeguard the quality of coders' classifications. Also NICAM should demonstrate to the Commissariat to what extent the classifications are reliable, valid, stable, consistent and precise. Further arrangements regarding this check by the Commissariat have been laid down in a supplement to a covenant between both parties. (Betzel 2005)

NICAM is recognised as an institute that is eligible to self-regulate (or co-regulate) audiovisual media content. However, this recognition is not necessarily restricted to one institute. If other institutions meet the conditions set by the Commissariat, they are candidates for becoming a self-regulatory institute as well. This is also an implicit incentive for NICAM to achieve and maintain a critical mass of participating industry organisations.

Although participation in NICAM is voluntary for organisations in the three media sectors (TV, film, DVD/video), those organisations that do not participate will fall under the regime of the Commissariat. They will also receive special attention from the Ministry of Justice (Van Dijk 2007). So, there is a strong incentive for the industry to collaborate. However, Mr Bekkers emphasises that there is a strong commitment from the industry, because they genuinely feel that this is an important issue (Bekkers 2007).

4.3.3 Inputs

Location: Media Centrum, Media Park, Hilversum, The Netherlands

Director: Wim Bekkers

Staff: Aside from the management, staff is 9 full time equivalents

(NICAM Annual Report 2005)

Table 30: NICAM's budget (*€1,000). Sources: NICAM Annual reports 2005 and 2006.

	2006	2005	2004
Credit			
Contributions	774	724	615
Compensations	2	3	15
Fines	67	38	37
PEGI	323	315	289

¹⁸⁸ For more information, see: <http://www.cvdm.nl/pages/english.asp?>

	1,166	1080	956
Debit			
Board and Committees	89	76	58
Personnel	494	480	432
Procured work	108	82	83
Housing	67	58	41
General costs	125	114	139
Activities	205	145	152
Depreciation of fixed assets	6	1	43
	1,094	956	948
Net	72	124	8
Financial result	7	2	2
	79	126	10

NICAM's costs for personnel, housing, overhead and other activities (including promotional campaigns) amount to approximately one million euros. The costs for participating organizations was estimated at around €900,000 (European Commission 2003). Contributions to NICAM are split currently split equally between the sector parties and the government (Bekkers 2007). The intention of government is to reduce its contribution. While in 2003, the state contribution in 2003 was 73% of the total costs (€532,000), in 2004 it constituted 65% of NICAM's contributions and in the latest year (2005) the state contribution is less than 50%, (approximately €400,000). The aim of government is to subsidise a maximum 40% of NICAM costs in 2006 (excluding funding of incidental projects). The Dutch government realises that its commitment is de facto justified as NICAM fulfils certain functions that the government would have to assume otherwise (Van Dijk 2007).

The organisations affiliated with Kijkwijzer are responsible for classification of the content, as well as the costs associated. The Figure below illustrates the initial backlog in TV programme coding, and the increase in DVD/video classification as a percentage of total coding and in absolute terms.

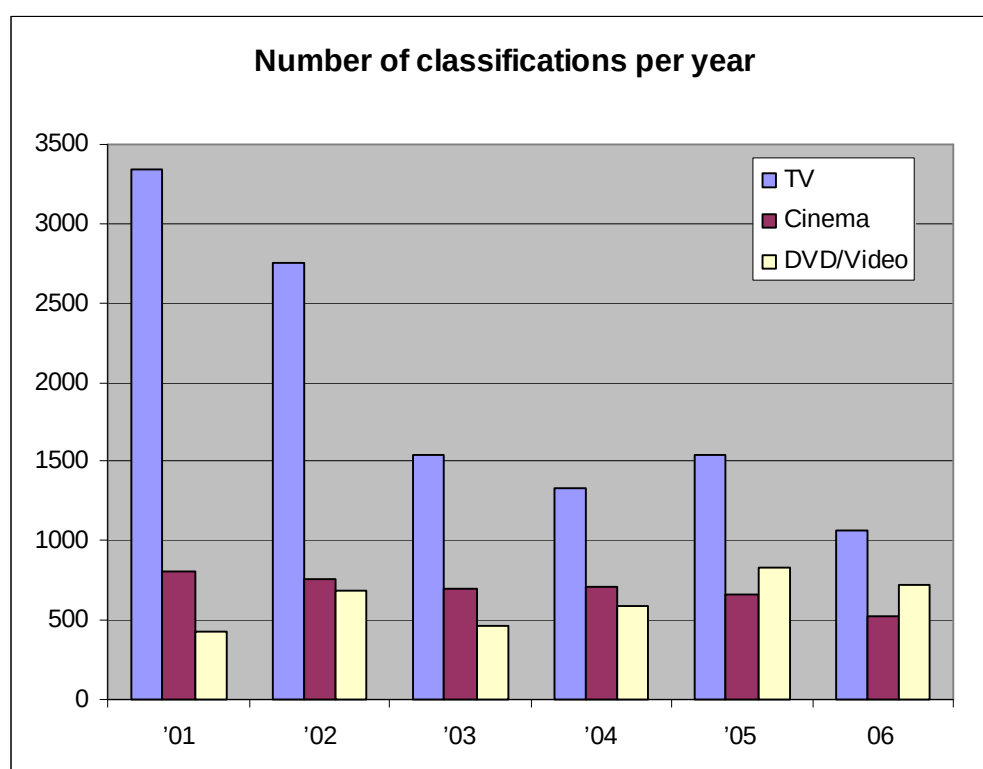


Figure 17. Annual number of classifications for TV, cinema and DVD/video (2001-2006)

(Source: NICAM Annual Reports)

NICAM's revenues through fines amount to tens of thousands of euros, sufficient to cover only a fraction of its costs. The remainder of the contributions are distributed equally across the participating organizations: 25% for the public broadcasting channels, 25% for the commercial broadcasting channels, 25% by the film distributors, and 25% by the DVD distributors and rental agencies (Bekkers 2007). Policy officer from the Ministry of OC&W, Mr van Dijk (2007), argues that when the coverage of participating organization increases, the share of the industry in the contributions to NICAM should increase accordingly. Director Bekkers (2007) and government representative Van Dijk (2007) consider the budget sufficient to execute the tasks assigned to NICAM.

4.3.4 Activities

The board consists of 10 representatives from the different audiovisual sectors subject to co-regulation. The chairman, Ms Hedy d'Ancona, is completely independent and is a reputable ex-Minister of Media (Bekkers 2007). NICAM has several committees that are independent from the board (Betzel 2005):

- Complaints commission: this fully independent committee of seven people is handling audience complaints;
- Appeals commission: this committee of four people is dealing with appeals to decisions of the previous committee, lodged by the complainant or the member company involved, and gives the final decision in a case. This commission also operates independent from NICAM;

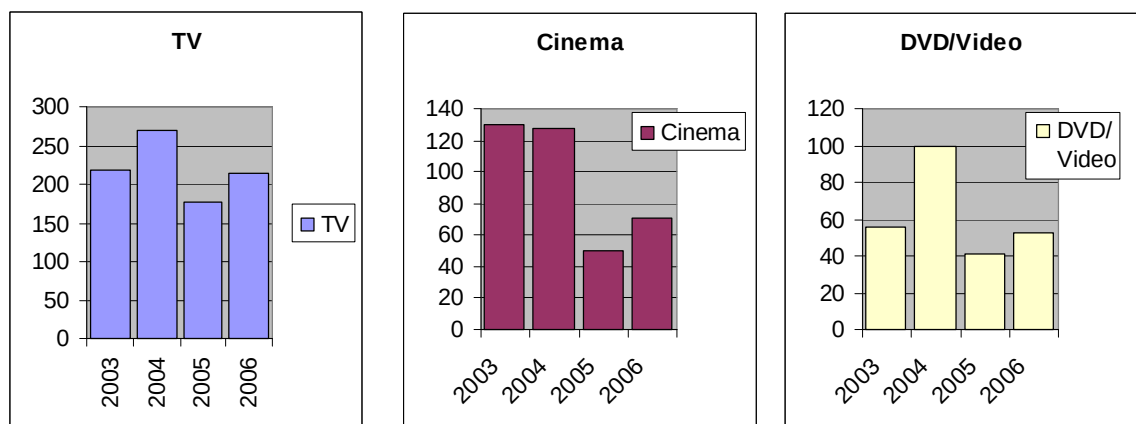
- Science commission: this committee of four people evaluates the classification system and develops and updates it.
- Coders commission: this committee of four people advises when a coder has doubts about the classification given. Compliance is voluntary. But if there is a complaint by the audience regarding a classification, the party that has followed the advice has a stronger position in the procedure.
- Advisory commission: this committee of 27 people advises on different aspects of the NICAM system to the general board, either on request of the NICAM or on own initiative.

The Ministry of OC&W argues that NICAM has a strong reputation and is not influenced by industry interests; the institutional elements introduced to guarantee independence are functioning well (Van Dijk 2007).

4.3.5 Enforcement

Any citizen can complain to the Kijkwijzer system. Most complaints relate to incorrect classification of an audiovisual product or if a programme is broadcast too early in the day. Any person identifying an infringement to the Kijkwijzer rules has six weeks to submit a complaint through the NICAM. On the website of NICAM/Kijkwijzer (www.kijkwijzer.nl) there is a standard complaint form which can also be obtained by post from NICAM. Every complainant is notified in writing when a complaint has been accepted for an adjudication by the complaints commission. Decisions of the commission are issued within eight weeks of an adjudication and the complainant will be informed on the decision. Not all complaints are dealt with by the complaints commission. Most complaints are dealt with by the NICAM bureau on behalf of the chairman of the complaints commission. Each complainant receives the decision relating in writing. Decisions are also communicated through the website of NICAM. Complainant and the involved broadcaster or other party are invited for the hearings of the complaints and appeals commission but are not obliged to attend. (Betzel 2005).

Figure 18. Complaints filed to NICAM about classifications Source: NICAM Annual Report 2006.



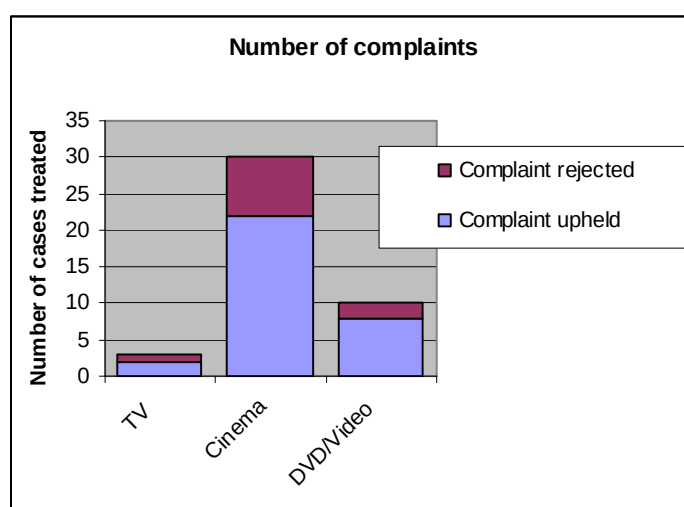


Figure 19. Appeals filed in 2006. Source: NICAM Annual Report 2006.

Complaints are referred to the complaints commission only in cases of serious doubts about the classification,. The independence of the complaints commission is safeguarded by following conditions:

- Members of the complaints commission are not working in the sector nor have any financial, managerial or other interest in the audiovisual sector, founders or members of NICAM.
- The chairman of the complaints commission will be appointed by the general board, independently from other members of the complaints commission.
- The chairman has to be an experienced jurist, completely independent from audiovisual sectors, founders or members of NICAM. Currently, the chairman of the complaints commission is Mr E.H. Swaab.
- The chairman is appointed for four years and can be re-elected once.
- The complaints commission operates autonomous and decisions are made after majority. (Betzel 2005)

The institutions ‘charged’ with the complaints that are upheld by the Complaints Commission have the opportunity to appeal in front of the Appeal Commission. This commission can either confirm, reject or partly confirm the verdict of the Complaints Commission, or it can refer the complaint back to the Complaints Commission. If the complaints are upheld, the Complaints Committee can enforce fines on the participating organisations. Thus far, these fines are mostly in the order of several thousand euros with the highest being €12,000 for a repeat offender. After the first evaluation of NICAM in 2003, the Ministry concluded that the size of the fines was not sufficient to have a real incentivising effect. Consequently, the maximum fines were increased to €135,000, the same level as those used by the Commissariat (Bekkers 2007). The highest possible fine has not been imposed yet. Nevertheless, the incentivising character of these fines is considered to be sufficient (Bekkers 2007; van Dijk 2007).

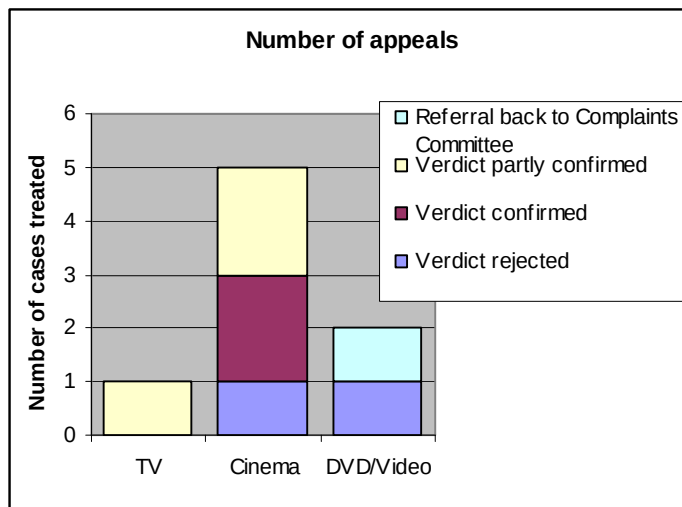


Figure 20. Appeals treated by the Appeal Commission in 2006.

Source NICAM Annual report 2006

The government closely monitors actual compliance with the self-regulatory measures. This supervisory role is delegated to the Media Authority, which regularly investigates and evaluates the functioning of the system of self-regulation. NICAM itself also performs regular quality assessments of compliance with the rules. In addition, it regularly tests consumer perception and use of Kijkwijzer. As “meta supervisor”, the Commissariat has the responsibility to check the quality of the classification system of NICAM (Betzel 2005):

- NICAM should demonstrate to the Commissariaat to what extent the classifications are reliable, valid, stable, consistent and precise;
- each year before 1 March the NICAM will submit all necessary data to the CvdM.
- each year before 1 July the CvdM will report to the state secretary about its “meta supervision” on NICAM/Kijkwijzer.

According to the supplement of the covenant between the Commissariat and NICAM, the latter is due to present an annual report which includes amongst other results (Betzel 2005):

- overview of complaints lodged with NICAM (numbers and contents analyses);
- overview of results of checks by NICAM of classifications (intern quality check);
- description of other activities performed by NICAM for the intern quality check; and

Furthermore, there should be a comparison with classifications in other European countries at least once every two years. This report should include data of most recent audience research (Betzel 2005). Given the close involvement of the Ministry of OC&W, the NICAM initiative is classified by participants as co- rather than self-regulation (Bekkers 2007; Betzel 2005).

4.3.6 Outputs

NICAM’s and particular Kijkwijzer’s activities attract a lot of media attention.

Additionally, in the early years of Kijkwijzer, it launched media campaigns to increase awareness of the classification system.

4.3.7 Outcomes

Kijkwijzer was developed taking into account that content can be distributed via different media (Internet, mobile technology, gaming, etc.), which are subject to drastic changes.

A recent extension of NICAM's remit has been the classification of certain erotic mobile content. The initiative for this self-regulation came from within the telecom sector (Bekkers 2007). The five main operators (Vodafone, Orange, KPN Mobile, T-Mobile and Telfort) approached NICAM to join the Kijkwijzer system. The system includes a warning for users of mobile services before entering erotic sections. In May 2005, Vodafone started an 'opt out' option blocking erotic content. This initiative followed a communication by Commissioner Reding that requested the mobile phone industry in the Member States to implement measures to protect minors from harmful content (Bekkers 2007). Additionally, the publishing industry has also approached NICAM for potential application of the classification to print media. The Ministry does not want print media to be regulated through co-regulation for constitutional reasons, but it encourages exchange of information and expertise (Van Dijk 2007).

Bekkers does not consider the Internet within or converging with NICAM's remit. Van Dijk argues that most of the harmful content distributed via Internet touches upon criminal law. Furthermore, Internet governance falls under responsibility of the Ministry of Economic Affairs. However, NICAM does closely monitor developments in this area. For example, NICAM is member of Youth Protection Roundtable,¹⁸⁹ an international collaborative initiative for a safer internet that proclaims awareness building and education to protect children from harmful content. Furthermore, NICAM participants who offer on-line content that has been subject to classification will use the Kijkwijzer icons on their website. The popular portal *uitzendinggemist.nl* ("*missed a tv-programme*") for instance, which offers most of the public broadcasting channels' programmes on-demand television via internet, use the Kijkwijzer icons, and so do the public TV YouTube channels, and the on-line only theme channels (Nederland 4) (Bekkers 2007). Van Dijk (2007) argues that a NICAM-type initiative is only possible in sectors that have a considerable commercial footprint.

4.3.8 Impact

Although NICAM is a not for profit co-regulatory agency, there is a certain commercial value to its activities. NICAM will ask for compensation, when other countries decide to use Kijkwijzer (Bekkers 2007). However, both NICAM and the Ministry of OC&W emphasise that, in order to avoid any concessions to its independence and not-for-profit status, there is no intention whatsoever to commercialise NICAM's services.

4.3.9 Sustainability and Reform

Mobile phone content: In April 2005, NICAM signed a contract with mobile operators KPN Mobile, Orange, Telfort, T-Mobile and Vodafone. These five operators introduced

¹⁸⁹ Youth Protection Roundtable (2007) Available at: <http://www.yprt.eu/yprr/content/sections>. Accessed on July 30th, 2007.

the Kijkwijzer system on 1 April. The operators and NICAM see the labeling system as an effective tool to alert the mobile phone user on the nature of the material before they see it.

As soon as a mobile phone user searches for pornographic images or text, a Kijkwijzer icon appears, if applicable with a recommended age restriction. The Kijkwijzer currently only applies to sexually explicit content, but there are plans to extend the application to other types of sensitive material.

With developments in new media, the potential area of application of Kijkwijzer is subject to adaptation. Kijkwijzer already expanded the original remit of “Nederlandse Filmkeuring” from TV and cinema to video and DVDs, and some of the services provided on mobile telephones. For interactive games (including those supported by game consoles such as PlayStation), the international PEGI system is applied, which is based on the Kijkwijzer classification (see <http://www.pegi.info>). NICAM is owner and the executing institution of the PEGI system. NICAM takes care of the daily activities involved with operating the PEGI scheme, including support via a helpdesk and monitor adherence. Internet content is not classified by Kijkwijzer. NICAM claims that it is following developments in this area with interest.

International Adoption of the Model: there have been attempts to apply the NICAM Kijkwijzer system in other countries. The European Commission has indicated that it intends to apply the Kijkwijzer methodology in a broader context (Van Dijk 2007). In Turkey, for example, Kijkwijzer has been implemented with government support, where it currently functions to satisfaction of the stakeholders (Bekkers 2007). Iceland would also like to implement Kijkwijze (Bekkers 2007). According to Van Dijk (2007) it is not desired that the European Commission takes a role as pro-active regulator in this area, but rather one as a facilitator of international collaborations. Bekkers (2007) argues that Kijkwijzer is, in principle, applicable to any geo-political scope, because of the evidence-based nature of its rating system. National boundaries are probably an appropriate geopolitical scope to tackle these issues (Van Dijk 2007). When applying Kijkwijzer in a different country there are certain local context conditions to be taken into account (Bekkers 2007). While the content description can occur at an international level (Van Dijk 2007), the system is flexible for adjustment to such locally specific norms. In Turkey for example, the acceptance for violence is higher, while the acceptance for erotic content is lower than in the Netherlands (Bekkers 2007). The system may thus also be flexible to tailoring for certain target audiences, such as religious groups (Van Dijk 2007). Other context factors could include the influence of public broadcasting channels, such as the BBC in Britain and the public channels in Germany (ZDF, WDF, ARD). Van Dijk (2007) argues that in Europe there is a certain extent of regulatory convergence. The Netherlands, traditionally considered to be rather liberal with regards to content norms, has gradually moved towards the European average. The same is true for traditionally stringent regimes. Eventually, there may European consensus, with room for local differences, may be possible.

An element of innovation is that NICAM is currently in a process of enabling the Kijkwijzer icons to be ‘machine readable’. However, Mr Bekkers emphasises that expansion of NICAM’s remit is not on the horizon (Bekkers 2007). Hoff (2007) states that:

“NICAM has done a wonderful job. In my opinion it’s the one example that proves that

self-regulation can work, with all its weaknesses, taking some power away from existing government-run ratings systems that couldn't hope to keep up with new media."

4.3.10 Evaluation

There have been various internal and external evaluations of NICAM and Kijkwijzer in particular:

- NICAM periodically monitors the users' (in particular parents) awareness, opinion on appropriateness and application of the Kijkwijzer:
- Every three years, the Ministries involved are responsible for periodical evaluation of NICAM. This evaluation is usually outsourced to an external consultant.
- The Commissariat for the Media conducts an annual review of NICAM's functioning to be reported to the Cabinet before June 1st (Valkenburg et al. 2001). The most recent evaluation, published on July 3rd 2007, concluded that the Kijkwijzer system functioning is "excellent" (Commissariaat voor de Media 2007).
- The European Commission has conducted an empirical review of film rating practice in Europe (European Commission 2003).
- The Ministry of OC&W installed the Commission for Youth, Violence and Media (YVM) to advise government on policy for this topic. (*"Commissie voor Jeugd, Geweld en Media"*)

In sum, these evaluations have supported the initiative and have been generally positive. However, Bekker acknowledges that these reviews showed that improvements can always be made. The YVM Commission, for example, recommended NICAM to improve transparency of its independence and involvement of stakeholders. The Commission argued that wider support was required for a sustainable continuation of NICAM and an elaboration of its remit. The Commission concluded that close government involvement remains necessary.

Headline issues for evaluation are:

- Financially, NICAM maintains independence through costs of implementation on a 'pay per play' basis and the lack of a verified alternative classification scheme.
- The major continuing success factor internally is the proof of its concept and operation, with an expanding mandate to provide a service for PEGI and potential adoption in other countries (e.g. Iceland, Turkey).
- The main external conditions impact success/failure are:
 - Governmental: the continued good relationship with Parliamentary assessors.
 - Market: potential new initiatives outside Netherlands.
 - Consumers: continued high awareness and media literacy.
- Lessons for European policy are that the NICAM replaced the perceived failure of state regulation, and it has performed this new role highly successfully. Extension of non-written classification into other sectoral or pan-sectoral schemes as in PEGI

needs close monitoring as the next case study shows.

4.4 Online games Rating: PEGI Online

Pan European Game Information : PEGI

Researcher: Chris Marsden

The PEGI system is a pan-European video game classification scheme funded by fees for game classification. It emerged from previous UK and US schemes. It merges the Netherlands NICAM system and UK Video Standards Council capabilities in training industry to rate its own content for distributors. Note that legal ratings and decisions not to rate (i.e. refuse licences for distribution) to games also exist, and PEGI has no legal force. It does have very broad industry buy-in, including mobile and online game publishers. The latter inspired the recent initiative PEGI Online, which responds to growth of interactive games and was co-funded by the EC Safer Internet Action Plan and evaluated by SIAP in 2007. PEGI Online was launched by Commissioner Reding in June 2007. Its coordination can be seen as a type of 'co-regulatory policy making with self-regulatory implementation'. Note there is a government advisory board.

Table 31: Summary of PEGI Case Study

Was there a government mandate initially?	No
What kind of government involvement is there?	EU partial funding of PEGI Online leads to monitoring, liaison and evaluation
Which other stakeholders are involved and how?	Primarily industry-led SRO
How is transparency ensured?	Web publication of proceedings, website and other efforts
What is the enforcement mechanism, is it effective, at what cost?	Expulsion of non-conforming members
What is the relative size of administrative burdens?	Low. Supplemented by national statutory regulation.
Is financial independence assured/how?	Successful pay-per-play funding in a growing market.
Which internal factor most impacts success?	Expanding mandate into mobile games and online games. Relations with KJM
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: relationship with EC and national governments such as Italy. Market: press and public relations to ensure wider knowledge; distributor compliance with labelling.
Lessons for European policy	Perceived success of self-regulation, but new role and increasing membership by mobile on online Internet companies. Impact on competitiveness of entrepreneurs needs monitoring, as in online market may be harder to ensure wide participation.

4.4.1 Origin of Video Game Rating

The electronic games industry has existed offline for over thirty years, but is becoming a much more significant part of the user experience. Formerly a games console based discrete activity, it is rapidly becoming a broadband-enabled online activity, with massive multiplayer gaming having originated in South Korea. According to Price Waterhouse

Coopers¹⁹⁰, the global entertainment and media industries are expected to see accelerated growth of 7.3 percent and will reach \$1.8 trillion in annual sales by 2009. The global video game market is expected to be the fastest-growing component and will increase from \$25.4 billion in revenue in 2004 to almost \$55 billion in 2009, growing at a 16.5 percent compound annual rate. The introduction of the next-generation broadband-enabled consoles, as well as the continued growth of handheld and mobile gaming, will be key drivers of growth.¹⁹¹ Europe is the largest publisher of games, with about 40% of games authored in the European Union. Additionally, Europe and East Asia have much greater adoption of mobile games than North America.

A corpus of legal scholarship concentrates on the virtual world's relationship with the law, with the 'State of Play' conference an annual event in its fifth year in 2007¹⁹². Much of Lessig's discussion in the seminal 'Code and Other Laws of Cyberspace' (1999) considers the etiquette of virtual environments. The effect of violent gaming on youth has been recently much debated in the media, and has led the American Psychological Association to pass a 2005 resolution which states in part:

"BE IT FURTHER RESOLVED that APA engage those responsible for developing violent video games and interactive media in addressing the issue that playing violent video games may increase aggressive thoughts and aggressive behaviors in children, youth, and young adults and that these effects may be greater than the well documented effects of exposure to violent television and movies.

BE IT FURTHER RESOLVED that APA recommend to the entertainment industry that the depiction of the consequences of violent behavior be associated with negative social consequences.

BE IT FURTHER RESOLVED that APA (a) advocate for the development and dissemination of a content based rating system that accurately reflects the content of video games and interactive media, and (b) encourage the distribution and use of the rating system by the industry, the public, parents, caregivers and educational organizations."¹⁹³

There is a great deal of pressure on the industry, whether or not one accepts the APA's finding that video games can be more harmful to young people than television. Content rating is instituted in Australia under the co-regulatory schemes established by the National Classification Code of 1995, under the powers in the Broadcasting Services Act 1992. In 2000, Section 5 of the Act became operational, extending the co-regulatory system to the Internet¹⁹⁴. Further co-regulatory measures have recently been introduced in China and South Korea (to prevent games players' obsessive playing resulting in harm to self and others offline).

190 Price Waterhouse Coopers (2005) Global Entertainment and Media Outlook 2005-9 from

<http://www.pwcglobal.com/extweb/industry.nsf/docid/8CF0A9E084894A5A85256CE8006E19ED?opendocument&cvendor=none#IAAS>

191 See OECD (2005) Digital Broadband Content: The Online Computer And Video Game Industry DSTI/ICCP/IE(2004)13/FINAL at pp53-54, at <http://www.oecd.org/dataoecd/19/5/34884414.pdf>

192 See <http://www.nyls.edu/pages/2713.asp>

193 American Psychological Association (2005) Resolution on Violence in Video Games and Interactive Media at

<http://www.apa.org/releases/resolutiononvideoviolence.pdf> released August 17 at <http://www.apa.org/releases/videoviolence05.html>

194 See Wright, A. (2005) Coregulation of Fixed and Mobile Internet Content, paper at 'Safety and Security in a Networked World: Balancing Cyber-Rights and Responsibilities' conference, Oxford, September, at <http://www.oii.ox.ac.uk/research/cybersafety/?view=papers>

European concerns with computer games have reached the stage of pan-European legislation to regulate the content of games, in Recital 12 of the 2005 Recommendation on the Protection of Minors and Human Dignity:

This Recommendation covers new technological developments and complements Recommendation 98/560/EC. Its scope, on account of technological advances, includes audiovisual and on-line information services, such as newspapers, magazines and, particularly, video games, made available to the public via fixed or mobile electronic networks¹⁹⁵.

The dominant model for self-regulation of the video game industry on the pan-European level is the PEGI rating system (the Pan European Games Information), implemented in the spring of 2003 by the Interactive Software Federation of Europe (ISFE)¹⁹⁶.

The three most prominent self-regulating bodies of the electronic game industry, on whose models PEGI was built, were the Entertainment Software Rating Board (ESRB, a program of the Interactive Digital Software Association in the United States), the Video Standards Council (VSC, a programme of the European Leisure Software Publishers Association in the United Kingdom), and the Kijkwijzer (a programme of NICAM in the Netherlands).

4.4.2 Design and Institution

The rating system is a result of a period of collaboration and negotiation between stakeholders from national self-regulatory organizations and the industry, and the project also received either advice or support from major video console manufacturers, experts in the field, and relevant stakeholders within the European Commission. As of September 2005, 16 European states were participating in the scheme and the most notable country not included was Germany (due to its 2003 legislation on protection of minors that includes video games and the Internet within the larger national self-regulatory framework).¹⁹⁷ Reding (2007) explains that¹⁹⁸:

Rating and labelling are included in the modernized Recommendation on the Protection of Minors and Human Dignity which was adopted in December 2006. ..In 2002, the EU Council of Ministers adopted a Resolution on the protection of consumers, in particular young people, through the labelling of certain video games and computer games according to age group.

She also refers to the 2003 independent ratings study¹⁹⁹ and overall assesses that:

it is a considerable achievement that the selfregulatory Pan European Games Information age-rating system PEGI replaced a significant number of existing national age-rating

¹⁹⁵ European Parliament (2005, 7 September) legislative resolution on the proposal for a recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry (COM(2004)0341 – C6-0029/2004 – 2004/0117(COD)) at <http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//TEXT+TA+P6-TA-2005-0330+0+DOC+XML+V0//EN&L=EN&LEVEL=0&NAV=S&LSTDOC=Y&LSTDOC=N>

¹⁹⁶ See Calvert, Justin (2002) New age rating system for games in Europe, 'Gamespot' 25 October at <http://news.zdnet.co.uk/hardware/emergingtech/0,39020357,2124493,00.htm>

¹⁹⁷ The participating countries included Austria, Belgium, Denmark, Finland, France, Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

¹⁹⁸ Reding, Vivienne (2007) Self regulation applied to interactive games : success and challenges, ISFE Expert Conference, Brussels, 26 June 2007, SPEECH/07/429

¹⁹⁹ (2003) "Study on the rating practice used for audiovisual works in the European Union"

systems with a single system that is identical throughout most of Europe! Moreover, I believe the fact that PEGI has been designed to meet varying cultural standards across the participating countries and that representatives of society such as consumers, parents and religious groups were involved in the setting up of the PEGI system, is very important. Obviously, it must be ensured that this involvement of main societal groups remains.

In its first two years of operation, PEGI statistics show the following implementation.

Figure 21: Games Rated in Years April 2003-March 2005

BY AGE						
	3+	7+	12+	16+	18+	Total
Game Totals	1579	274	905	462	102	3 322
Percentages	47,53%	8,25%	27,24%	13,91%	3,07%	100%

The PEGI age categories are 3, 7, 12, 16 and 18, and all the games also receive up to six content descriptors, warning that game's content includes discrimination, drugs, fear, bad language, sex, or violence.

Figure 22: PEGI content descriptors



PEGI is an independent, non-profit organization; founded by the industry and puts a high priority on protecting industry interests. It has well developed public outreach and publicity programs designed to explain how PEGI serves the public interest as PEGI:

- cooperates with the government both in the formation of the two variants of PEGI and in the advisory board on which government member sit;
- considers all parts of the producer-supplier-consumer chain and have developed programs to address not only rating at production, but also distribution and marketing;
- provides guidance on application of rating icons on packaging; they have an informal and internal procedure for evaluating their rating mechanisms and making changes to them;
- has a formal complaint and appeal procedure for settling disputes.

4.4.3 Inputs

Address: 15 rue Guimard B-1040 Brussels, Brussels

Organisation: Secretary General Patrice Chazerand (Parent Organisation: Interactive

Software Federation of Europe)

Budget: undisclosed, based on number of games classified, estimated above €1m per annum.

Annual report: available²⁰⁰, with annual conference established.

Staff: approximately 5, classification/training functions carried out by NICAM on behalf of PEGI, and Video Standards Council of PEGI's agent in UK.

There are three boards: the main board made up of representatives of IFSE members, the advisory board of policy expert members (officially “parent/consumer bodies, child psychologists, media specialists, civil servants, academics and legal advisers versed in the protection of minors in Europe”), and the complaints board of 15 independent experts.

There is no separate Board representing consumer groups or civil society. The Complaint Board is composed partly also by psychologists and other experts in the field. PEGI Complain Board together with the Advisory Board in case of disputes proposes to the industry improvement for the classification system.

4.4.4 Activities

PEGI was updated in August 2005 to take account of mobile and online gaming, extending its remit²⁰¹. It has been referred to as a model example of pan-European regulation by Commissioner Reding in speeches in 2003 and 2005²⁰². She also launched PEGI Online at the annual conference in Brussels on 26 June 2007 – offline is now ‘PEGI Classic’. PEGI Online was part-funded by the European Commission Safer Internet Action Plan, a move which strengthened PEGI links to the mobile and ISP communities.

Chazerand (2007) explains that the European Commission involvement including meeting officials in January 2007²⁰³ – and in Rome the PEGI Advisory Board meeting discussed and invited the Commission to have an advisory board seat (letter of 15 January). However, the EC did not sit on the drafting council until its review meeting

These proposals all clearly make PEGI's approach one of collaboration. The European Commission suggested in review of the project co-funding that the draft Code should be put out for consultation, as the code committee included only one civil society member. Advisory group Isabelle Falque-Pierrotin in July said that code needed strengthening. However, PEGI's view was that to make that public during negotiation would be ‘imprudent’, that commercial sensitivity means that decisions have to be agreed first as it is important to get all members to join up. It was suggested that mobile content providers were very much less politically pressurised in their code. The draft Code was presented to the High Level Group of Experts on Mobile. Age verification was the key concern in mobile as in PEGI Online.

200 <http://www.pegi.info/en/index/id/178/nid/media/pdf/211.pdf>

201 See PEGI Info newsletter No.7 at <http://www.pegi.info/pegi/download.do?id=12>

202 See presentation by Secretary General Patrice Chazerand Liverpool 21 September 2005 at http://www.fco.gov.uk/Files/kfile/AudiovisualConference_Draft_Programme.pdf

203 Chazerand, Patrice, Chief Executive PEGI, 26 June 2007 Interviewer Chris Marsden

The PEGI Online Safety Code (POSC) authorizes those parties who agree to be bound by its rules to display the PEGI Online Logo once their games are registered with the PEGI system. The Code is available online and in brief covers²⁰⁴:

Age-rated game content: Only game content that has been appropriately rated under the regular PEGI system or another recognized European system such as that operated by the BBFC in the UK or the USK in Germany will be included on a site.

Appropriate mechanisms will be in place to allow game players to report the existence of undesirable content on any related websites.

Removal of inappropriate content: License holders will use their best endeavours to ensure that online services under their control are kept free of content which is illegal, offensive, racist, degrading, corrupting, threatening, obscene or which might permanently impair the development of young people.

Privacy policy: PEGI Online licence holders collecting personal information from subscribers will maintain an effective and coherent privacy policy in accordance with European Union and national Data Protection laws.

Community standards: PEGI Online licence holders will prohibit subscribers from introducing content or indulging in online behaviour which is illegal, offensive, racist, degrading, corrupting, threatening, obscene or which might permanently impair the development of young people.

A responsible advertisement policy

- all advertisements will accurately reflect the nature and content of the product represented and wherever reasonably practicable the rating issued
- all advertisements shall be created with a sense of responsibility towards the public
- no advertisement shall contain any content that is likely to cause serious or widespread offence
- advertising for products rated 16+ or 18+ shall not be specifically targeted towards those who are younger
- ancillary or separate products that are being sold or promoted in association with a core product must be appropriate for the audience for which the core product is intended
- licence holders should inform the public by means of a general statement of the existence of sponsorships and/or the existence of 'product placements' associated with any online service.

4.4.5 Enforcement

Clearly, the Code's enforcement is the key PEGI challenge. Reding (2007) highlights PEGI's ongoing activities to raise awareness of the new and existing schemes:

- a safety code, which lays down rules to be followed by the providers who have signed up

²⁰⁴ PEGI (2007) PEGI Online Safety Code ('Posc'): A Code Of Conduct For The European Interactive Software Industry at <http://www.pegionline.eu/en/index/id/media/pdf/197.pdf>

- a logo, which can be used by providers to show that they have signed the safety code

She also notes that PEGI provides a linked web site, which informs users PEGI Online and about playing games online safely. She concludes:

This is a good example of an industry initiative developed in co-operation with other stakeholders which allows a rapid and flexible solution to the problems of new technologies and greater safety for our children and I ask you to report regularly to the Commission and to the public about the take-up of PEGI Online.

Chazerand makes the point that the system works for three specific reasons:

- All the major industry players joined the system at its political inauguration in 2001-2, urged by the European Commission and Member States;
- It has been able to take advantage of the classification system expertise of NICAM and the appeals procedure expertise of VSC, in a telling example of pan-European systems using national expertise for comparative advantage;
- The continued success of the system has produced a virtuous circle of improved procedures (for instance appeal) and pan-sectoral impacts (for instance, mobile and online markets).

When it comes to enforcing their decisions and employing sanctions, the PEGI system relies on the voluntary national character of self-regulation. In the UK, the VSC sanction mechanisms are reserved for repeated offenders, as the VSC's stated policy is first to seek industry's cooperation in improving practices to correct for the breaches of the Rules. Once it decides to impose sanctions, the VSC can terminate membership in the organization that includes loss of benefits. The VSC can also use a referral to the government or the BBFC as a sanction mechanism. But in practice, VSC represents the interests of publishers in front of the BBFC. If BBFC refuses to classify a game, it effectively acts to ban or delay its publication until an appeal.²⁰⁵ This is not an empty threat: BBFC did deny a rating to recent violent and otherwise unmerited computer games, notably *Manhunt 2*.

The possibility to ban games across Europe was proposed by various countries in 2005. Commissioner Frattini also made an October 2006 proposal and investigated the issue – but stated that it is a national issue to decide on human decency in each case. Denmark and Portugal claimed that this is impossible at a European level, as their constitutions or laws forbid such censorship.

The current controversy was caused by a violent game called *Manhunt 2*. Option is an R18 (restricted adult distribution) or even refusing a rating. Video Standards Council in the UK has all 18+ games referred to them, and they forward the rating to the BBFC when unsure of whether rating can be undertaken. In the case of *Manhunt 2*, it was refused a rating, so the BBFC effectively banned the game. In Netherlands, NICAM can impose a

²⁰⁵ See the case of the 1997 game *Carnageddon* published by SCI, Take 2's *Postal* and BMG's *Grand Theft Auto*. (as well as *Kingpin* and *Shadowman*) The cases are described by the VRC.

warning or penalty as a result of a successful complaint before the NICAM Independent Complaints Committee. The fines and warnings are public. The complainant or a party subject to the complaint can appeal the decision of the Complaints Committee. A separate, three-member NICAM Appeals Committee, with no ties to the industry, rules on the appeal within four weeks, but NICAM maintains a disclaimer over complaints regarding actual content of the product.

Therefore PEGI relies to a large extent on national enforcement of regulation in addition to its filtering system – it does not replace national co-regulation, but acts as a harmonised European addition to that system.

4.4.6 Outcomes

PEGI has secured wide industry buy-in from offline games and increasingly from mobile games publishers. A test for the PEGI Online system will be which non-European and online publishers choose to join and rate their games, given that there is no distributor physical bottleneck and the market to this point has been dominated by non-EU publishers. In particular the market for PC-based games has a more fragmented market structure than console-based gaming, and in new Member States PC-based gaming dominates.

4.4.7 Outputs

Research commissioned by PEGI in 2004, fifteen months after launch, suggested that the pan-European system had resulted in greater player awareness of ratings than in Australia's system which had been developed in 2000:

Compared with numbers taken in Australia, a territory with a smaller population and a common language, 3 years after the (Australian) OFLC launched its own age rating system, those coming out of the Nielsen survey look pretty encouraging: 59% of respondents said that they were aware of a game rating system in Europe against 42% in Australia. Among the players' community, the results are pretty close: 69% for PEGI vs 74% in Australia²⁰⁶.

This highlights the communications and media literacy element of any ratings system. Without consumer awareness, and retailer education to actually enforce the ratings, the system is an empty vessel. IFSE began a media literacy initiative in 2005-6 to further publicise the ratings system. In the UK, for instance, a special 'games summit' was held on 5 December 2004, calling on retailers and parents to ensure that they did not allow children to play 18 rated games²⁰⁷. Further media literacy and public outreach efforts include an annual conference and publicity campaign to launch PEGI Online. Significant resources are devoted by PEGI – as opposed to games publishers, in contrast to many SROs we studied – in this effort.

4.4.8 Impact

There is some, but insufficient press coverage of PEGI's activities. Selloni (2007) explains

²⁰⁶ See IFSE Press Release (2004) 14 December: PEGI Celebrates Its First Two Years Of Operations at [http://www.isfe-](http://www.isfe-eu.org/index.php?PHPSESSID=ca3fcbb3951ccab889ca9a568e1772&template[0]=matrice.html&template[1]=rubrique.html&oidit=T001:96dec7f314175b346499b34f5ad64fda)

[eu.org/index.php?PHPSESSID=ca3fcbb3951ccab889ca9a568e1772&template\[0\]=matrice.html&template\[1\]=rubrique.html&oidit=T001:96dec7f314175b346499b34f5ad64fda](http://www.isfe-eu.org/index.php?PHPSESSID=ca3fcbb3951ccab889ca9a568e1772&template[0]=matrice.html&template[1]=rubrique.html&oidit=T001:96dec7f314175b346499b34f5ad64fda)

²⁰⁷ See Video games warning (2004) [http://www.politics.co.uk/domestic-policy/video-games-warning-\\$7240904.htm](http://www.politics.co.uk/domestic-policy/video-games-warning-$7240904.htm)

that in Italy there is not enough communication and most people, i.e. parents, do not know what PEGI is, neither are they aware of the risks connected to violent video games. When the new law will be enforced certainly the producers will organize a sensitization campaign. The Advisory Board has already urged PEGI and the industry to launch information campaigns and so far a limited campaign has been undertaken, however, this is far from sufficient for raising the needed public awareness. It is also important to point out the positive impact video games can have for example for marginalised groups like handicapped and old people.

4.4.9 Sustainability and Reform

Reding (2007) explains recent developments:

Since the adoption of the Council Resolution five years ago many developments have taken place: PEGI has come into being, we have Massively Multi-player Online Role Playing Games or MMORPGs; online communities such as *SecondLife* blur the border between games and community websites; and the European Union has 12 more Member States. Therefore, it is my intention to work together with my colleague Meglena Kuneva on a Commission report to the Parliament and the Council on developments such as progress on the labelling of video and computer games according to age group since the adoption of the 2002/952/EC Council Resolution... The report should be available before the end of 2007. Also in the last quarter of 2007, the Commission intends to adopt a Communication on media literacy....These actions supplement the stocktaking exercise recently carried out at the initiative of my colleague Franco Frattini and of the German Presidency. This exercise concludes that, as regards illegal content in video games, existing legal provisions are sufficient.

France and Italy are pressing for consumer association representation on the complaint board rather than advisory board. France has a proposal to add language descriptors in French, but PEGI is avowedly non-lingual (let alone multilingual). Chazerand (2007) explains the danger of pan-European schemes is that Europe has different approaches between the 'North-west' and the rest. It is inflexible to try a European scheme instead of national schemes. The problem is that "you can reinvent" the whole scheme. As an example, France claims that PEGI doesn't reflect French cultural biases – because the rating questionnaire doesn't take local cultural context into account. Is context a problem for particular countries? If coders claim that cultural specificities are important, then a full PEGI Advisory Board panel is required to review the whole of the content for all cultures.

Selloni (2007) explains that she:

recently joined the Advisory Board and have therefore only limited experience with PEGI, I think that the PEGI classifications' system is relatively simple and functional. The organization seems to operate effectively and professionally. However, it is important to point out that Italy is late in tackling the problems regarding video games, other countries have already quite a long experience in this area.

Due to the new law in Italy, the collaboration between PEGI and the government will be increased and there will be more controls on video games' trade. Italy has a proposal for an extra regulatory layer – as in Germany – for extreme cases. The problem here is that it would require making it a crime to sell games to those not old enough to buy according to the rating. Italy is the test case for instituting PEGI classification into national law. Selloni (2007), a member of the PEGI Advisory Board appointed by the Minister of

Communications in behalf of the Italian government, explains that the discussion on how to deal with violent video games has been a hot topic in Italy and has led to considerations on how to tackle the problem via new mechanisms. PEGI is not yet recognized by the Italian law. However, a draft bill regarding the classification of violent video games put forward by the Ministers of Communications and the Ministry of Cultural Heritage ('Ministero delle Comunicazioni' 'Ministero dei Beni Culturali') ("Disegno di legge recante norma a tutela dei minori nella visione di film e nell'utilizzo di video giochi"), approved by the Board of Ministers, debated in September 2007 by the Parliament. This draft law foresees in the current version that PEGI is responsible for the classification in the first place (this is in practice handled by NICAM that has significant experience in the area), while a newly introduced body ('Comitato Media e Minori') within the Ministry of Communications would take over the supervision (this body might include representatives from civil society etc.). The law recognizes PEGI and its classification mechanism, while allowing for further verifications by the Ministry. The law foresees sanctions against distributors/retailers, and sellers in case of a violation of the classification. Through the new law PEGI is getting closer to the government as PEGI and the government will be jointly responsible for regulating violent video games. Currently such classification systems are foreseen by law for television programs, however, the idea is to extend classification systems also to the areas of the internet, mobile telephony, cinema and video games. The last two are to be addressed by the proposed law. The same bill foresees a similar organism within the ministry responsible for the classification of movies. In this case, however, no self-regulatory body is foreseen but only a Committee within the Ministry. A recent reform supported by the Italian government was increased attention to the age group between 10 and 12. In this respect the control mechanisms of the classification would be enhanced in line with the procedures of the older age groups.

PEGI itself claims to be more co-regulatory than self-regulatory at least in its approach to government relations:

One key feature of the PEGI system - probably the main driver of its success - is its unique combination of business and government input (on this ground, some would call it co-regulation rather than self-regulation).²⁰⁸

Its composition, with an advisory board made up almost entirely of government representatives, 14 out of 15 members, certainly supports that interpretation²⁰⁹. The ratings system has provided a model for the UK Independent Mobile Classification Body (IMCB)²¹⁰.

208 Chazerand (2005) Liverpool speech supra at <http://www.europa.eu.int/comm/avpolicy/revision-tvwf2005/docs/ip6-isfc.pdf>. See also ISFE (2005) Position paper on the Communication from the Commission "Challenges for the European Information Society beyond 2005" at [http://www.isfe-eu.org/index.php?PHPSESSID=804e6e3cfdc7506303904aa81afe850e&template\[0\]=matrice.html&template\[1\]=rubrique.html&oidit=T001:dfb8bc4a6dcf3052747cea0839f32f75](http://www.isfe-eu.org/index.php?PHPSESSID=804e6e3cfdc7506303904aa81afe850e&template[0]=matrice.html&template[1]=rubrique.html&oidit=T001:dfb8bc4a6dcf3052747cea0839f32f75)

209 See IFSE (2005) Appendix to ISFE's comments on Issue 6: Protection of Minors and Human Dignity, September at <http://www.europa.eu.int/comm/avpolicy/revision-tvwf2005/docs/ip6-isfe-encl.pdf>

210 See UK Independent Mobile Classification Body (2005) IMCB Guide and Classification Framework for UK Mobile Operator Commercial Content Services at p6 at <http://www.imcb.org.uk/>

4.4.10 Evaluation

Headline issues for evaluation are:

- EU partial funding of PEGI Online leads to monitoring, liaison and evaluation.
- Financially, PEGI maintains independence through costs of implementation on a ‘pay per play’ basis and the lack of an alternative classification scheme, though it is not mandated.
- The major continuing success factor internally is the proof of its concept and operation, with an expanding mandate to provide a service for PEGI Online, and use of NICAM and VSC services which had previously proved ‘best in breed’.
- The main external conditions impact success/failure are:
 - Governmental: the continued good relationship with European and national institutions, notably Italy and France. The relationship with the German KJM system is important.
 - Market: potential outcomes for online games.
 - Consumers: continued high awareness and media literacy.
- Lessons for European policy are that PEGI has performed this new role highly successfully and proactively.

Because PEGI is the only pan-European system, it has a potential of serving as a best-practice model for other industries in search of a coordinated scheme of self-regulation across EU member state boundaries. The pan-European system was also made possible by the fact that the UK ELSPA (now VSC) system was well developed and that the vast majority of the other member states either lacked any system of video games ratings or had only started to think about adopting their other media rating mechanisms to deal with this relatively new and expanding media industry.

Germany’s decision not to use the PEGI system serves as an important reminder that even the most successful ‘pan-European’ self-regulatory models may not live up to all the Member States’ concerns or national legal requirements. Germany’s 2003 laws precludes Germany from relying on an entirely voluntary pan-European system of video ratings.²¹¹ The Oxford study (2004) states that:

the PEGI system resulted from the initiative of the UK ELSPA, and was importantly influenced by the British self-regulatory experience. However, the addition of content descriptors and more reliance on the manufacturers are only two of several important influences from the Dutch NICAM model. In that sense, the ISFE’s PEGI rating system is a self-regulatory mechanism that incorporated the institutional and historical lessons of British self-regulation in the areas of films released on video, and later video games, with new and original thinking behind the Dutch experiment of rating media content regardless of the medium in which it is found.

PEGI has proved the success of a co-regulatory system in a highly dynamic and rapidly converging industry. Using the examples taken from film classification and video classification, it has formed a pan-European system (absent Germany) that has itself been acclaimed by the European Commission and adopted in part by the mobiles industry. Its effects are extending to online and mobile markets through the ratings system itself. Its

211 However, one could envisage a system where local governments could delegate the rating responsibility to a pan-European self-regulatory agency.

success may be more an exception than the rule, however, as the lack of institutional inheritance and prior art in regulation in this field permitted computer gaming to take a more self-regulatory approach than more established media. The similarities with mobile content self-regulation are striking, but the differences compared to many more established industries means that the view of PEGI as a blueprint for all content regulation online is simplistic.

4.5 Internet Protocol TV: ATVOD

Association of TV On Demand : ATVOD

Researcher: Lorna Woods

ATVOD is a nascent regulator of Video on Demand, with six members. Membership is voluntary. It has limited resources and has no legal requirement for its foundation, simply corporate responsibility on the part of large communications companies. It has a virtual presence. Note a governance review was underway in 2007, and a new Code will be launched by the Minister for Culture on 12 December. It emphasises the need to consider member and direct resources, in the same manner as fellow ratings self-regulator IMCB. It has an extremely low profile thus far. ATVOD has been praised as an initiative by Commissioner Reding. It was formerly evaluated by Woods (2006) for the Hans Bredow study of media self-regulation for DG INFSO.

Table 32: Summary of ATVOD Case Study

Was there a government mandate initially?	No
What kind of government involvement is there?	Liaison with Department of Culture and EC
Which other stakeholders are involved and how?	Primarily industry-led SRO with special advisors
How is transparency ensured?	Web publication of proceedings, website and other efforts – improving from low base
What is the enforcement mechanism, is it effective, at what cost?	Expulsion of non-conforming members. Unproven.
What is the relative size of administrative burdens?	Very low.
Is financial independence assured/how?	Continued dependence on industry parties.
Which internal factor most impacts success?	Membership growth and proof of enforcement and membership sanctions – unproven as yet
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: relationship with Ministry and Parliament, especially for AVMS. Market: press and public relations as well as media literacy.
Lessons for European policy	Perceived successful self-regulation. Impact on competitiveness of entrepreneurs needs monitoring, as Sky has refused to join and Internet-only players may follow.

4.5.1 Interests and Policy Needs

In the UK, it was decided not to include video on demand within the scope of Ofcom under the Communications Act 2003. As a response to this, the industry created a self-regulatory body, ATVOD, to deal with consumer protection issues in relation to VOD services. As the industry itself has recognised, this is an attempt to pre-empt action on the

part of government.²¹² In this sense there are similarities to PEGI. Although ATVOD emphasises its separateness from Ofcom and re-emphasises that it does not have to comply with Ofcom code, its own code refers back to that code and in many instances there may be overlap – for example if programming is broadcast on traditional television first, it will be subject to Ofcom review.

ATVOD concerns ‘on-demand services’ as defined in the ATVOD code as ‘a service where video and audio programming, commercial transactions, information and other consumer benefits are provided over a telecommunications network (of any nature whether by cable wireless or otherwise) for reception at different times to the premises of individual subscribers in response to requests made by individual customers’. It shows no signs of expanding or developing this remit.

4.5.2 Design and Organisation

Membership of ATVOD is open to those undertakings which operate on-demand services which are available for reception within the UK; associate membership is also possible for operators of telecommunications networks over which on demand services are distributed as well as for suppliers of programming for on-demand services. Membership, whether full or associate, is voluntary. Its membership went to seven; it is now six, including the BBC as an affiliate member.²¹³ According to the ATVOD code. ATVOD will notify the Department for Culture Media and Sport of its membership. ATVOD is a self-regulatory body.

The mission of ATVOD is developed by two core principles found in its Code:

- “members recognise their responsibility to assist subscribers in their efforts to take children and young people from unsuitable material;
- members recognise their responsibility to provide accurate, tightly on reasonably prominent guidance relation to their offerings of (a) content reasonably expected to cause significant offence or upset to some customers and (be) commercial services”.

ATVOD’s main function is to provide a consumer protection mechanism via a complaints procedure in respect of VoD services. At the time of the Hans Bredow Report, contact with ATVOD was only by post; there is now the possibility to contact ATVOD by email. There is currently no helpline number. Although the website specifies that ATVOD allows you to complain on line, this function did not appear to be available. ATVOD has also developed a voluntary ‘trustmark’ which its members are under no obligation to use. Some view such opt-in regulation as significant for inspiring public confidence in on-demand services.²¹⁴

²¹² See Video Networks Ltd presentation “Regulation in a Converged World”, June 2005

²¹³ Current full members are: BT, OnDemand Group; Virgin Media; Channel 4 and Tiscali.

²¹⁴ As noted by Ofcom ‘Perhaps we might move to a sort of “opt in” regulation, where some content providers agree to meet certain standards, in return for a publicly recognised kite mark or mark of approval. This does not necessarily need to involve the regulator. We have already seen good progress in self regulation, encouraged by bodies such as ISPA and ATVOD.’ Foster, R., Competition and the Public Interest: A More Transparent Approach - A Paper for the OECD/Ofcom Roundtable on Communications Convergence, 2 June 2005

4.5.3 Inputs

ATVOD is a private company limited by guarantee which was established in 2003. It was established by five companies then operating in the VoD field.

ATVOD is run by a Board, with an independent Chair, Elizabeth Filkin. The other members of the board represent the industry members.

The ATVOD code specifies provision for a secretariat, currently carried out by Andrea Millwood-Hargrave. As Woods noted (Hans Bredow 2006):

‘The code envisages a maximum of 11 members in total, but currently provides also for each for member to have a representative on the board plus, for every four full members, one representative collectively appointed by any associate members. Although these rules currently mean that the representatives of the members could outweigh independent members, the rules also specify that, no later than the fifth anniversary of the coming into force of the code, the majority of ATVOD board members are to be independent of the members. It also provides that the independent members are not only to be unconnected with the provision of on-demand services that are selected to correspond, as far as possible, so as to reflect a diversity of background and experience.’

Currently, there are two advisors to the board, though their role and expertise is not specified. It may be that these two individuals are the non-industry members referred to in the ATVOD code to reflect other interests, though this is not how they are described on the ATVOD website. Appointments to these positions have not been publicly advertised, but filled from lists of suggestions of appropriate persons, apparently supplied by DCMS; again this limits costs on recruitment expenses.

ATVOD is funded by its members, the funding formula being agreed by unanimous decision of the ATVOD board. It has filed accounts at Companies House as at 31 December 2005 and its next accounts are not due til 31 October 2007. Its annual return is overdue. It is not accountable to Parliament, nor does Ofcom have direct oversight of its activities. The DCMS has been kept informed, on an informal basis, of ATVOD’s activities, though ATVOD at the moment is under no obligation to inform the DCMS or get the consent of the DCMS for its activities. Although it has a secretariat, ATVOD seems to have little in the way of resources or personnel.

4.5.4 Activities

ATVOD has produced a Code of Conduct (9 June 2004), as well as a number of practice statements. These are agreed by the Board, seemingly without consultation of other interest groups. The provisions in the Code which provide (limited) involvement of stakeholder groups do not seem to have been implemented. It aims to provide a complaints and appeals system. As noted above, the code has been undergoing a process of revision and revised versions should be available soon. There have been no adjudications to date. Whether this low level of activity is due to the low profile of ATVOD; a perfect service provided by its members; or a relatively small market thus far, is not known.

4.5.5 Enforcement

The first step for a complainant is to complain to the VOD services provider. A complaint may then go to the ATVOD Board. According to the terms of the original ATVOD code, an independent appeals body is to be set up called the ATVOD Independent Appeals

Commission. It comprises a chairman and four lay members. There is no industry representation. Appeals may be made on two grounds only:

- (1) the ATVOD adjudication was based on an error of fact; or
- (2) the ATVOD adjudication was based on an incorrect exercise of the ATVOD board's discretion.

The status of the appeals body itself is unclear, though it is likely to be a public body for the purposes of the Human Rights Act, and therefore reviewable at law for its decisions and process.

A separate appointing body is to be appointed by ATVOD to recruit the members for the Independent Appeals Commission. Again, this body is not to include any member or affiliate of a member although it is to consult the ATVOD board during the appointment process. The appointing body will also set the remuneration rates for the members of the Independent Appeals Commission. A separate fund is to be established to pay for this. The money for the fund will be provided by the members in accordance with the funding formula to be determined by the ATVOD board, again acting unanimously. There is no information on the website about the actual existence of the IAC, though apparently the ATVOD Board has heard a complaint. Article 2(g) of the ATVOD Code provides that it will publish annual reports, such reports to include, inter alia, summaries of complaints received by members and by ATVOD.

This system has been replaced recently by a new Code detailing the ATVOD complaints procedure of 16th July 2007. The remit for the code and thus for the complaints procedure has not changed. The code also requires members of the public to approach the relevant service provider first. If this proves unsatisfactory then ATVOD will send a Complaints Application Form. As an initial step ATVOD will attempt to secure a resolution without recourse to a formal determination. If this is unsuccessful, complaints will be considered by the ATVOD Board of Directors, with a right of appeal to the ATVOD Independent Appeals Adjudicator.

4.5.6 Outputs

The main output so far has been the ATVOD Code, which contains standards of behaviour for ATVOD members. The ATVOD Code requires the Board to consult members and other stakeholders, including the DCMS, before changing those standards, it does not seem as though ATVOD Board will be bound by those views. There seems to have been no such change to date which is available as a matter of public record, though as noted a review is underway. The ATVOD Board may additionally adopt policy statements which will be incorporated into the Code and therefore bind members, although such practice statements cannot amend the constitution of ATVOD, the Core Principles of the Complaints Procedure. These are available on the ATVOD website; again these have been revised during the review process. Given that they are agreed by the ATVOD Board, the views of the ATVOD membership will be reflected in these policy statements, though it is unclear the extent to which non-member interests of any description are taken into account.

4.5.7 Outcomes

ATVOD has low apparent levels of ongoing activity. There are a number of policy statements on its website, but no updates until December 2007. The most recent policy statement (on racial hatred) had dated from June 2006. The others all relate to 2004/05. The review of the ATVOD Codes and Practice Statements had no direct consumer involvement in their revisions. Whilst this may suggest that ATVOD is developing more than its website would suggest during the study period, it leaves a problem of the transparency of its procedures until its relaunch in December 2007.

4.5.8 Impact

There seems to be little awareness of ATVOD activities. A Lexis/Nexis search of UK newspapers revealed no hits, although numerous articles (especially recently) are detailing developments in the VoD market. It is involved with both Ofcom and BSG.

4.5.9 Sustainability and Reform

According to the ATVOD Secretariat a governance review has been underway, taking into account the likely changes as a result of the Audiovisual Media Services Directive. It seems that the complaints procedure will be dealt with in a separate code (dating from 16th July, though not yet publicly available); as will constitutional matters; with content issues being dealt with in a separate code which is, apparently, close to be finalised.

Crucially the new code – to be announced and launched by the Minister James Purnell on 12 December 2007 – will not track the broadcasting code in the way the current version does. Further guidance on the acceptability of content is found in revised guidance notes of the same dates. The Code at present distinguishes between content under the editorial control of the ATVOD member and that not.

Advertising regulation has been contracted out or delegated to the ASA. ATVOD has also replaced its appeal board with an independent adjudicator, who has recently been appointed. Part of the motivation for this change was a concern about costs of maintaining a full appeal board structure for what currently seems to be few complaints.

Additionally, ATVOD is a member of the Broadband Stakeholders Group.²¹⁵ ATVOD was invited to participate in the Audio Visual Content Information Working Group established by Ofcom as part of its media literacy responsibilities.²¹⁶ The working group is to investigate how viewers prefer to receive information about challenging content, particularly in homes with digital television and broadband connections to the Internet.

4.5.10 Evaluation

ATVOD has not been transparent, despite the terms of its code. Its review of its code and appeals procedure has been carried out in private, although apparently government has been informed, and the Minister Purnell launched the Code after our survey was completed, on December 12 2007. Little has been done to involve non-industry

²¹⁵ <http://www.broadbanduk.org/content/view/117/>

²¹⁶ Section 11 Communications Act 2003 puts Ofcom under certain duties to promote media literacy. In particular it is required to “bring about a better public understanding of the nature and characteristics of material published by means of electronic media”.

stakeholders and its appointment procedures have not been fully transparent. ATVOD had a low profile and did not published annual reports on its website. It does not seem to have been discussed in any legal academic literature to date. Whilst this may be a consequence of a relatively young organisation with as yet a limited market, it is to be hoped that as the market for on-demand services develops, that transparency and involvement of viewers, as well as communication of its activities to the outside world, is improved.

ATVOD is therefore very much self-regulation that is ‘unproven’ at member state level. Nor is it all-encompassing in the UK industry, given that start-ups and indeed Sky, the largest VOD market actor, are not included in its membership. This raises a broad question of future impact assessment practice for member states and the European Commission. As the AVMS Directive requires implementation in all Member States by 2010, can (and should) some kind of common methodology be applied to ensure that the VOD industry regulatory outcomes and design are as harmonised as is reasonably possible across Europe? As an example, Poel (2007) explains the outcomes of a study recently conducted in the Netherlands looking at the impact of Internet Protocol TV. The study of 10 IPTV suppliers was intended to help in assessing the impact of public broadcasters on Internet business. A business model approach was used to investigate government policy options, to identify competition bottlenecks in the value chain, leading to policy and regulatory design²¹⁷. They used an interesting mixture of 6 Netherlands and 4 UK case studies. Very little disruptive radical new content strategies (e.g. social networking content generated by users) or platforms were found. That is, the public broadcasters used existing platforms mainly.

Impact assessment strategies for self-regulation of the VOD industry are clearly at a very formative stage. We would suggest that this forms a useful area for the European Commission and Member States (possibly through the European Platform of Regulatory Authorities EPRA) to set out a cooperative research agenda to investigate the best practice and useful forms of self- and co-regulation in this area. This should include those mobile self-regulatory fora under the European Framework examined above, as well as VOD and the self-regulation of UGC, as in video sites such as Metacafe, YouTube, MySpace and social networking multimedia sites including *Bebo* (see below).

217 See Poel and others (2007) Policy Analysis of IPTV for Public Organisations in Info – cite needed.

CHAPTER 5 Emerging Regulation Areas

5.1 Virtual Worlds: SecondLife

SecondLife

Researcher: Eddy Nason/Chris Marsden

SecondLife is a virtual world established by LindenLabs from San Francisco, operating since 2003 (as a beta). It claims 9 million residents with about 30,000 concurrent users. There are now many more non-US than US users, who only comprise 25% of the total. Its regulatory system works via Terms of Service and resident self-regulation. Content controversies include the behaviour of avatar personalities: virtual rapes and paedophilia. Economic controversies concern fraud and misuses of the virtual currency – Linden dollar. Bank crashes have resulted, and gambling has been banned from the world. The servers are all US-based, but LindenLabs in 2006 opened offices in the UK. They anticipate strategies to head off future regulatory challenges. Evaluation is thus far mainly academic, where a flourishing industry is developing examining all aspects of SecondLife including regulatory options.

Table 33: Summary of SecondLife Case Study

Was there a government mandate initially?	No
What kind of government involvement is there?	Publicity and success of SL has led to monitoring, liaison and evaluation
Which other stakeholders are involved and how?	Consumers and potential partners
How is transparency ensured?	Web publication of rules, website and other efforts
What is the enforcement mechanism, is it effective, at what cost?	Expulsion of non-conforming members; suspension of businesses and even market sector of gambling
What is the relative size of administrative burdens?	Very low but growing.
Is financial independence assured/how?	Dependence on venture capital backers.
Which internal factor most impacts success?	Business model in internationalisation – imaginative transgressions by users
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: regulatory interest both in US and abroad Market: press and public relations as well as potential new initiatives. Expanding non-US market for non-regulated environment.
Lessons for European policy	New type of self-regulation, in new non-WWW space. Impact on competitiveness of entrepreneurs needs

monitoring, as SL has no real competitor.

5.1.1 Interests and Policy Needs

A type of interactive experience has become increasingly popular, that of online ‘virtual worlds’²¹⁸. In an online ‘game’ (really more an immersive experience), it is possible for the administrator to respond to inappropriate behaviour by a member by the online equivalent of a community punishment. Nelson and Francis (2007) state that:

Virtual worlds are at a very early phase. In many ways, we are at a stage similar to where the World Wide Web was in 1993, when the first commercial and government Web sites were being created, security was poor, and very few legal and regulatory issues had been adequately addressed.²¹⁹

A key difference is that virtual worlds will have to comply with the regulatory agencies and scrutiny which has matured with the public Internet. To take a recent example drawn from criminal law enforcement, The Child Exploitation and Online Protection Centre (2007) explains²²⁰:

Amongst emerging trends in online usage is *SecondLife*, an internet-based virtual world hosted in the US which allows users to create characters which interact with each other and provides an advanced social networking service. In response to its increasing popularity, Teen *SecondLife* was developed for 13-17 year olds. Some recent media attention has been paid to virtual sexual activity by user defined characters of child-like appearance. Whilst this activity has so far been observed only in the version of *SecondLife* for which users must be 18 or over, it is a moot point whether these computer generated images constitute images of child sexual abuse under current legislation in the US and UK. Increased use of both sites raises the possibility not only that children and young people will be exposed to such imagery, but also that offenders will gain access to the teen version in order to groom children and young people.

This presents the view that increasing use of the Internet tends to ever-greater abuse threats and thus need for regulation:

These developments have been accompanied by the advent of Web 2.0; this has changed the way children and young people interact online, affording them more creative control over their online experience....This phenomenon, coupled with easier, more expedient access to online content and functionality is quickening the pace at which the Internet is evolving, generating more opportunities for interactivity among its younger users. However, there is a strong positive association between opportunities and risks in this context; increasing opportunities for online interaction also present challenges for those tasked with the regulation of online content, behaviour and offline consequences.

218 See generally Davies, T. and Noveck, B. (eds) (2006) *Online Deliberation: Design, Research, and Practice*. Chicago, IL: CSLI Publications/University of Chicago Press; Noveck, B. (2006) ‘Architecture, Law and Virtual Worlds’, 10 *First Monday* 11 at www.firstmonday.org/issues/issue10_11/noveck/; Balkin, J.M. and Noveck, B.S. (eds) (2006) *The State of Play: Law and Virtual Worlds*. New York: New York University Press

219 Nelson and Francis (2007) *The 3D Internet and Its Policy Implications*, 35th Research Conference on Communication, Information and Internet Policy, Alexandria, Va., 30 September 2007, at

<http://web.si.umich.edu/tprc/papers/2007/682/TPRC%203D%20Internet%20and%20Its%20Policy%20Implications%20Nelson.htm>

220 Child Exploitation and Online Protection Centre (2007) *Strategic Review 2006-7*, at 11

It is often claimed that inhabitants of virtual worlds comprise a very different population than typical Internet users. The latest European Internet survey by the European Interactive Advertising Association, released on 13 November 2007²²¹, reveals that there are 169 million Internet users, 80% of whom use broadband connections, and who spend an average of 12 hours a week online. 42% visit SNS regularly (up from 23% the previous year), over 30% view video online (up from 12%), with relative declines in frequent email usage and television viewing (for 16-24 year olds). 12% more over-55s use the Internet, and 8% more women, than the previous year. Therefore it is clear that social networking and video consumption are powerful new uses for broadband Internet surfers, and that an increasingly female and older profile is emerging as the technology matures from its previous male, youthful demographic. Ondrejka (2007) reports that the median *SecondLife* user is a 38 year old woman. Both virtual world inhabitants and virtual world regulatory scrutiny are more mature and more mainstream than the breathless media hype might suggest. This case study explores the reality of the most popular Western virtual world, *SecondLife*²²².

SecondLife is a three dimensional virtual world created and launched in 2003 by Linden Research Inc. (known commonly as Linden Labs). The brainchild of Phillip Rosedale, it aims to provide a 'new form of shared experience, where individuals jointly inhabit a 3D landscape and build the world around them'.²²³ Linden Labs itself was formed in 1999.

Linden Labs is a start-up company. Technically, it is moving towards an 'open source' *SecondLife*, providing developers with the opportunity to shape their own virtual world.²²⁴ In regulatory terms, it is clear that *SecondLife* would like to maintain as much user-generated regulation as possible. There is also anticipation amongst certain academics that *SecondLife* may eventually move away from its server structure and towards a peer to peer (P2P) file sharing network.²²⁵ This is not official *SecondLife* policy.

221 European Interactive Advertising Association (12 November 2007) survey by Synovate/Aegis of 7000 users in 10 EU Member States, reported by Wray, Richard (2007) Young networkers turn off TV and log onto the web, The Guardian Online.

222 East Asian virtual worlds are vastly more popular than Western versions, partly because the fantasy game-playing is so immersive, partly because broadband connectivity and social acceptance of game-play is so ubiquitous compared to its Western niche. We acknowledge that World of Warcraft is of a different order of magnitude in its popularity and commercial value than Western virtual worlds. An interviewee for this project, Joi Ito, is a very senior member of World of Warcraft.

223 Taken from the Linden Lab website: <http://lindenlab.com/about> (Accessed on the 8th August 2007)

224 Arrington M (2007) "SecondLife goes open source – should it be non-profit too?", Tech Crunch (available at <http://www.techcrunch.com/2007/01/08/second-life-goes-open-source-should-it-be-non-profit-too> - accessed on 27th August 2007)

225 Mayer-Schöneberger V and Crowley J (2005) "Napster's SecondLife – The regulatory challenges of virtual worlds", Faculty Research Working Paper series, Harvard University: John F Kennedy School of Government, p50



Figure 23: User generated Content in *SecondLife*²²⁶

The growth of *SecondLife* has been phenomenal - not simply in terms of numbers of users, but also in the diversity of users. From its beginnings in 2003 as a San Francisco based and predominantly US client based medium, *SecondLife* has now grown to have users in over well over 100 countries, with only around 25% of those in the USA (Figure 24). This variety of countries in which *SecondLife* operates clearly brings with it a number of regulatory problems, as each country will have different regulatory protocols on the different aspects of *SecondLife* (from IP law through to what constitutes inappropriate content for minors).

²²⁶ See Lester, John (2006) What is SecondLife, aka Pathfinder Linden, on file with report team

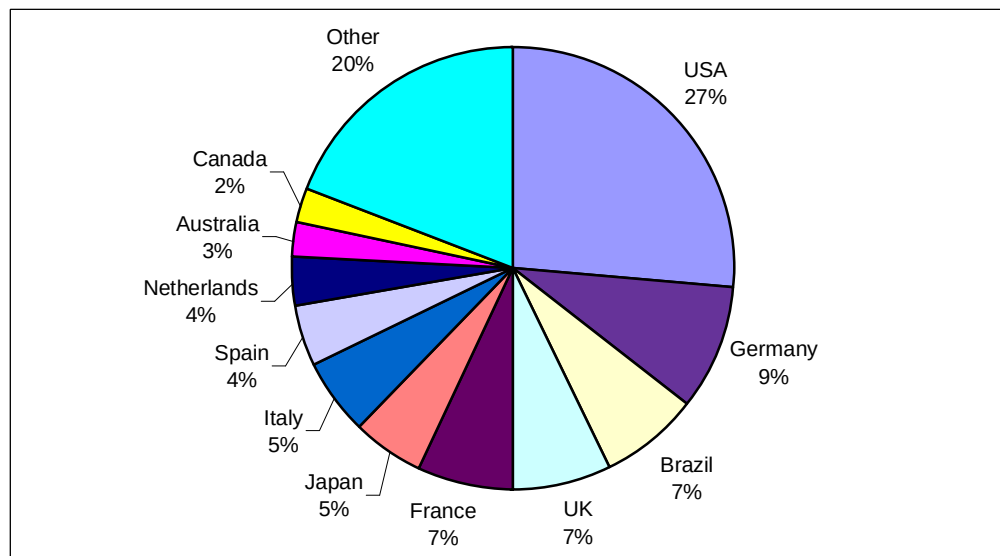


Figure 24. Active avatar count in *SecondLife*, by country (% of total avatars)

Source: Countries by active users statistics *SecondLife* 200707 (available at http://s3.amazonaws.com/static-SecondLife-com/economy/stats_200707.xls) – accessed on 26th August 2007

SecondLife is also expanding away from traditional internet provision to work with mobile internet providers. With companies such as Vodafone having a presence in *SecondLife*,²²⁷ *SecondLife* itself is now available through the mobile phone networks, although connectivity is currently unreliable.²²⁸

5.1.2 Design & organisation of the Institution

Unlike many of the other case study organisations within this report, *SecondLife* was designed with an ideology in mind rather than a problem that required solving. Phillip Rosedale has suggested that the drive behind the creation of *SecondLife* was an opportunity to recreate the way people interact on the internet.²²⁹ Although it is often referred to as a game, *SecondLife* does not involve any tasks or point scoring.

Ondrejka, *SecondLife*'s head of technology – who resigned in December 2007 after this survey was completed - suggested that despite the presence of other virtual worlds on the internet, none of them perform the same function as *SecondLife* (i.e. the majority of successful virtual worlds are very obviously games with a purpose and point scoring). This leads to the interesting situation where any regulatory pressure on virtual worlds in Europe and North America is almost exclusively on *SecondLife*, requiring them to take the lead on any self-regulation issues.²³⁰ This also means that there is not a single regulatory body that *SecondLife* can consider the “one” that it must interact with – creating complications and

227 Best J (2006) “Vodafone users to chat through *SecondLife* avatars”, Silicon.com (available at <http://networks.silicon.com/mobile/0,39024665,39163702,00.htm?r=1> – accessed on 27th August 2007)

228 See <http://metaversed.com/17-jul-2007/second-life-nokia-n800>

229 Maney K (2007) “The king of alter egos is surprisingly humble guy: Creator of *SecondLife*'s goal? Just to reach people”, USA Today.Com, available at: http://www.usatoday.com/printedition/money/20070205/SecondLife_cover.art.htm (accessed on the 26th August 2007).

230 Ondrejka C (2007), Interviewer Chris Marsden

requiring *SecondLife* to understand the host of different regulatory issues that are likely to (and often do) come their way.

The role of *SecondLife* has evolved throughout its short lifespan, and now it is becoming a valid business opportunity for both individual *SecondLife* residents and for real world businesses that want a presence in *SecondLife*. For example, the range of businesses run by *SecondLife* residents is very wide; from pet manufacturers to private detectives.²³¹ Major real world companies involved in *SecondLife* include IBM, Adidas Reebok, Toyota and Disney.²³²

Businesses have taken to *SecondLife* for a number of reasons, but they have all been facilitated by the ability of *SecondLife* residents to make money in the *SecondLife* economy. *SecondLife* uses Linden Dollars as its currency, but the reason that *SecondLife* is so attractive to business is that Linden Dollars have an exchange rate with US dollars,²³³ meaning that making money in *SecondLife* can be equivalent to making money in the real world. This is made possible by the intellectual property (IP) laws of *SecondLife*, where individuals can own the IP of their own new script (i.e. objects in *SecondLife*), providing them with an opportunity for transactions in *SecondLife*.

The other key factor for business involvement in *SecondLife* is the ability to own land. *SecondLife* has two types of users: regular users who can participate for free but may not own land; and premium users who pay a fee (US\$9.95 per month²³⁴) but are able to own land. Land sales and rental have become a lucrative business in *SecondLife*, with *SecondLife* boasting their first real world millionaire (in US\$) in 2006.²³⁵ Strictly speaking, land is not owned by *SecondLife* residents, since they essentially only rent server space on *SecondLife*'s servers.

This model of financial regulation in *SecondLife* is in fact the second attempt at setting up the finances of *SecondLife*. Initially, *SecondLife* had a taxation system based on the amount of 'property' owned by residents. However, that was very unpopular since taxes were high and stifled innovation (leading to an "in-world revolution" of protests at the main entrance). The new system based on purchasing property and paying for land alone (with maintenance fees).²³⁶

SecondLife is so different from other virtual worlds that they consider themselves to be a unique entity. This means that *SecondLife* must be self-regulatory, especially as there is no formal regulation that applies specifically to them. Ondrejka (2007) suggested that *SecondLife* would benefit from some form of regulation as opposed to media-driven and politically shortsighted reaction, as it would allow Linden Labs to know where they stand

231 See <http://SecondLife.com/whatis/businesses.php> for a fuller list of businesses (accessed on 26th August 2007)

232 See http://en.wikipedia.org/wiki/Businesses_and_organizations_in_Second_Life for a longer list of exemplar companies involved in *SecondLife* (accessed on 26th August 2007)

233 The exchange rate is relatively constant at around L\$2.65 to the US\$ (<http://SecondLife.com/whatis/economy-market.php> - accessed 26th August 2007)

234 <http://SecondLife.com/whatis/plans.php>

235 Hof R (2006) "SecondLife's first millionaire", *Business Week* (available at http://www.businessweek.com/the_thread/techbeat/archives/2006/11/second_lifes_fi.html - accessed on 26th August 2007)

236 Ondrejka, Cory (2004) "Aviators, Moguls, Fashionistas and Barons: Economics and Ownership in SecondLife" (available at SSRN: <http://ssrn.com/abstract=614663>)

on a number of issues.²³⁷ This is an argument that the threat of misguided or technically incompetent regulation can create an atmosphere of uncertainty that stymies technical, social and economic investment in such systems.,

5.1.3 Inputs

SecondLife was launched in June 2003.

It is owned by Delaware corporation Linden Labs. Linden Labs, the *SecondLife* provider organisation is based in San Francisco, and is still run by its creator Phillip Rosedale and co-creator Cory Ondrejka.

The servers physically are located in California, Texas.

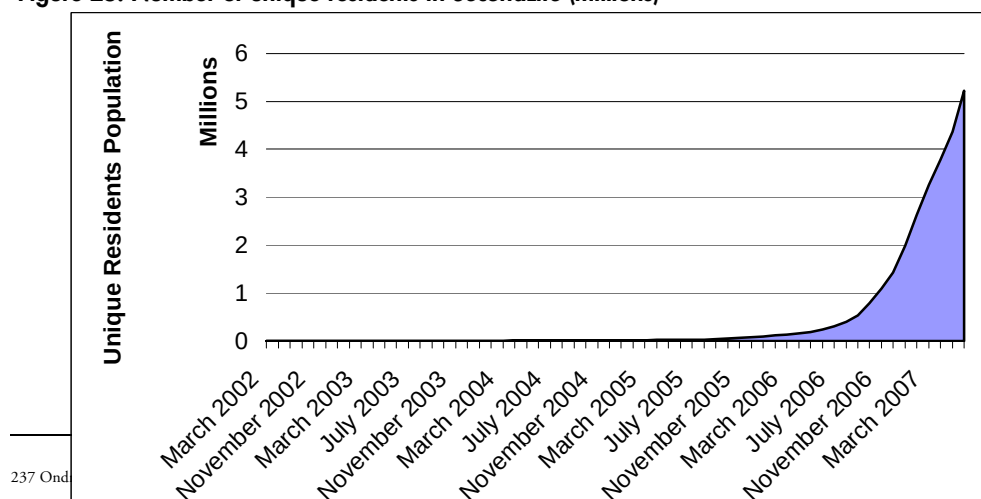
It employs around 200 staff in its offices around the world.

As a privately run company that has yet to be floated on the stock market, Linden Labs is not accountable to a set of shareholders. This makes gaining information about the financial and organisational set-up of Linden Labs difficult as there is no requirement to produce detailed annual reports – but Rosedale has suggested that the organisation is at the point of profitability.²³⁸ Currently, that level of profitability is maintained by subscriptions and land sales in *SecondLife*.

Linden Labs claimed in early 2007 that there were 3.2 million residents in *SecondLife*, although an individual can have multiple avatars (3D representations of themselves in *SecondLife*). Also, these figures represent people who have logged into *SecondLife* and do not necessarily represent regular users (as opposed to those who simply try out the metaverse).²³⁹ The *SecondLife* home page (www.SecondLife.com) on 26 August 2007 showed that the number of residents was over 9.1 million, with 1.6 million residents logging in over the last 60 days. The number of independent users was identified by *SecondLife* as over 5.2 million in June 2007 (

Figure 25).²⁴⁰

Figure 25. Number of unique residents in *SecondLife* (millions)



²³⁷ Ond

²³⁸ Interview with Phillip Rosedale (26th August 2007); available at <http://secondlife.eurcis.com/stories/2007/08/27/exclusive-philip-rosedale-interview-from-slec> (accessed on 26th August 2007)

²³⁹ See <http://www.foxnews.com/story/0,2933,269690,00.html> for more details (viewed on 26th August 2007)

²⁴⁰ Figures taken from SecondLife Economic Statistics (http://SecondLife.com/whats/economy_stats.php) – accessed on the 26th August 2007.

Source: Population Statistics *SecondLife* 200707 (available at http://s3.amazonaws.com/static-SecondLife-com/economy/stats_200707.xls) – accessed on 26th August 2007

5.1.4 Activities

As Linden Labs is a start up company, its managerial structure now reflects the key decision makers in place originally. The executive board of Linden Labs is chaired by Mitch Kapor (the founder of Lotus Development), and is made up of Jed Smith (managing partner of Catamount Ventures), Bill Gurley (Benchmark Capital) and James Currier (Founder of Tickle Inc.). Philip Rosedale also sits on the board of directors, and is the only Linden Labs representative. With a small staff and a small board, there are no other offshoot committees from the board with specific remits (such as finance). All these functions are performed by Linden Labs staff.

Since service users are so involved in the development of *SecondLife*, it is perhaps unsurprising that Linden Labs has set up a system for users to be involved in reporting bugs and glitches that require Linden Labs' intervention. However, there seems to be relatively little involvement of people outside the board and management structure of Linden Labs in the direction of the company or the strategic decisions it makes. This has occasionally led to conflict, with the decision to allow corporations into *SecondLife* meeting with occasional disquiet – such as the demonstration held in the *SecondLife* Adidas store by members of the “*SecondLife* liberation army”.²⁴¹

LindenLabs did organise a meeting with expert users and academics in spring 2007 (Hunsinger 2007, Ondrejka 2007), intended to establish the best strategy towards users' activities and regulation going forwards. That meeting, which is otherwise undocumented, produced a broad consensus in favour of attempting to continue to make regulation as lightweight as possible, and to continue with the paradigm of ‘unregulation’, as it has been termed, subject to the minimal laws of the territory on which it is based.

5.1.5 Enforcement

Within *SecondLife* there is often a need for enforcement of regulations set out in the contract between users and Linden Labs. The range of enforcement actions is wide and can even lead to expulsion from *SecondLife*. Linden Labs has set out community standards for *SecondLife* that should be respected. There are six main community standards:²⁴²

1. Intolerance

Actions that marginalize, belittle, or defame individuals or groups inhibit the satisfying exchange of ideas and diminish the *SecondLife* community as whole. The use of derogatory or demeaning language or images in reference to another Resident's race, ethnicity, gender, religion, or sexual orientation is never allowed in *SecondLife*.

2. Harassment

Communicating or behaving in a manner which is offensively coarse, intimidating or threatening, constitutes unwelcome sexual advances or requests for sexual favours, or is

²⁴¹ Best J (2006).

²⁴² The following six standards are taken directly from the *SecondLife* website - <https://secure-web4.SecondLife.com/corporate/cs.php> (accessed on 27th August 2007)

otherwise likely to cause annoyance or alarm is Harassment.

3. Assault

Assault in *SecondLife* means: shooting, pushing, or shoving another Resident in a Safe Area; creating or using scripted objects which singularly or persistently target another Resident in a manner which prevents their enjoyment of *SecondLife*.

4. Disclosure

Sharing personal information about a fellow Resident --including gender, religion, age, marital status, race, sexual preference, and real-world location beyond what is provided by the Resident in the First Life page of their Resident profile is a violation of that Resident's privacy. Remotely monitoring conversations, posting conversation logs, or sharing conversation logs without consent are all prohibited in *SecondLife* and on the *SecondLife* Forums.

5. Indecency

Content, communication, or behaviour which involves intense language or expletives, nudity or sexual content, the depiction of sex or violence, or anything else broadly offensive must be contained within private land in areas rated Mature (M). Names of Residents, objects, places and groups are broadly viewable in *SecondLife* directories and on the *SecondLife* website, and must adhere to PG guidelines.

6. Disturbing the Peace

Disrupting scheduled events, repeated transmission of undesired advertising content, the use of repetitive sounds, following or self-spawning items, or other objects that intentionally slow server performance or inhibit another Resident's ability to enjoy *SecondLife* are examples of Disturbing the Peace.

When a report is made of an incident that constitutes breaking one of the community standards, then members of the *SecondLife* Abuse Team begin an investigation into the incident using screenshots, chat logs and other tools to make sure that the claim is valid. If the claim is valid, then the Abuse Team can take action against the perpetrator. In April 2007, Linden Labs changed the way that the Abuse Team worked slightly, by using a pattern based methodology that allows Linden Labs to identify where abuse occurs and by who.²⁴³ The aim of this is to speed responses to abuse complaints. It is not clear what the appeals process is for those who feel falsely accused or judged incorrectly.

Since Linden Labs only intervenes when a user breaks one of the six community standards or when someone breaks a real world law, there are essentially two types of intervention. Real world illegalities are thought to represent less than 1% of the total abuse reports sent to *SecondLife*.²⁴⁴ For those disputes and complaints that constitute copyright violations, *SecondLife* deals with them according to the DMCA (Digital Millennium Copyright Act). However, *SecondLife* does not act as a court in disputes in the same way the DMCA can,

²⁴³ See <http://blog.SecondLife.com/2007/04/18/changes-in-abuse-report-resolution/> for further details

²⁴⁴ Ondrejka C (2007) personal communication

since *SecondLife* merely carries data without intent.²⁴⁵

If there are disputes that do not constitute a breach of any of the six community standards or a real world illegal act, then *SecondLife* can offer moderators, but these can only help resolve disputes and cannot enforce any agreements between the parties involved.²⁴⁶

Ondrejka has suggested that the lack of a clear regulatory environment leads to increased legal costs as lawyers must be employed by Linden Labs in order to deal with specific problem cases – such as the ‘Families of France’ lawsuit to block minors in France using *SecondLife*.²⁴⁷ *SecondLife* servers are only based in the United States, a policy decision to ensure that physically only one national jurisdiction is in a position to enforce against servers. *SecondLife* has offices in Brighton in the UK, and its staff travel extensively internationally. The lawsuit brought by ‘Families of France’ I attempting to block minors in France using *SecondLife*. This action was set to go to court in June 2007.

Perhaps the most high profile enforcement issues that Linden Labs have had to deal with have been around gambling in *SecondLife*²⁴⁸ and the collapse of the Ginko, a bank in *SecondLife*. The gambling issue is one that *SecondLife* chose to address prior to any regulatory pressure, as gambling was seen²⁴⁹ as something that would invite external regulation and therefore stifle creativity with *SecondLife*, to the extent that it could threaten the very existence of the environment.²⁵⁰ The Ginko bank collapse was one for which *SecondLife* denies accountability beyond the fact that it carries all data agnostically. Ginko are an external provider in the *SecondLife* environment and as a bank were offering very high rates of interest on Linden dollars deposited with them. When Ginko’s *SecondLife* branch ran out of Linden dollars there was widespread panic from investors – with good reason, after the collapse of Ginko’s bank they owe upward of US\$750k to clients.²⁵¹ This collapse brought the issue of financial regulation in *SecondLife* to the forefront, with the US financial regulators getting increasingly inquisitive about the role of *SecondLife* as a financial market housed on servers in the US. For *SecondLife* the best explanation of its position on Ginko²⁵² is that it was a third party and *SecondLife* takes no liability, as it is not a safe harbour, but the actual Terms of Service exclude its liability because it has to act as mere conduit.

This has prompted *SecondLife* to set up a *SecondLife* Securities Exchange Act, to provide market stability and investor confidence. John Zdanowsk, CFO of *SecondLife*, is confident that regulation of the financial side of *SecondLife* is settled:

"The threat is there, the danger is there. The reality is that unlike the real world, in

245 Ibid

246 Mayer-Schoneberger V and Crowley J (2005) p26

247 See <http://gamepolitics.com/2007/06/04/french-watchdog-organization-targets-second-life> for further details (accessed 26th August 2007)

248 <http://blog.SecondLife.com/2007/07/25/wagering-in-second-life-new-policy/>

249 <http://blog.SecondLife.com/2007/08/09/anti-gambling-policy-update-faq/>

250 Ondrejka C (2007) personal communication

251 Rappeport A (2007) “When Virtual Crises Turn Real”, CFO.com (available at http://www.cfo.com/article.cfm/9670900/1/c_2984312?fm=gm – accessed on 27th August 2007).

252 <http://blog.SecondLife.com/2007/08/14/the-second-life-economy/>

SecondLife it just so happens that we know everything that happens.”²⁵³

5.1.6 Outputs

This section of the study, aims to investigate the policy outputs that come from the case study organisation. In particular this has focused in other studies on the activities of the annual general meetings of an organisation. Linden Labs, as a privately owned company does not have to hold an AGM as it has no shareholders. Therefore, company policy is set by Linden Labs’ management, and to some extent by the board of directors.

The policies that do come out of Linden Labs are often high profile and receive a lot of coverage – for example the change in policy on gambling in *SecondLife* was one which was picked up by the mass media.²⁵⁴ Interestingly, the outcomes of policy changes become rapidly known to residents of *SecondLife*, since they affect them directly; but the inception of policy is something that is not as well communicated to residents. One resident described the gambling ban as happening “overnight and without warning”.²⁵⁵

5.1.7 Outcomes

As mentioned earlier, and shown in Figure 1, *SecondLife* as an organisation is growing almost exponentially in terms of user numbers (based on the number of avatars within *SecondLife*). Organisationally, Linden Labs has been forced to grow very quickly in order to cope with this. However, with *SecondLife* becoming open source in 2007, much of the creation of new script has effectively been outsourced to residents of *SecondLife*. This does bring regulatory issues in itself, as allowing residents to produce script, and therefore objects, means that there is no longer central control of what people will build in *SecondLife*. A good example of this problem is the case in 2005 of a man in *SecondLife* placing a huge naked portrait of himself to face his female neighbours property – an action that led to a formal complaint to Linden Labs abuse department.²⁵⁶

The Linden Labs abuse department deals with many mediation issues, including inappropriate content as cited above, gambling, disturbing the peace, harassment, assault, violations using alternate accounts. The measures taken with these complaints range from warnings to users through suspensions from *SecondLife* to expulsion from the metaverse. *SecondLife* even has a “Police Blotter” on its community page, which shows the 25 most recent disciplinary actions taken by Linden Labs.²⁵⁷

5.1.8 Impact

The impact financially of *SecondLife* is significant, though not as yet in terms of the profits to Linden Labs. The true economic value in *SecondLife* is to its users. With the presence of *SecondLife* property millionaires, there are genuine financial opportunities in *SecondLife*, and a number of people make their entire living through *SecondLife*. *SecondLife* as a metaverse has its own GDP, and the “exchange rate” with US\$ can be expressed in real

²⁵³ Rapoport (2007) supra.

²⁵⁴ For example, it was picked up by the Times online, Fox News, ABC news as well as by specialist internet newsgroups such as ‘gaming today’ and ‘product reviews’ (sites identified through a Google News search using “SecondLife Gambling” as a search string)

²⁵⁵ Comment taken from SciFi Tech, available at http://blog.scifi.com/tech/archives/2007/08/05/peer_review_sec.html (accessed on the 28th August)

²⁵⁶ Mayer-Schönberger and Crowley J (2005). p26, Footnote 82

²⁵⁷ <http://SecondLife.com/community/blotter.php>

world monetary terms. Cory Ondrejka estimates that the current GDP of *SecondLife* is circa US\$500m²⁵⁸ – with the exchange of US\$ for Linden dollars (L\$) now holding steady at around US\$7m a month (Figure 26).²⁵⁹

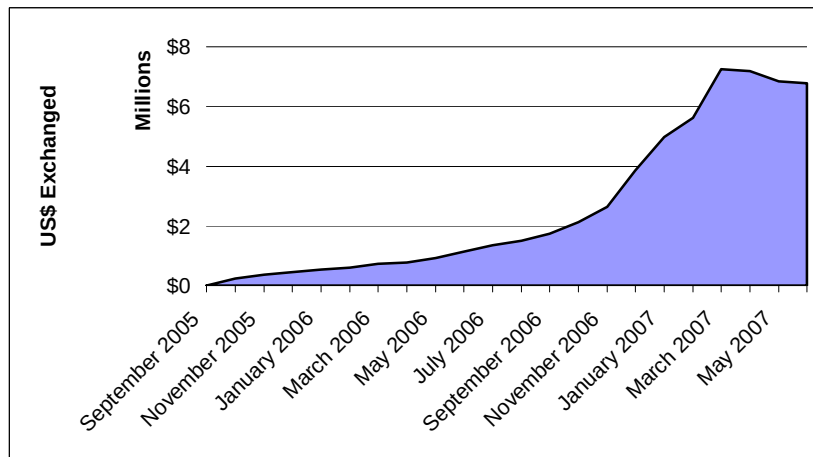


Figure 26. US\$ exchanged for L\$ on a monthly basis

Source: LindeX Transactions Statistics *SecondLife* 200707 (available at http://s3.amazonaws.com/static-SecondLife-com/economy/stats_200707.xls) – accessed on 26th August 2007

There is still no real competitor to *SecondLife* which is a disappointment for Ondrejka as:

- “they could take some regulatory heat off” *SecondLife* which is currently a lightning rod for regulatory issues internationally surrounding virtual worlds;
- there could be competitive differentiation and other useful developer pressures.

SecondLife is encouraging as much open source development, as can be permitted while maintaining system integrity. It is constantly hacked and attacked, but appears to be ensuring satisfactory system integrity despite this. There are other virtual worlds, but these are typically games and do not have open source code, so are not as amenable to a independent developer business model as *SecondLife*. There is, however, competition within *SecondLife*, where a market economy has arisen with individuals able to charge for their own code.

The number of virtual worlds on the internet is relatively large, and it is difficult to identify which is the ‘most popular’. This is because of the problem with subscriber information versus active user information. Still, Giga OM has produced a top 10 worlds, based on subscription and user information (Table 34), although this must be tempered by the fact that the use of subscribers and active users is not consistent in their listing.²⁶⁰

²⁵⁸ Ondrejka (2007)

²⁵⁹ Figures taken from *SecondLife* Economic Statistics (http://SecondLife.com/whatis/economy_stats.php) – accessed on the 26th August 2007.

²⁶⁰ Giga OM is an online news and weblog published by GigaOmniMedia, Inc. (a San Francisco-based company) who deliver technology news, analysis and opinions on topics ranging from broadband to online games and Web 2.0.

Table 34. Top 10 virtual worlds as defined by Giga OM in June 2007

	Virtual world	Number of subscribers	Subscription or active users?
1.	World of Warcraft	8.5m	Subscribers
2.	Habbo Hotel	7.5m	Active users
3.	Runescape	5m	Active users
4.	Club Penguin	4m	Active users
5.	Webkinz	3.8m	Active users
6.	Gaia Online	2m	Active users
7.	Guild Wars	2m	Active users
8.	Puzzle Pirates	1.5m	Active users
9.	Lineage I/II	1m	Subscribers
10.	<i>SecondLife</i>	500,000	Active users

Source: <http://gigaom.com/2007/06/13/top-ten-most-popular-mmos/> - accessed 27th August 2007

World of Warcraft is clearly a very large virtual world, and one that has been similarly troubled with the real life trading of virtual objects between players – often for high sums. However, Cory Ondrejka warns against making too many comparisons between the financial regulation that is in place for World of Warcraft and that for *SecondLife*, since *SecondLife*'s economy is more akin to eBay or the Internet in general than to World of Warcraft.²⁶¹

Linden Labs employees engage very broadly with the policy community, including presentations at such events as State of Play conferences (2007 in Singapore)²⁶², the Harvard-Ruschlikon conference (Zurich, Switzerland 2007)²⁶³, iCommons (Dubrovnik, Croatia 2007)²⁶⁴ and Aspen Summits²⁶⁵. While these are not international regulatory summits, the Aspen Summit for instance brought Linden Labs into discussion with Commissioner Reding, US FCC staff and others.

5.1.9 Sustainability and Reform

As a virtual world in which the resident is so powerful, there is constant innovation within *SecondLife* itself. Linden Labs as an organisation are involved in trying to introduce new aspects to *SecondLife*, such as the recent introduction of '3D Voice', to enable avatars to speak to each other within the virtual world, but the majority of scripting innovation occurs at the resident level.

SecondLife's economy is thriving. However, it is difficult to say what spill over effects this

²⁶¹ Ondrejka C (2007)

²⁶² <http://www.nyls.edu/pages/3367.asp>

²⁶³ <http://www.rueschlikon-conference.org/r2007/public/public2007.php>

²⁶⁴ <http://www.icommmons.org/summit07>

²⁶⁵ http://www.aspeninstitute.org/site/c.huLWJeMRKpH/b.2628901/k.206B/FOCAS_2007_Participants.htm

has on the e-economy in general. *SecondLife* has provided new opportunities for businesses within the virtual world, but these are seen to be mainly marketing ploys for real world sales. The impact of *SecondLife* on the economy (either the e-economy or the real world economy) is difficult to estimate, making the damage from the withdrawal of gambling within the world difficult to quantify²⁶⁶.

There are many large companies involved in *SecondLife* (from IBM through to a Maldives *SecondLife* embassy), and with the introduction of voice software, the potential for more realistic networking is greatly increased (either socially or in a business sense).

Since the resident is so key in driving forward the development of *SecondLife* (and by association its economy), they are the main protagonists in the development and change of *SecondLife*. However, it is unlikely that residents themselves will be able to change the function of *SecondLife*, since Linden Labs still retain control over the housing of the virtual world. Therefore, any change to the mission of *SecondLife* will likely be because of innovations or opportunities identified by Linden Labs (an example of this could be a move towards business use of *SecondLife* for virtual meetings, something IBM have been particularly interested in through their *SecondLife* presence).²⁶⁷

Ondrejka notes that to apply regulation to such virtual worlds may be counterproductive:

“Completely 100% effective filtering is a race to unplug your Internet connection.”

He also argues that any claims by other user-generated content sites that everything is done automatically and randomly should be treated with cynicism. The Amazon ‘Mechanical Turk’ charges 1 penny a picture for image scanning, and human content is even more expensive – by a factor of perhaps five times, which makes regulating a million or a billion images a day extraordinarily expensive whether by mechanical or human means, if that were the desire of governments. The *Bebo* solution may not be replicable in that case. In *SecondLife*’s case, with over 3 Terabytes (3,000,000,000,000 Bytes) of user-generated content per day, the idea of filtering is so expensive its not an option.

For *SecondLife*, international expansion of its user base creates scaling issues in ‘ping’ latency – i.e. the delay in response to user commands. Development of international server centres may be sought with partners who would deal with local regulatory issues through their local knowledge – it is difficult to imagine a start-up company being able to deal with such local regulations in-house outside its own jurisdiction. In this regard, one might note the huge apparent increase in regulatory costs which Google has incurred in its ownership of YouTube. It is very doubtful that an independent YouTube could have dealt with these costs given its size.

5.1.10 Evaluation

Headline issues for evaluation are:

- Financially, *SecondLife* is dependent on Linden Labs’ venture capital backers.
- The major continuing success factor internally is the proof of its concept and operation, with an expanding adoption in other countries, and imaginative

²⁶⁶ By banning gambling *SecondLife*’s revenue has also dropped, but Ondrejka believes this may be coincidental.

²⁶⁷ See http://news.com.com/8301-10784_3-6127448-7.html (accessed 28th August 2007)

transgressions by users.

- The main external conditions impact success/failure are:
 - Governmental: the continued good relationship with host countries (to date, only the US).
 - Market: potential new initiatives outside the US.
 - Consumers: continued high awareness and media literacy, but also the development of rival worlds such as World of Warcraft and others.
- Lessons for European policy are that SecondLife may represent a new powerful type of self-regulation, in new non-WWW space. The impact on competitiveness of entrepreneurs needs monitoring, as SL has no real competitor and many entrepreneurs use SL for their own businesses as developers and merchants.

SecondLife academic research seems to be speculative not evaluative as to the future of *SecondLife*. This is unsurprising since evaluations of organisations tend to occur with organisations that are required to be open and accountable to stakeholders. Since Linden Labs is a privately run company there is little incentive for them to be evaluated other than by their own requirements for information. Linden Labs and *SecondLife* are both open in providing information on the usage, financial situation and policing of *SecondLife*²⁶⁸.

There is a level of consultation with users (residents) of *SecondLife*, although its impact is not apparent. The power of residents in *SecondLife* is down to their ownership of content within the world. By securing buy-in to the metaverse, *SecondLife* have also allowed residents to become stakeholders in the shaping of the virtual world. This power potentially means that were other virtual worlds to open up, then residents could validly take their intellectual property with them to another realm and leave *SecondLife*. As long as there is potential to make money out of *SecondLife* however, this seems unlikely.

The main regulatory challenges that *SecondLife* will face over the coming years are in scaling internationally, how best to deal with open source development in *SecondLife* (since Linden Labs have little control over developers) and the licensing issues that come from open source development. However, Ondrejka believes that this regulatory pressure is something that should fall onto developers rather than on Linden Labs, since they are simply the place in which the developments are used.²⁶⁹ It has been counter-argued that since virtual world providers can control the code and contracts of residents, the onus is on them to regulate and they are liable for any breach of law.²⁷⁰ This works relatively well as a model if the provider (in this case Linden Labs) has a server hub that maintains the virtual world. However, if the world moves to a peer to peer file sharing style network, in which the architecture of the world is decentralised, then the regulatory environment suddenly begins to look very different. If *SecondLife* does eventually move to a peer to peer network, then, as with Napster, the regulatory onus will be on users rather than providers.

Mayer-Schonberger and Crowley (2006) see four scenarios for virtual world regulation:

1. Virtual world providers will serve as regulators by enforcing the terms of their

²⁶⁸ In fact Ondrejka states that SecondLife are far more open about the virtual world statistics on SecondLife than any other virtual world. These are available at http://SecondLife.com/whatis/economy_stats.php

²⁶⁹ Ondrejka (2007) personal communication

²⁷⁰ Mayer-Schonberger V and Crowley J (2005). p47

- contracts with users to prevent cyber-fraud and ensure proper behaviour,
2. Governments could try to block their citizens from using virtual worlds that don't abide by government restrictions and regulations (although this will never be 100% effective, just as governments have not been able to completely block access to Web sites),
 3. Government may try to minimize the real-world impact of virtual worlds by, for instance, banning the sale of virtual goods for real-world currency, or
 4. "Real-World Assisted Virtual World Self-Governance," governments provide support for mechanisms where by users of virtual worlds can agree upon and enforce their own "community standards" and rules of conduct.²⁷¹

SecondLife may be moving forward in its ability to create social and business interaction in a world that is difficult to regulate (a bonus for residents); but this very aspect of *SecondLife* makes it an ideal place to meet others in an anonymized format and to move money around from country to country through *SecondLife* internal sales. The Australian government has already expressed concern at the prospects this raises for terrorist activity through *SecondLife*,²⁷² and it may be that regulation comes not from traditional financial areas of government, but from a national security perspective.

5.2 Digital Copyright: Creative Commons

Researcher: Chris Marsden

CC was founded in 2002 as a non-profit based at Stanford, California. It drafts licences for individual content creators to licence content on non-commercial terms. It now has over 60 other national CC licences. Lawrence Lessig is its founder Chief Executive, as well as its intellectual leader, in much the same respect as Tim Berners Lee for the W3C. Early board member and Free Software Foundation head Richard Stallman quit in 2004, criticising CC for its lack of radical mission. Lessig stepped back in 2007, though continuing as CEO and leading a major fundraising drive to raise \$500,000 to put the organisation on a more secure footing than its largely volunteer/academic beginnings. CC licences used on the photo sharing site Flickr means over 150million 'artworks' are licensed. The growth of the CC 'movement' includes iCommons and ccSalon to showcase CC licence use, and CC International (South Africa) and the Creative Commons summit to encourage sharing of best practice. Licence enforcement is controversial as an emerging legal issue for CC in various jurisdictions, as is the relationship between non-commercial content in the public sector and CC licensed content.

Table 35: Summary of Creative Commons Case Study

Was there a government mandate initially?	No
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²⁷¹ Mayer-Schonberger, Viktor, and Crowley, John (2006) "Napster's SecondLife?: The Regulator Challenges of Virtual Worlds" Northwestern University Law Review, Vol. 100, No. 4, <http://www.vmsweb.net/attachments/pdf/NWLR100n4.pdf>

²⁷² See Virtual World News, 30th July 2007 (<http://www.virtualworldsnews.com/2007/07/terrorists-in-s.html#more>) for more information – accessed on the 28th August

What kind of government involvement is there?	Publicity and success of Creative Commons has led to monitoring, liaison and evaluation, and support by e.g. Brazil
Which other stakeholders are involved and how?	Consumers, civil society sector, universities and potential partners
How is transparency ensured?	iCommons, Web publication of rules, website and other efforts
What is the enforcement mechanism, is it effective, at what cost?	Debateable enforcement possibilities for national licences
What is the relative size of administrative burdens?	Very low.
Is financial independence assured/how?	Apparently successful fundraising drive in 2007.
Which internal factor most impacts success?	Business model adaptation in 3.0 version and continued internationalisation – imaginative transgressions by users
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: Regulatory and policy interest both in US and abroad Market: press and public relations as well as potential new initiatives. Potential acceptance of model by some public service, third sector and commercial interests.
Lessons for European policy	New type of self-regulation, in creative content space. Impact on competitiveness of entrepreneurs needs monitoring, especially in view of potential commercial licence use. Non-monetary value needs assessing.

5.2.1 Interests and Policy Needs

Access to knowledge is now recognized as a key driver of social, cultural and economic development, with tangible economic advantages to be gained by sharing²⁷³. The ‘all rights reserved’ model of traditional copyright law, with its complex legal concepts and requirement for permission for all uses, does not fit well with an environment which enables sharing and reuse of content by users. In the analogue environment the ability to produce, reproduce, distribute, share and promote creative works was relatively restricted, due primarily to geographic, economic and technological limitations. The emergence of consumer digital technologies such as CDs and the internet in the 1990s allowed for increasing levels of functionality, particularly in relation to interactivity. More recent production and communication technologies – mobile phone cameras, mp3 encoding for music, rich media applications, video streaming and peer-to-peer networking provide simple ways for users to collaborate, communicate and create material, including ‘mashing up’ existing material into new and innovative media. Pam states:

“With the advent of the Internet, a global network providing the capability to the general public for peer-to-peer transfer of digital media, it no longer makes sense for the media industry to use the existing producer/publisher/distributor/consumer one-way pipeline business model since a larger proportion of the public are capable, willing and interested to act as producers, publishers and distributors.”²⁷⁴

273 See a robustly optimistic assessment and for policy makers of great importance, Weiss, Peter N. (2002) *Borders in Cyberspace: Conflicting Public Sector Information Policies and their Economic Impacts*, US Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, http://www.weather.gov/sp/Borders_report.pdf

274 Pam, A. (2002) “Hyperdistribution” *Serious Cybernetics* at <http://www.sericyb.com.au/hyperdistribution.html>

The risk in such an environment is that copyright law will become a barrier to the realization of the full potential of these technologies. A significant legal response to such a challenge has been the development of new licensing systems to open up access to and use of protected material. Access to and re-use of materials produced by government and other publicly funded bodies has also emerged as an important issue in recent years. Historically it has been cumbersome and expensive to provide access to government information. However digital technologies have now removed many traditional barriers to widespread distribution of material to the public. As a result, consumer demand for access to, and reuse of, government information has risen exponentially, driven in part by the emergence of Web 2.0 functionality.

‘Open Content Licensing’ (OCL) models are based upon and respect copyright whilst giving permission in advance for the content to be used more broadly than would be permitted under default copyright law. These licences are typically:

- generic (i.e. standard terms apply to all users),
- non-discriminatory (i.e. anyone can access the content) and
- provide the user with the right to reproduce, copy and communicate the content,
- subject to prescribed terms or conditions.

They are designed to be relatively short, simple and easy to read, interoperable with other open content licences, and machine enabled. The most popular and widespread of these licensing models in relation to creative material is Creative Commons.

5.2.2 Design & organisation of the Institution

Creative Commons followed and was stimulated by the decision of the Supreme Court in *Ashcroft v. Eldred* (2002), confirming the extension of the copyright term, a case in which Lessig (for the only time in his legal career) acted as advocate in the Court. Creative Commons was seen by some copyright holders as potentially a direct threat to their business model, though it is positioned as a ‘middle way’ between commercial copyright and anarchic free copying. Part of this is due to much legal academic posturing and rhetoric, and the associated ‘Copyleft’ movement. Bill Gates went as far in 2004 as to call CC licence developers ‘communists’, which led to the memorable rebuttal phrase ‘Commonists not communists’. That a Stanford law professor’s employment of copyright licences to enable non-commercial licensing – i.e. creating a legal framework for the assertion of property rights – could be so misconstrued is perhaps a reflection on the heat of the US debate. The most important intellectual contributions to the wider digital ‘commons’ argument – which claims substantial inroads to the existing monetary capitalist means of production – are those of Professor Yochai Benkler, an important inspiration to the CC project²⁷⁵.

²⁷⁵ See variously:

Benkler, Yochai (1998) Communications infrastructure regulation and the distribution of control over content Telecommunications Policy, vol.22, no. 3, pp. 183-196, at: <http://www.benkler.org/PolTech.pdf>

Benkler, Yochai (1998) Overcoming agoraphobia: building the commons of the digitally networked environment Harvard Journal of Law and Technology, vol. 11, pp. 287-400, at: <http://www.law.nyu.edu/benkler/agoraphobia.pdf>

Creative Commons is an internationally active non-profit organization that aims to promote new copyright management options for creators. The Creative Commons project issues a suite of standardized licences that are made freely available to copyright holders and which provide a range of protections and freedoms for their material. Content creators can use these licences to increase the ways that the general public can legally access and use their creative material, without giving up their copyright. This voluntary “some rights reserved” concept is designed to build a layer of reasonable and flexible copyright in the face of increasingly restrictive default rules. It is a model based on prior permission utilizing private rights for public goods²⁷⁶.

5.2.3 Inputs

Creative Commons’ launch was by Stanford Law School professor Lawrence Lessig²⁷⁷, CC Chair Joi Ito and cyber-libertarian and former rock star John Perry Barlow, in 2002.

Creative Commons claims a staff of “over 30 in four offices around the world, supporting thousands of volunteers in over 70 jurisdictions” (Lessig 2007)²⁷⁸.

They set a goal of raising a further \$500,000 by end-2007 in order to give the organization “a solid financial footing.”

This would help CC but also Science Commons and NeuroCommons, ccLearn (an educational project) and iCommons.

5.2.4 Activities

The first Creative Commons licences were released in December 2002. Since this time there have been new versions released, with the current being version 3.0, which was released in February 2007. The features of the most commonly used or ‘core’ licences have remained relatively constant over time. Each of these licences comes with certain base rights, along with optional ‘licence elements’. These elements represent ways in which creators may wish to restrict how their work can be used and include:

- Attribution (BY): This element has been compulsory in each of the core licences since version 2.0. Whenever a work is copied, redistributed or remixed under a Creative Commons licence, credit must be given to the original author.
- Non-Commercial (NC): Lets others copy, distribute, display, and perform the work — and derivative works based upon it — for non-commercial purposes only.
- No Derivative Works (ND): Lets others distribute, display, and perform only verbatim copies of a work, not derivative works based upon it.
- Share Alike (SA): Allows others to distribute, display and perform derivative works only under the same licence conditions that govern the original work.

Benkler, Y. (2002). Coase’s Penguin: Or Linux and the Nature of the Firm. *Yale Law Journal*, 369, 112

Benkler, Y. (2006). *The Wealth of Networks: How Social Production Transforms Markets and Freedom*. New York: Yale University Press.

276 See Coates, J. (2007) “Creative Commons – The Next Generation: Creative Commons licence use five years on”, 4:1 SCRIPT-ed 72 at 3.3.1,

<http://www.law.ed.ac.uk/ahrc/script-ed/vol4-1/coates.asp>

277 Lessig, Lawrence (1999) *Code, and Other Laws of Cyberspace*, New York: Basic Books

278 Lessig, L. (2007) [cc-lessigletter] *Creative Commons @ 5 Years*, at www.creativecommons.org

It is important to stress the substantial legal technical problems in constructing a licence set which acts with the artists' interests, and in localizing the CC licences for jurisdictions other than the US. In the UK, for instance, one of the first non-US projects, after initial pro bono work by a US law firm's London office, a CC-UK legal licensing team was established with representative copyright lawyers from the Universities of Oxford, Edinburgh, Queen's College London and London School of Economics. It took over 18 months to publish licences, by which point the licences had split into:

- CC-EW (England and Wales),
- CC-Scotland (to reflect the different copyright law tradition) and
- CC-NI (Northern Ireland).

Further complications arose in the UK – by 2003 the Creative Commons International (now iCommons) 'flagship' territory²⁷⁹ – in connection with attempts to persuade the British Broadcasting Corporation (BBC) to incorporate the CC-UK licence into its plans to permit licence fee payer re-use of some content in what became its 'Creative Archive'²⁸⁰.

The Creative Archive is an important UK government policy concern, with strong connections to the Ofcom plan for an Internet-only Public Service Publisher as a 'Digital Age' public service broadcaster, and has expanded to include the Creative Archive Licence Group. The Archive is a repository of content licensed as available for sharing, watching, listening to and reuse by the general public. The Licence Group currently consists of:

- the BBC, Channel 4, Open University, the British Film Institute, Teachers' TV and the Museums, Libraries and Archives (MLA) Council.

Content on the Archive is now made freely available to UK citizens only, for viewing and remixing for non-commercial purposes. The licence used by the Archive is closely modelled on the Creative Commons Attribution-Noncommercial-ShareAlike licence.

This is a case study in the problems of combining the concerns of amateur artists with those of a commercially significant and acutely legally conscious organization. Despite the personal visits, meetings, speeches and encouragement of both Lessig and then-BBC Director-General (chief executive) Greg Dyke, the projects could not agree the legal basis for a common licence. Concerns included:

- to ensure BBC content was not reused in politically contentious ways which would breach BBC duties of impartiality;
- to ensure value to the UK BBC viewer (television licence fee payer);
- to ensure no breach of the rights of artists who produced the content for the BBC, notably trades unions' members' concerns and those of collecting societies.

As a result, despite the attempts of both BBC Creative Archive lawyers and those of the CC-UK project, agreement could not be reached and the BBC decided on a separate licence which met its concerns. The BBC Creative Archive legal head, Paula LeDieu,

²⁷⁹ CCInternational was based in Berlin until 2005, then became iCommons and moved to headquarters in Johannesburg, South Africa.

²⁸⁰ creativecommons.bbc.co.uk

resigned to lead iCommons as it became clear the negotiations had reached an impasse.

Part of this ultimately fruitless and futile UK experience helped in the current iteration of the licences. The version 3.0 licences include a series of changes such as:

- **separating the “generic” (now called unported) licence** from the US licence²⁸¹;
- harmonising the treatment of **moral rights**²⁸² and **collecting society royalties**²⁸³;
- expressly prohibiting **misuse of the attribution requirement** to assert or imply association or relationship with the licensor or author;
- inclusion of a mechanism to **permit compatibility** between CC ShareAlike licences and other similar open content licences; and
- minor language changes to accommodate concerns of key participants Debian²⁸⁴ and Massachusetts Institute of Technology (MIT)²⁸⁵.

5.2.5 Enforcement

There is now case law from two jurisdictions of CC licencees suing for inappropriate reuse of licensed material in breach of the licence conditions (Ito 2007; Guadamuz 2007). In particular concerns have been raised that a CC licence amounts to an enforceable contract in civil law jurisdictions, and it has been claimed that the CC licence is therefore of different enforceability in these jurisdictions than in its original jurisdiction, the US. There is substantial disagreement on this point, between for instance Guadamuz and Lessig (Guadamuz 2007).

Enforcement was certainly not Lessig’s primary concern in designing the original licence. Creative Commons users are not expected to have a legal background, and a number of tools and mechanisms in its licensing model are designed for ease of use. These include:

- the licence generator²⁸⁶ via the ‘License Your Work’ button on the Creative Commons international homepage. The generator uses a series of simple questions about how the creator would like others to reuse their content to identify the most appropriate Creative Commons licence.
- Uniform branding – each of the standard Creative Commons licence elements – Attribution, Non-Commercial, No Derivatives and ShareAlike – has its own associated abbreviation and icon, as do each of the six licences that can be created by combining these elements. These icons are built into both the Commons Deeds and licence buttons.
- The ‘Commons Deeds’ – each licence incorporates a one-page, plain language summary of the licence. This Commons Deed provides an overview of the

281 http://wiki.creativecommons.org/Version_3#Further_Internationalization

282 http://wiki.creativecommons.org/Version_3#International_Harmonization_.E2.80.93_Moral_Rights

283 http://wiki.creativecommons.org/Version_3#International_Harmonization_.E2.80.94_Collecting_Societies

284 http://wiki.creativecommons.org/Version_3#Debian

285 http://wiki.creativecommons.org/Version_3#MIT

286 <http://creativecommons.org/license>

freedoms afforded to the general public and the terms and conditions on which those freedoms can be exercised as well as a link through to the full legal code of the licence.

- Licence buttons – each national Creative Commons licence comes with its own ‘licence button’ which can be embedded on webpages or in digital file formats, making it easy to instantly recognise the material as being under a Creative Commons licence.

1. Since the launch of the Generic/Unported Version 3.0 licences, these licence buttons come in three variations –

- the classic “some rights reserved” button,
- the licence icons button and
- the abbreviations mini-button.

The Commons Deed and full licence terms are instantly accessible to the user by clicking on the button.

- searchability – metadata which can be embedded into digital files is available for each of the CC licences. This permanently marks them with information related to the licence (i.e. the title of the work, the author and the location of any source works) and allows search engines to identify the licence terms under which the materials are made available²⁸⁷. Google²⁸⁸ and Yahoo²⁸⁹ both allow users to search for CC material based on its licence terms, as do a number of content aggregators such as Flickr and the Mozilla Firefox²⁹⁰ web browser.
- Customisable metadata –Version 3.0 licences also let the creators embed their attribution and title of the work into the licence metadata, as well as a link to obtaining extra permissions beyond those allowed by the licence.
- Applications – developing new applications that automate processes such as licence generation and metadata embedding, for example, in Microsoft Office files²⁹¹, ccPublisher²⁹² and Adobe²⁹³ applications.
- Explanatory resources – Creative Commons websites contain large libraries of explanatory resources, including fact sheets, case studies, short films, and a detailed FAQ page.
- National Creative Commons projects write academic and popular press articles exploring the Creative Commons in a national context. These articles also provide information to users.

²⁸⁷ Creative Commons operates its own CC Search interface, accessible via the ‘Find CC Licensed Work’ button on the Creative Commons

²⁸⁸ www.google.com/advanced_search

²⁸⁹ <http://search.yahoo.com/cc>

²⁹⁰ www.firefox.com

²⁹¹ <http://www.microsoft.com/downloads>

²⁹² <http://wiki.creativecommons.org/CcPublisher>

²⁹³ <http://creativecommons.org/technology/xmp-help>

5.2.6 Outcomes

An example of CC licences at work is Flickr²⁹⁴, the Yahoo!-operated online photo management and sharing application. It aims to help people make their photos available to friends, family and the general public and enable new ways of organising photos. Flickr directly incorporates Creative Commons licensing as an option in its system. Uploaders can choose a Creative Commons licence for their photos when they upload, set one as a default for every time they upload, or retroactively change or add a licence for photos they have already uploaded. Flickr also hosts a page dedicated to browsing photographs available under Creative Commons²⁹⁵. The page splits up images by licence type, and users can search for specific keywords within that licence type. Coates et al (2007) estimate that 10 percent of the 35 million photos published on Flickr to end-2006 were under a CC licence.

5.2.7 Outputs

Government policies increasingly favour use of open content licensing in relation to material produced by the educational, cultural and research sectors²⁹⁶. The Organisation for Economic Cooperation and Development (OECD) and the United Nations Educational, Scientific and Cultural Organisation (UNESCO) are now undertaking their own open access initiatives²⁹⁷. OECD specifically discussed Creative Commons as a way of overcoming obstacles created by legal restrictions that hamper the negotiability of copyright material in the digital environment²⁹⁸.

Massachusetts Institute of Technology (MIT) launched MIT OpenCourseWare (MIT OCW) on 30 September 2002, an online publishing initiative designed to provide free access to virtually all of MIT's undergraduate and graduate course materials. The MIT OCW platform is based on the conviction that "open dissemination of knowledge and information can open new doors to the powerful benefits of education for humanity around the world."²⁹⁹ As of 1 November 2006, MIT OCW has licensed 1550 courses under Creative Commons across a number of disciplines. Content within MIT OCW includes course materials such as class plans and study guides as well as supplementary materials and some audio and visual content.

5.2.8 Impact

It is clear that CC is not particularly well-known by artists except in the Flickr application, as for instance admitted in the Australian case: "a clear indication that there is a significant lack of understanding of the workings of the CC licensing model among the general

²⁹⁴ flickr.com

²⁹⁵ flickr.com/creativecommons

²⁹⁶ At the extreme, see Maldonado, Edgar A. and Andrea H. Tapia (2007) Government-mandated Open Source Development: the Case Study of Venezuela, Paper presented at 35th Research Conference on Communication, Information and Internet Policy, September 30

²⁹⁷ See OECD (2006) Open Educational Resources at OECD, <http://oer.wsis-edu.org/oecd-oer.html> and the UNESCO (2007) Open Training Platform at <http://opentraining.unesco-ci.org>

²⁹⁸ OECD Centre for Educational Research and Innovation (2007) Giving Knowledge for Free: The Emergence of Open Educational Resources p 13, <http://213.253.134.43/oecd/pdfs/browseit/9607041E.pdf>

²⁹⁹ Massachusetts Institute of Technology (undated) Our Story, <http://ocw.mit.edu/OcwWeb/Global/AboutOCW/our-story.htm>

community.”³⁰⁰

There are three main areas where further public awareness and development is needed:

- continued research on issues related to Creative Commons and Open Content Licensing;
- building awareness of the Creative Commons project and expanding the information available about the Creative Commons project;
- providing greater advice and support for projects that are considering implementing, are in the process of implementing and/or that have implemented Creative Commons licences.

There is an evident need for better information outlining how to use the CC licensing system, for a range of discreet groups including:

- individual practitioners looking to license their work;
- content users looking to utilise CC licensed works;
- organisations and content providers looking to aggregate content under CC licences;
- commercial agents; and
- funding bodies.

‘Incubated’ by Creative Commons, iCommons (<http://icommons.org>) is an organisation with a broad vision to develop a united global commons by collaborating with open education, access to knowledge, free software, open access publishing and free culture communities around the world. iCommons incubates projects that cross borders and unite commons communities, acting as “a platform for international collaboration towards the growth and enlivening of a global digital commons.” The secretariat is located in Johannesburg, South Africa.

It is focused on a broad range of issues such as education, science and research, business, culture, policy and law and is responsible for operating the iCommons iSummit (<http://icommons.org/isummit-07>) each year. iCommons features projects that encourage collaboration across borders and communities, and promotes tools, models and practices that facilitate universal participation in the cultural and knowledge domains. The iSummit collaborates with organisations and communities from around the world to demonstrate and share best practice and discuss strategies for continuing the positive impact that ‘sharing’ practices are having on participation in the cultural and knowledge domains³⁰¹.

The ccSalon concept started in San Francisco. Since the first Salon, it has become a monthly event focused on building a community of artists and developers around CC licences, standards and technology. Around the world the concept has been enthusiastically

³⁰⁰ Coates et al (2007) at 42.

³⁰¹ See Bledsoe, Elliott, Jessica Coates and Brian Fitzgerald (2007) *Unlocking the Potential through Creative Commons*, at <http://creativecommons.org.au>, ISBN 978-0-9802988-3-3

adopted. To date ccSalons have been run in Amsterdam, Beijing, Berlin, Johannesburg, London, Los Angeles, New York, Seoul, Taipei, Toronto and Warsaw³⁰². Salons showcase individuals, organisations and projects that are using CC licences; demonstrate the collaborative possibilities of CC; foster and publicise the CC community; provide a real-world set of examples of products and projects that have benefited from using CC; and provide a less-formal space for networking and linkage building. Rather obviously, they are also free parties for the creative community.

5.2.9 Sustainability and Reform

The decisive break between CC and the more ideological Open Content Licensing groups came with Richard Stallman's decision to resign from the CC board in 2004. Stallman had founded the 'Copyleft' movement with his Free Software Foundation (FSF) in the 1980s, and his FSF legal counsel Professor Eben Moglen is the author of 'Information Communism', the tract which may in part have led to Gates' conflation of the commons with the communist ideal. As a result, CC is seen by some as a betrayal of the FSF and copyleft ideals³⁰³, but given its development by property lawyers and wider adoption by industries which survive on copyright payments, that is perhaps inevitable. For many open source advocates (Hogge 2007), Creative Commons is viewed as a non-contentious and relatively uninteresting sideshow experiment, compared to the main discussions about copyright term limits, the uses of open source, and recent controversy over the General Public Licence (GPL) Version 3.0.

CC works closely with some artists, content users groups and cultural and arts bodies in developing this information, but clearly more impetus, especially through government support, is needed. More specific research on CC use within the creative industries is also required. Particularly important research areas include:

302 For web addresses for each ccSalon see:

Amsterdam: <http://icommmons.org/2006/11/30/youre-all-invited-to-the-ccsalon-in-amsterdam>

Beijing: http://wiki.creativecommons.org/Beijing_Salon

Berlin: http://wiki.creativecommons.org/Berlin_Salon

Johannesburg: http://wiki.creativecommons.org/Johannesburg_Salon

London: http://wiki.creativecommons.org/London_Salon

Los Angeles: http://wiki.creativecommons.org/Los_Angeles_Salon

New York: http://wiki.creativecommons.org/NYC_Salon

Seoul: <http://icommmons.org/2006/09/01/share-remix-and-enjoy>

Toronto: http://wiki.creativecommons.org/Toronto_Salon

Warsaw: http://wiki.creativecommons.org/Warsaw_Salon

303 For a characterisation of the type of debate OSS engenders, see Vance Ashlee (30th August 2007) Meet Mark Radcliffe: The man who rules open source law -

'The most inefficient conspirator in the world', The Register, http://www.theregister.co.uk/2007/08/30/open_source_mark_radcliffe/:

Of course, the open source "community's" initial response to just about anything tends to veer toward apocalyptic scenarios - in this case a world destroyed by logos. Rather than tempting reality, the members of the never-ending car crash known as the "license-discuss" mailing list, where all the really important OSI matters are handled, embraced conniption. "You know, if you don't like something, give it an evil name and come up with these hypotheticals that don't exist in the real world," Radcliffe said. "It is interesting to me that in all of the discussions on license-discuss the problem that people were talking about, which is that attribution would somehow limit the number of people who are willing to distribute the product and it would destroy the marketing. I don't remember any comment from any distributor of any of the products using open source except a positive one. So this big problem that a couple of the people on license-discuss were postulating as to how this was going to destroy open source just had no basis in fact."

See also: <http://lawandlifesiliconvalley.blogspot.com/2007/08/open-source-legal-webinar-open-source.html>

- clarification of downstream use,
- how to combine commercial and open content licensing, and
- creating an environment of compatible licensing between CC and other licensing arrangements.

Key areas for further research and licence development include:

- clarification of the definition of non-commercial in the CC licences, both generically and within the context of different sectors;
- clarification of how moral rights are included in CC licences;
- how open content licensing can be utilised in conjunction with commercial licensing;
- the interaction between collecting societies and CC licensing;
- whether geographically or regionally limited licences would be beneficial (e.g. an Australian Education Licence); and
- whether sector-specific licences are needed to address issues particular to the government and education sectors³⁰⁴.

5.2.10 Evaluation

Evaluation of Creative Commons is emerging in the academic community, though as licences have only been available for four years, conclusions from such evaluation must be interim and contingent³⁰⁵.

The Australian government 'Unlocking the Potential' strategy³⁰⁶ identifies six key issues facing the copyright industry:

1. stimulating market interest in investment;
2. confronting the challenge of international competition;
3. rectifying disadvantages created by the historically-based analogue/digital distinction;
4. recognising digital content as a general purpose technology for the 21st century;
5. filling skills gaps in a leading edge industry; and

³⁰⁴ See Coates et al (2007) at p41.

³⁰⁵ See Opderbeck, David W. (2007) Socially Rivalrous Information: of Candles, Code, and Virtue, Paper presented at 35th Research Conference on Communication, Information and Internet Policy, September 29; Grimmelmann, James (2007) Sustainable Commons Production and the Virtues of Moderation, Paper presented at 35th Research Conference on Communication, Information and Internet Policy, September 29; Cheliotis, Giorgos, Warren Chik, Ankit Guglani, Giri Kumar Tayi (2007) Taking Stock of the Creative Commons Experiment: Monitoring the Use of Creative Commons Licenses and Evaluating Its Implications for the Future of Creative Commons and for Copyright Law, Paper presented at 35th Research Conference on Communication, Information and Internet Policy, September 29

³⁰⁶ DCITA (2006) Strategic Industry Leaders Group Report to the Australian Government, Unlocking the Potential: Digital Content Industry Action Agenda, http://www.dcita.gov.au/arts_culture/publications_and_reports/film_and_digital_content/unlocking_the_potential_digital_content_industry_action_agenda_report

6. building a total industry from a fragmented base.

These are very similar to the EC (2006) ContentOnline consultation issue areas. Coates et al (2007) claim that “The Creative Commons licensing model has the potential to positively impact on a number of these issues” as outlined in the table below.

Table 36: Coates (2007) on Challenges to Copyright Industries (at p11)

issue	issue breakdown	cc's relevance
Stimulating market interest in investment.	Despite its commercial potential, currently the industry is not competitive in attracting investment capital.	As a content management system provides new ways of organising, creating and distributing content. It also presents scope for innovative use of materials in derivative works. New business models are emerging which take advantage of these attributes, to make better use of the revenue raising potential of new technologies.
Confronting the challenge of international competition.	International competition within the digital content industry is expected to intensify.	CC is specifically drafted to be an international licensing system, with identical effect in all countries. This helps level the legal and regulatory playing field for Australian businesses operating on the global stage.
Recognising digital content as a general purpose technology for the 21st century.	Digital technology has the capacity to transform business activities by improving efficiency or creating opportunities for new products and business models.	Provides a cost-effective and expedient alternative to traditional content creation and management which is designed to take full advantage of the distribution and promotion potential of new technologies.
Filling skills gaps in a leading edge industry.	Training is not keeping up with the broad range of skills now required of digital content workers.	The simplicity of the CC licensing system and the number of tools and guides available to assist with its use makes it easier for individual creators to understand their IP licensing choices.
Building a total industry from a fragmented base.	Industry sub-sectors operate in relative isolation to each other.	CC can facilitate collaboration within sectors through better sharing of content and training materials. Equally it can open up content for reuse in complementary ways in different sectors.

In summary, it is clear that Creative Commons is a novel but not radical means of allowing those creators who do not seek commercial copyright protection to nonetheless maintain their rights in a work. Its use for Web2.0 users and creators is seen in its use by users of Flickr, amongst others. In five years it has achieved relatively broad public and government acceptance and usage but the copyright industries remain wary of a non-commercial use. In the face of rampant ‘piracy’³⁰⁷ of copyrighted content, its ‘Middle Way’ between such piracy and the full protection of the analogue copyright regime appears to have significant policy traction even if it is dismissed as a sideshow by both Copyleft and copyright lobbies.

5.3 Social Networks: Bebo

Researcher: Eddy Nason/Chris Marsden

Bebo is the largest social network in Ireland, and No.3 worldwide. It was formed in

³⁰⁷ Non-commercial sharing is termed ‘piracy’ by copyright industry lobbies such as the collecting societies and in particular the Recording Industry Association of America (RIAA), though it might be thought more properly appropriate for those who take copyrighted materials and resell without recompense to the original legal and moral owners, rather more than teenagers who copy for their own or friends’ use.

California in 2005 with European owners, and its core market is European teens. In response to regulatory concerns, especially with regard to child abuse possibilities, a Chief Safety Officer was appointed in 2006. All staff are trained on safety issues. There is a dedicated human interface for profile photos to prevent abuse. As a successful hybrid European/US social network, its pre-emptive regulatory model raises issues: of entry barriers to European (especially youth) markets, of a 'Bill of Rights' for users, and as to whether such safety policies are replicable. It is too recent a phenomenon to have been evaluated.

Table 37: Summary of Bebo Case Study

Was there a government mandate initially?	No
What kind of government involvement is there?	Publicity and success of Bebo has led to monitoring, liaison and evaluation of sector, e.g. ENISA ³⁰⁸
Which other stakeholders are involved and how?	Consumers and potential partners
How is transparency ensured?	Web publication of rules, website and other efforts
What is the enforcement mechanism, is it effective, at what cost?	Expulsion of non-conforming members; suspension
What is the relative size of administrative burdens?	Low but growing. Far larger than for comparable sites, with brand differentiation
Is financial independence assured/how?	Dependence on venture capital backers.
Which internal factor most impacts success?	Business model in more protected and teenage/school-friendly European type of social network– imaginative transgressions by users
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: regulatory interest both in US and abroad, especially for security, child safety and privacy. Market: press and public relations as well as potential new initiatives. Expanding European market for regulated environment – contrast to SecondLife.
Lessons for European policy	New type of self-regulation, in child-friendly environment – but is it applicable to adult social networking spaces. Impact on competitiveness of entrepreneurs needs monitoring, as competitors without such demographics will not copy.

5.3.1 Interests and Policy Needs

One of the most distinctive features of North American and European broadband use compared to its narrowband predecessor is the extraordinary growth of social networking, a phenomenon that is now mature and fully established in earlier adopter mass broadband markets in East Asia. DiPerna (2006) describes Social Networking Sites (SNS) as 'connector' sites with the following characteristics³⁰⁹:

The connector website provides a relatively simple means of interaction for users who seek to offer or obtain goods, services, or information;

³⁰⁸ http://www.enisa.europa.eu/doc/pdf/deliverables/enisa_pp_social_networks.pdf

³⁰⁹ DiPerna Paul (2006) The Connector Website Model: New Implications for Social Change presented at the Annual Meeting of the American Sociological Association. Internet and Society, Montreal, August 11, 2006, at 7.

It is an intermediary offering peer-to-peer web applications that collectively make up an infrastructure for social exchange, networking, and diffusion processes;

Over time, user-to-user interactions gradually generate a majority portion of the website content and the regulation of which is governed jointly between the host organization and the online community of users;

Depending on the surrounding social and economic conditions, as well as site design and development, the connector website should excel in facilitating the discovery and coordination of context-based communications and transactions.

He also identified two inter-related characteristics of SNS, discovery and coordination:

Connectors make discovery more powerful and accurate through social search and trust-building applications. In terms of coordination, connectors are more efficient than other online community websites because they have the capacity to maneuver (sic), or network, specialized communications and transactions for users in specific situations. Often social search and social networking applications are mixed together on connector websites and previously have been regarded by and large as a single application.

There have been two generations of SNS claimed, though in fact most are simply hybrids, and the distinction between pre-Internet ‘bubble’ (1999) sites and post-‘bubble’ (2003 onwards)³¹⁰ is as much a matter of investor distinction as reflecting techno-socio-economic changes amongst users. That is, there is a distinction more based on availability and funding of such sites than necessarily a profound step-change in performance or utility. The two generations are:

1. ‘First generation’ World Wide Web based, emphasizing social search applications for online dating (e.g. Match.com), online trading and classifieds (e.g. Craigslist), online auctions (e.g. eBay), and reunion (e.g. Friends Reunited, Classmates.com).
2. Web2.0 from 2002, using new software functionality and broadband domestic connections, explicit professional (e.g. LinkedIn), elite (e.g. ASmallWorld, Decayenne) and social (e.g. *Bebo*, MySpace, *Facebook*) networking applications based on referral through mutual friends or interests.

The Table below shows how the users of SNS are split between different regions of the world. This table clearly shows that *Bebo* is the most ‘European’ of the top SNS, with over 60% of its unique users based in Europe.

Table 38. Total Worldwide Home/Work Locations Among Internet Users Age 15+

SNS	Share (%) of Unique Visitors					
	Worldwide	North America	Latin America	Europe	Middle East-Africa	Asia Pacific
MySpace	100.0%	62.1%	3.8%	24.7%	1.3%	8.1%
Facebook	100.0%	68.4%	2.0%	16.8%	5.7%	7.1%
Hi5	100.0%	15.3%	24.1%	31.0%	8.7%	20.8%
Friendster	100.0%	7.7%	0.4%	2.5%	0.8%	88.7%
Orkut	100.0%	2.9%	48.9%	4.6%	0.6%	43.0%

³¹⁰ There was close to zero new funding of start-up companies in Internet content/services/applications in the period 2000-2.

<i>Bebo</i>	100.0%	21.8%	0.5%	62.5%	1.3%	13.9%
Tagged	100.0%	22.7%	14.6%	23.4%	10.0%	29.2%

Source: ComScore.com (<http://www.comscore.com/press/release.asp?press=1555>). Accessed on 11th September 2007

The growth of SNS since summer 2006 reflects a broadening of the user base from a predominantly teenage and student origin, with the top seven sites' audience growing from 135million to 276 million over that period, and continuing to grow. *Facebook* is now Europe's largest 'destination' site accessed by password, its daily usage only exceeded by search engines and other free sites, and the ubiquitous auction site eBay.

Table 39. Worldwide Growth of Selected* SNSs June 2007 vs. June 2006 Total Worldwide Home/Work Locations Among Internet Users Age 15+

SNS	Total Unique Visitors (000)		
	Jun-06	Jun-07	% Change
MySpace	66,401	114,147	72
<i>Facebook</i>	14,083	52,167	270
Hi5	18,098	28,174	56
Friendster	14,917	24,675	65
Orkut	13,588	24,120	78
<i>Bebo</i>	6,694	18,200	172
Tagged	1,506	13,167	774

Source: ComScore.com (<http://www.comscore.com/press/release.asp?press=1555>). Accessed on 11th September 2007

5.3.2 Design & organisation of the Institution

Bebo was formed by husband and wife duo Michael and Xochi Birch in 2005, as a social network for young people to rival MySpace. Now it competes against MySpace, *Facebook*, Flickr, Hi5, Tagged and Orkut in a global market for SNS. Prior to starting *Bebo*, the management team had successfully started Birthday Alarm, a website providing reminders for people's birthdays if signed up. Although *Bebo* officially started in January 2005, it was given a major re-launch in July 2005, when it was pitched as a social network site particularly aimed at students around the world, particularly focusing on schools and universities in English speaking countries.³¹¹ One of the driving factors for *Bebo* was that it would be able to have unlimited photo capability and it would be personalisable for individuals who did not have the skills to write their own HTML (through whiteboards and downloadable skins).³¹²

The *Bebo* website claims that *Bebo* is the largest SNS in the UK, Ireland and New Zealand, and figures from the end of July 2007 show that *Bebo* has grown rapidly since June 2006.

As a social network, *Bebo* originally started as a place to interact with others and share pictures. However, as it has expanded, *Bebo* has drawn in other aspects to its business,

³¹¹ Taken from an interview with Michael Birch at 'Online Personals Watch', available at

http://onlinepersonalswatch.typepad.com/news/2006/03/online_personal_4.html (accessed on 11th September 2007)

³¹² Ibid

forming partnerships with Buena Vista UK, Current TV and other multimedia providers to give multiple dimensions to the services provided by *Bebo*.³¹³ Increasing the content variety also increases the regulatory pressures on *Bebo* and these will be discussed further later in the case study.

The *Bebo* business model has evolved and it now encompasses music, TV and film as part of its remit. Since it partners with other organisations to provide many of these services – the regulatory pressure is often taken on by the partner, since they have previously been supplying the service that requires regulating (for example, the new partnership with iTunes puts *Bebo* into a market that requires strict regulation, but that iTunes are already heavily involved in and used to).

Therefore, the major regulatory issues that *Bebo* faces also affect all social network sites. In *Bebo*'s case the main one is safety, since *Bebo* is specifically aimed at schools and colleges and there are issues over appropriate content for minors and interactions with minors through the site. Since social network sites work in multiple countries they are subject to a number of different regulatory regimes. *Bebo* responded to this pressure by appointing Rachel O'Connell, an expert in internet safety, to oversee its safety procedures.³¹⁴ Clearly this only represents part of the regulatory pressure that *Bebo* is under, but it is the area of *Bebo*'s business that is highest profile and has been subject to most media pressure to regulate.

5.3.3 Inputs

Bebo is based in San Francisco and the majority of their staff is housed in the San Francisco office, although they have staff working in Austin (TX), Los Angeles (CA), Sydney (Australia) and London (England).

Michael Birch is CEO. *Bebo* as an organisation is run by the CEO and management within the company. The board of directors have a guidance role and directors include former ESat Digifone CEO Barry Maloney. It is unclear if there are specific committees that have responsibility for aspects of *Bebo*'s business.³¹⁵ It is unclear whether outside stakeholders have a say in the strategic directions that *Bebo* takes or whether it is entirely centrally run.

Funding includes an injection from Benchmark Capital of \$15m.³¹⁶

The executive team that run the organisation have also set up a number of other organisations such as Birthday Alarm, Ringo and Friendster.³¹⁷

It is difficult to know what the value of *Bebo* is. The best guess can be based upon potential takeovers that have occurred or been rumoured. For example, BT were rumoured to have offered £300m to purchase *Bebo*, while *Bebo* demanded over £1bn to purchase it.³¹⁸ Since

313 See <http://www.Bebo.com/Press.jsp> for details of partnerships (accessed 10th September 2007)

314 See <http://www.Bebo.com/Press.jsp?PressPageId=1533927716> (accessed 10th September 2007)

315 See Business Week's company profile for details; <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=27307754> (accessed on 11th September 2007)

316 Taken from the *Bebo* website, "about us" section (www.Bebo.com/StaticPage.jsp?StaticPageId=2517103831). Accessed on the 10th September 2007

317 Ibid.

318 Braithwaite T (2007) "Old media goes in pursuit of youth", FT.com (Financial Times), available at <http://www.ft.com/cms/s/0/695459da-2656-11db-afa1-0000779e2340.html> (accessed on 10th September 2007)

these are media reports it is difficult to say with any certainty whether these figures are accurate.

5.3.4 Activities

As an organisation, *Bebo* has 54 staff working across their locations, and are growing (although CEO Michael Birch claims it is difficult to find the staff to grow the organisation both technically and productively).³¹⁹

Bebo's primary income comes not from subscription fees (subscribing is free to all), but from advertising revenue. This advertising revenue comes from two sources. Firstly from traditional online advertising with advert windows on the site; and secondly from what Michael Birch calls "engagement advertising" – which works along the analogy of product placement and product sponsorship providing a more integrated product experience with *Bebo*.

Bebo's partnerships with other companies also bring in revenue. For example, *Bebo* and Apple recently joined forces to provide iTunes through *Bebo*; and Orange (the mobile phone company) also have a deal in place with *Bebo*.³²⁰

5.3.5 Enforcement

Since the main areas of regulatory uncertainty for *Bebo* are in safety and identity verification there are some very different enforcement measures. Under identity verification are a number of potential threats. Firstly, and most obviously for *Bebo* is one of child safety, with age verification being one of the key aspects for identification.³²¹ However, identifying people accurately is also important for national security reasons, with SNS such as *Bebo* providing opportunities for people to interact without disclosing true identities to one another or to anyone other than *Bebo*.

Report abuse' exists on every page next to the profile picture – the abuse team sees both people's details on an automated basis. Warnings are issued to users breaching rules for minor violations. Metrics about abuse, user perceptions, false positives become very dynamic in a growing community such as *Bebo*. Accounts terminated cause severe disruption to users, and we note the effect is to remove the 'social capital of that user's reputation or account. Negative news surveys appear regularly – but the actual number of accounts terminated is very small.

Verification of age and the safety of minors from sexual predators is an important point for *Bebo*. The role of Chief Safety Officer taken up by Rachel O'Connell in 2006 has been designed to address exactly this sort of problem. Her role is to report to the CEO as Chief Safety Officer with a remit across government affairs, moderated policy issues, privacy settings etc. She also oversees development of training manuals for the customer care team, ensures counselling where appropriate.

319 See interview at nPost.com (<http://www.npost.com/interview.jsp?intID=INT00160>). Accessed 11th September 2007

320 Palmer M (2007) "Apple to sell music through Bebo network", FT.com (Financial Times), available at <http://www.ft.com/cms/s/2/104bad26-1925-11dc-a961-000b5df10621.html> (accessed 10th September 2007)

321 Although age verification has many people struggling to identify the best approach: for more details see Thierer A (2007) "Social Networking and Age Verification: Many Hard Questions; No Easy Solutions", Progress on Point 14.5, The Progress and Freedom Foundation, available at <http://www.technewsreview.com.au/article.php?article=1430>

As Chief Safety Officer, O’Connell aims at the majority (ideally all) staff being trained in safety issues. The role involves ensuring that staff understand the potential for abuse, not in technical but in social terms. She aims that “Nothing should go on until its been through the safety check – and partners should also satisfy that requirement”. A challenge will be to open the environment to third parties while maintaining those standards, which may competitively differentiate *Bebo* from *Facebook* and *SecondLife* as more third-party facing networks.

As the role has only existed a year at *Bebo* and is not replicated in the industry over a longer period, the cost-benefit of the Chief Safety Officer role is unclear. The scope is quite wide and growing, benefits are tangible in user surveys but the metrics not yet analyzed. The enforcement of safety within *Bebo* is driven by: policy groups; media and users; law enforcement; CEO initiative.

5.3.6 Outputs

Since *Bebo* is a private concern, there is no publicly open AGM at which users and stakeholders can air their views on the company. Policies are decided by the management team for *Bebo* (potentially with input from the small board of directors). If these policy decisions are ones that affect a particular output aspect of *Bebo*’s regulatory requirements they are often made available to the press, and released on the *Bebo* website press page (www.Bebo.com/press).

Once policy decisions on regulatory issues such as safety have been made, they are distributed to members through a number of methods. These include innovative methods such as short video pieces on how to stay safe whilst using *Bebo*. These are available through www.Bebo.com/safety and provide a different way to engage the young people who are most at risk on *Bebo*.

5.3.7 Outcomes

As was shown in Table 39, *Bebo* is growing rapidly in terms of numbers of users, with the CEO also suggesting that it needs to grow in terms of staffing. As this growth occurs, *Bebo* is likely to become more international, as its business in English speaking European countries becomes saturated. This will lead to *Bebo* experiencing a wider variety of regulatory regimes than it currently must interact with.

5.3.8 Impact

Bebo is a highly successful business enterprise, evidenced by the desire of major firms to purchase the company (with both BT and Viacom allegedly making bids for the company).³²² The question for *Bebo* will be whether it can sustain this business model in an age when other social network sites such as *Facebook* are also experiencing fast growth. Since, there are no subscription costs for users, the price of services is never affected by changes in the social network market. However, the competition for advertising does inherently suggest that there are finite resources for all the social network sites online.

Financially it is impossible to identify the share of the social network market held by *Bebo*, since that would require detailed accounting not just for *Bebo* but for all the social network

³²² Braithwaite T (2007).

sites. However, we can identify the fraction of unique users that *Bebo* has (as in July 2007) when compared to the other major SNS (Figure 27). MySpace has by far the largest share of the market with 41% of unique users. *Bebo* only has 9% of the market share, but as shown in Table 39, is rapidly expanding its market.

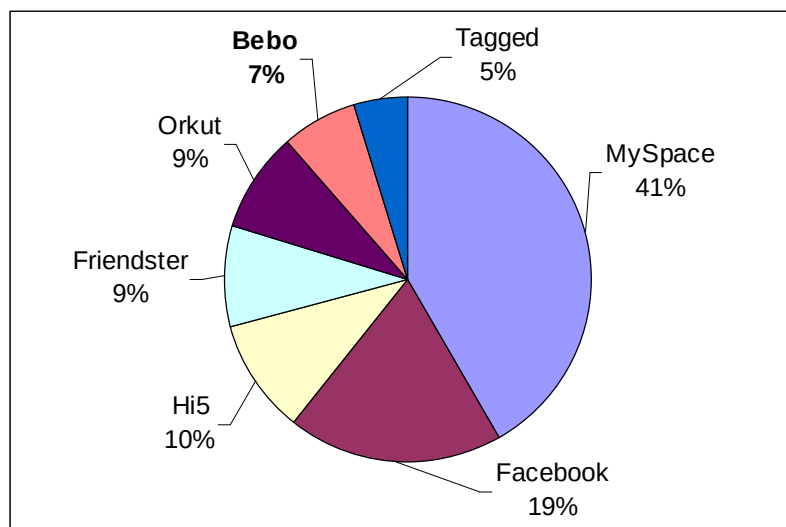


Figure 27. Share of unique users for major social network sites

Source: Data taken from ComScore.com (<http://www.comscore.com/press/release.asp?press=1555>). Accessed on 11th September 2007

The future of *Bebo* and the other social network sites is volatile and dynamic. As the market matures, with a large number of successful networking sites it is likely that there will have to be some integration of networks (as users are unlikely to sign up to more and more sites), as seen in South Korea and Japan. Innovative solutions for SNS include users able to access from their mobile phones.³²³

5.3.9 Sustainability and Reform

Through constant innovation, *Bebo* has expanded rapidly. This innovation started as early as the July 2005 re-launch of *Bebo* as a social network, rather than simply a photo and contact sharing site. It has continued with the introduction of new aspects to *Bebo* such as *Bebo Bands* (a section for Bands to have sites that can include music downloads and band information), and through new partnerships to provide external content (such as the partnership with Apple over iTunes). Through this interaction with other organisations, *Bebo* clearly makes a contribution to the e-economy and to economic performance. However, trying to identify this contribution in numbers is impossible without internal *Bebo* data.

From the point of view of Michael Birch (CEO), *Bebo* is innovating and changing in order to provide broader opportunities for those signing up to *Bebo*.³²⁴ This, in turn, will bring in advertising and profit for the company so it provides a business reason for innovation too. A particularly good example of this is the introduction of the online drama “Kate

³²³ See <http://www.socialdegree.com/?p=11> for an idea of the way SNS may evolve in the future (accessed on 11th September 2007)

³²⁴ See interview at nPost.com (<http://www.npost.com/interview.jsp?intID=INT00160>). Accessed 11th September 2007

Modern” on *Bebo*, which attracted 100,000 views on its debut weekend even without marketing – this has led to advertisers being incredibly keen to get involved with such ventures.³²⁵

Bebo has also launched SafeSocialNetworking.com to educate schools and to add to the curriculum. It follows and showcases the launch of the Safety pages. A new centre in *Bebo* is called ‘Be Well’ which is aimed at suicide prevention amongst 13-30 year old men, and with engagement by institutions. The approach is that user referrals and press relations reinforce the integrity of the approach. Part of the *Bebo* equation is that the market is maturing and ethical responsibility is becoming more ingrained. Without that culture of compliance, requesting or legislating a safety officer doesn’t help.

A problem for *Bebo*’s O’Connell (2007) lies in explaining that SNS usage won’t be a ‘total anonymity/privacy’ issue. Because the SNS environment is so complex, children are learning a lot of workflow skills (e.g. homework collaboration). She believes that fundamentally risk analysis has to encompass the new realities, identifying user behaviour and safety mechanisms as they develop. For O’Connell, the “approach is about policy guidelines, and risk minimisation in product development”.

Callanan of INHOPE states that due to the nature of the debate which typically does not assess cost-benefit analysis of proportional value of measures against their economic cost to operators and social cost to freedom of expression:

“There’s no reasonable and proportional debate about what’s appropriate and effective in the modern world”.

He argues that as *Bebo.com* now has direct reporting into police – from UK – so police receive direct report from kids – mainly about other children, this becomes taken as a default option for rest of Europe. As police are desperately under-resourced, other civil society groups are unwilling to push back and state that police are overwhelmed in this manner. Police policy on SNS is rapidly developing and preliminary analysis has been undertaken, as discussed in the *SecondLife* case study³²⁶.

5.3.10 Evaluation

Headline issues for evaluation are:

- Financially, *Bebo* is a privately held organisation which – typically for a start-up - making it difficult to evaluate its activities and policies.
- *Bebo* has not been the subject of any evaluations that are in the public domain. It is important therefore to track the growth and innovation for *Bebo* through its own corporate website, although this will only provide the ‘official’ view of growth and innovation within the company.
- ENISA has conducted a far broader and better resourced assessment of risks and

³²⁵ Interview with Joanna Shields, President International for Bebo, in the Media Guardian (August 13th 2007), available at <http://media.guardian.co.uk/mediaguardian/story/0,,2147332,00.html> (accessed 11th September 2007)

³²⁶ CEOP (2006) Understanding Online Social Network Services and Risks to Youth: A preliminary report on the findings of CEOP’s Social Network Seminar Series, at <http://www.ceop.gov.uk/pdfs/Social%20network%20serv%20report%20221206.pdf>

regulatory possibilities for social networks³²⁷, to which we defer except inasmuch as Bebo is an unusual best-of-breed ‘Made in Europe’ social network, dependent on high degrees of child use and therefore also the approval of parents and children. It is therefore an unusually pre-emptive network in its regulatory strategy, a paradigm.

- The major continuing success factor internally is the proof of its concept and operation, with an expanding mandate to provide potential adoption in other countries.
- The main external conditions impact success/failure are:
 - Governmental: the continued non-regulation or minimal regulation of social networks, especially for privacy and children’s protection.
 - Market: potential new initiatives outside Netherlands.
 - Consumers: continued high awareness and media literacy. The expanding European market for a well-regulated environment is a contrast to SecondLife.
- Lessons for European policy are that Carr (2007) argues that European concerns for user privacy and child safety can create a new environment in which regulation emerges on an individual company basis. It provides a new type of self-regulation, in child-friendly environment – but is it applicable to adult social networking spaces? The impact on competitiveness of entrepreneurs needs monitoring, as competitors without such demographics will not copy its policies.

It may be that recruiting specialists in child safety is an entry barrier to new start-ups – venture capital may neither fully understand the policy environment or invest the money for a start-up. However, Carr argues that:

“Our job is not to anguish over the rights of small companies and barriers to competition. If that means making it too expensive for small companies, then that’s the cost of being in the business.”

This could differentiate Europe from the United States, and raises the classic regulatory issue as to whether a race to the top (quality) or the bottom (removing any protections) results in the absence of government intervention. In the US, child safety is a lesser concern than in Europe, but gambling is the exception to any general perception of deregulation on the part of US SNS. Given the huge valuations of successful SNS such as MySpace and *Facebook*, it may be argued that the cost of child protection is trivial compared to venture capital availability in the US. However, new European SNS start-ups are likely to be unable to secure such funding, which means there may be a real innovation issue. Note the child safety issue and associated management costs are born by individual subsidiaries of even large multinationals, and should regulation fragment across member States in the absence of an agreed industry standard, that will prevent growth of potential pan-European networks.

³²⁷ http://www.enisa.europa.eu/doc/pdf/deliverables/enisa_pp_social_networks.pdf

5.4 Trust Seals: TRUSTe and Confianza Online

Trustmarks: TRUSTe and Confianza Online

Researcher: Neil Robinson

The context for trustmarks is a lack of trust in consumer contracting on the Internet, outside trusted brand names such as eBay. The late 1990s saw the foundation of several trustmarks in the US and internationally, with TRUSTe and others a way to demonstrate good faith. More recently, a dynamic trustmark system that removes trustmakers automatically where merchants fail to maintain standards has been developed: Squaretrade targets most problems that reduce trust. Spain has developed a new and well-supported trustmark aiming to build on best practice: Confianza Online.

Table 40: Summary of Trustmarks Case Study

Was there a government mandate initially?	Not directly - eTrade
What kind of government involvement is there?	Publicity and success of Truste has led to monitoring, liaison and evaluation of sector, and public-private initiatives e.g. Confianza
Which other stakeholders are involved and how?	Consumers and potential partners
How is transparency ensured?	Web publication of rules, website and other efforts
What is the enforcement mechanism, is it effective, at what cost?	Expulsion of non-conforming members; suspension
What is the relative size of administrative burdens?	Low and provides brand differentiation over non-trustmark sites.
Is financial independence assured/how?	Dependence on founders/backers and growing membership.
Which internal factor most impacts success?	Business model depends on added value for merchants – enforcement on users' reporting of sites that transgress
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: regulatory interest both in US and abroad . Market: press and public relations as well as potential new initiatives. Market penetration in mature e-commerce markets very disappointing.
Lessons for European policy	Generally trustmarks have been seen as a failure. Impact on competitiveness of entrepreneurs needs monitoring, as competitors without trustmarks assume no cost-benefit advantage to joining.

5.4.1 Interests and Policy Needs

With the increase in demand for eCommerce and the consequent increase in number of companies trading online there is an attendant risk of some malicious or inadvertent disclosure of personal information (classified as Personally Identifiable Information or Sensitive Personal Information) held by such companies. The rationale for some kind of mark, symbol or cachet that can be displayed as a means of illustrating adherence to a particular privacy standard has thus become ever more important.³²⁸ Although debate

³²⁸ There are now 7 different web assurance seals in the United States alone: BBBOnline Privacy and BBBOnline Reliability Program, TRUSTe, Verisign Assured

continues about whether the display of such trustmarks illustrates continued compliance or just compliance at the time the user organisation was audited,³²⁹ in general these are seen as useful instruments by policymakers for helping to create consumer trust in e-Commerce.

As awareness about privacy concerns (e.g. with publicity surrounding identity theft, phishing and malicious abuse of personal information) grows, the commercialisation of this area continues apace. In particular those organisations running seal systems have become increasingly profit related.³³⁰ Hence we may see that the model for the deployment of trust marks or privacy seals for engendering E-Commerce trust is becoming more like that of the certification mark associated with 'traditional' standards (e.g. ISO9001 for Quality Management). Business models of companies using such seals are now attuned to reaping the direct benefit that membership in such seal programs brings.

Trustmarks and privacy seals generally sit as the front end of a Code of Practice and aim to display compliance - or more rarely - non-compliance. Their main purpose is to provide the end consumer with clear and visible information in order to make informed choices about which sites can be trusted with their personal information. This of course assumes that the consumer has a level of awareness of what the seal or mark 'represents' (usually outside verification of a privacy policy or business practice involving personal information) but unfortunately this is not always the case.

Privacy seals have also been criticised for addressing the wrong problem. It is thought that 80% of the abuse of customer information comes from companies misusing personal data that they have legitimately obtained under a privacy policy compliant with a Trust mark system. It could be argued that the area where Trustmarks are going to have the most effect will be on the malicious remainder who seek to illegally obtain personal information for criminal ends.³³¹ Addressing this problem is where a trust-mark would be most applicable and useful and yet this accounts for only 20% of the total sorts of issues that serve to undermine trust in e-Commerce.

Although policymakers have accepted the usefulness of privacy trust marks or seals in the dynamically moving environment of e-Commerce such marks still do not have a general level of recognition or indeed credibility amongst the general populace. Key to attaining this credibility is demonstrating compliance and the consequences of a breach of the code or standard that the mark represents. So far this has not been particularly effective, with only one member of the most well known system TRUSTe actually being suspended. Automated systems can assist in this process by using technology to monitor compliance but as with any technological system its success depends on the quality of information input.

There are several well known 'Trustmark' or seal systems in existence in the area of e-Commerce trust. The most well-known are TRUSTe which has participating organisations in both the United States and Japan (but is a globally available standard); the privacy seal

and Verisign Secure Site, Online Privacy Alliance, Web-Trust

329 Stiener, D. Are eBay users getting a fair deal from Squaretrade? Auctionbytes.com available at <http://www.auctionbytes.com/cab/abn/y03/m05/i25/s03>

330 Squaretrade About Us | Overview Squaretrade available at: [http://www.squaretrade.com/pages/about-us-](http://www.squaretrade.com/pages/about-us-overview?vhostid=bliss&ctmp=squaretrade&cntid=i19i16ao71)

[overview?vhostid=bliss&ctmp=squaretrade&cntid=i19i16ao71](http://www.squaretrade.com/pages/about-us-overview?vhostid=bliss&ctmp=squaretrade&cntid=i19i16ao71)

331 Interview with Steve Abernathy, CEO, Squaretrade, 18th September 2007

of the Better Business Bureau Online (BBBOnline) which is representative of the 135 Better Business Bureaus in the United States and the Japanese Privacy Protection Mark devised by JIPDEC in 1998. This Mark applies to all organisations not just those participating in online trading. More recently in Spain, Confianza Online, an organisation established to address trust in commercial communications in electronic interactive media and contractual aspects in Business to Consumer (B2C) transactions has established its own seal called Sello de Confianza. Finally, in the United States, Squaretrade is an example of a company selling assurance with warranties and Accidental Damage Protection. Additionally, Squaretrade provides Online Dispute Resolution (ODR) for eBay buyers and sellers, run according to its own standards of practice.³³² In particular ODR is promoted as a fast, easy to use and accessible solution to resolving disputes that might arise during potentially untrustworthy transactions on the Internet, thus raising the level of confidence in the use of a particular e-commerce provider (e.g. eBay) by consumers. In the remainder of this chapter we highlight elements of TRUSTe Squaretrade and Confianza Online as different examples of seal programs to illustrate points and by way of comparison.

5.4.2 Design & organisation of the Institution

In June 1998 the US Federal Trade Commission (FTC) released its Privacy Online: A Report to Congress³³³ which was critical of websites not doing enough to protect consumer privacy. One month later the FTC announced that it would recommend regulation for online privacy protection unless the online industry took demonstrable action to address these issues by January 1999. A congressional sub-committee was then presented with a model of a possible statute for the protection of consumers who visit US commercial websites. The US Department of Commerce subsequently provided a set of fair information practices and enforcement guidelines for what they saw as effective elements of self regulation. These were further defined by the Online Privacy Alliance, an organization comprised of some 60 members of the private sector and associations. The OPA came up with a set of guidelines defining fair information practices and enforcement requirements. These developments took place concurrently with the formation of TRUSTe, which was originally founded in 1997 by the lobby organisation the Electronic Frontier Foundation (EFF) and Commerce.Net. The EFF has subsequently removed its association with TRUSTe on the basis that it feels that it now represents an entity hostage to corporate motives. However, TRUSTe was originally intended to act as an independent unbiased trust entity. The branded online seal in intended to bridge the gap between user concerns over privacy and Web sites needs for self-regulated information disclosure standards.

Confianza Online was developed as a result of a Spanish legislative initiative which called upon national statutory authorities to promote the development of self-regulation for new media. This was alongside the recognition by Spanish authorities of the extraterritoriality and complexities of control of the Internet. The E-Commerce Directive drove the consolidation of two separate codes (the Spanish e-Commerce Association (AECCEM)'s 1998 Code of protection on the Internet) and the Asociacion para la Autoregulation

³³² Squaretrade Standards of Practice for Online Dispute Resolution

http://www.squaretrade.com/cnt/jsp/lgl/standards_med.jsp?sessionId=tkttacvbv1?hostid=daffy&stmp=squaretrade&cntid=tkttacvbv1

³³³ Federal Trade Commission Privacy Online: A report to Congress (FTC) Washington DC 1998 available at <http://www.ftc.gov/reports/privacy3/toc.shtml>

(AUTOCONTROL)'s 1999 Ethical Code of Internet Advertising. Confianza Online was thus established as an integral self-regulatory system for both e-Commerce B2C and interactive advertising. As well as the two organisations above Confianza Online also consolidated the activities of more than 10 associations being of relevance to consumer protection on the Internet. AUTOCONTROL and AECCEM both decided that Confianza Online was necessary to avoid the undesirable proliferation of self regulatory systems that would create confusion amongst the consumers and marketplace.³³⁴ When the time came to transpose the EU Directive into Spanish law, Confianza Online thus became the designated Self Regulatory Organisation (SRO).³³⁵ Confianza Online was supported by the Ministry of Industry in the first instance and its establishment was marked by a special ceremony and approval of the Code. Furthermore the National Institute of Consumer Affairs have publicly acknowledged the usefulness of the Code of Practice. Confianza Online's Sello de Confianza was granted public trust-mark status by the Spanish Government in July 2005 as it complied with consumer protection requirements established by Royal Decree of the 20th February 2004 (292/2004).

Common assumptions about the formation of such schemes, particularly in relation to trust in e-Commerce rest on the motive of the avoidance of regulatory intervention. Whilst this was not explicitly the case with Confianza Online, the underlying rationale for the establishment of this system may be indirectly linked to a fear about regulation given market confusion is often seen as an area where governments try to legislate in order to introduce clarity.

5.4.3 Inputs

TRUSTe is a non-profit organisation under section 501(c)(6) of the US Code. TRUSTe certifies and monitors web site privacy and email policies, monitor practices, and resolves consumer privacy problems.

The board of directors is composed of approximately 11 people from a variety of organizations (wholly from industry). Additionally, 6 emeritus board members are listed, again all from the private sector. 4 organisations currently sponsor TRUSTe: AOL, Intuit, MAXAMINE and Microsoft. Sponsors provide critical support for the development of new programs and initiatives. The benefits of sponsorship include a seat on an advisory panel or initiative, a joint press release announcing joint commitment between TRUSTe and the sponsor, a company logo displayed on the website and marketing material; rotating sponsorship of a TRUSTe newsletter, marketing exposure at events and other unspecified benefits.

TRUSTe licensees pay to participate in the program on an annual basis. The fees are dependent upon the annual revenue of the company. The fee for a TRUSTe seal varies between \$599-\$25,000. It is available globally but most users are English websites and companies in Japan. According to the organization, revenues from its seal program stood at

³³⁴ Confianza Online: The Spanish self-regulatory system for E-Commerce B2C and Interactive Advertising presentation, September 2007 available at:

<http://www.confianzaonline.org/ingles/index.php>

³³⁵ Interview with Marta Ayed, General Manager, Confianza Online 20th Sept 2007

US\$4.4m.

In comparison the Confianza Online seal is run on a participant basis that requires organisations to be existing members of either AUTOCONTROL or AECCEM. All decisions are taken by a board of directors made up of 50% AUTOCONTROL and 50% AECCEM. Executive authority for running the scheme is delegated to a secretariat of two staff. Confianza Online physical offices are hosted by AUTOCONTROL although recently this was a virtual SRO. Although Confianza Online recognises the influence of government on decision-making, it remains that the associations are the main decision-making mechanism. Confianza Online issues its Annual Report which is sent to authorities in Spain, public administrations, associations, other government organisations in the country and also the European Commission. A monthly report is sent to the Public Administration containing details of companies using the scheme. Other reports have to be sent regularly (e.g. every 15 days) to different parts of the Spanish government and also regional government bodies. Additionally a newsletter is sent to companies who are members of Confianza Online. Confianza Online seal ‘Sello de Confianza’ costs a variable amount dependent upon whether the applying organisation is a member of one of the participating institutions. If the applicant is not a member of one of the participating associations then it has to pay a general joining fee which is dependent upon annual turnover. This can start from as little as €550 p.a.³³⁶ If the applying organisation is already a member of one of the associations then it is eligible for a 50% discount on its joining fee. Currently around one third of members come directly to Confianza Online and the rest are members of the participating associations.³³⁷

5.4.4 Activities

TRUSTe has four main offerings available to participants:

- the Web Privacy seal (indicating that the company adheres to its own privacy policy,
- a trusted download program (for the promotion of ethical behaviour from adware and software companies by white-listing certified applications)
- an email privacy seal (allowing participants to demonstrate that they are compliant with standards for permission based email communication e.g. not spamming consumers) and
- watchdog based Alternative Dispute Resolution with its Watchdog Dispute Resolution program which helps to ensure customer satisfaction with seal-holders privacy email and download practices.

Consumers can fill out a complaint form online leading TRUSTe to investigate the complaint and mediate a solution but this is done manually.

Currently 2940 websites participate in the TRUSTe seal program. This seal, which sites can display to illustrate that they are a member of TRUSTe is Safe Harbour certified and a

³³⁶ Confianza Online How to Join available at: see <http://www.confianzaonline.org/ingles/index.php#03>

³³⁷ Interview with Marta Ayed, General Manager, Confianza Online 20th Sept 2007

specific 'kids-seal' has been developed. In comparison to the BBOnline mark, it is not necessary to opt-in to the TRUSTe seal.

The steps towards being able to display the TRUSTe seal are as follows:

- the application must complete an online application (including a self assessment the submission of the privacy policy for review),
- undergo a web site audit and review to make sure the website is in compliance with TRUSTe standards.
- The seal is then awarded for display on a website and ongoing monitoring and dispute resolution is performed - websites are automatically and manually reviewed and TRUSTe performs surprise checks.
- TRUSTe also facilitates alternative dispute resolution in case consumer complaints are filed.

Membership of TRUSTe requires companies to have (amongst others):

- email unsubscribe function,
- opt-out function limiting the sharing of Personally Identifiable Information,
- security measures,
- complaint resolution process,
- privacy statement fulfilling certain key criteria, etc.

TRUSTe also offers specific seal programmes such as TRUSTe's Children's Privacy Seal, eHealth Privacy Seal, and EU Safe Harbor Seal, which have additional requirements to the general Web Privacy Seal. There is a management team and a board of directors.

The code is the main focus of Confianza Online activity. A website displaying the Sella de Confianza seal must show adherence to the code. There are two main parts of the code; best practices and procedural rules. These two parts cover advertising over interactive media and B2C transactions. Complaints are placed directly with Confianza Online. The seal itself is not automated and only provides a link to the Code on the Confianza Online website where the interested user can review the code and also list of members to see if the company displaying the seal is doing so legitimately. Various means can be used to send a complaint including fax, email, and postal mail. Out of court mediation can take place which is performed by AECCEM. A 7 working day online mediation procedure then starts which is referred to the National Consumer Arbitration Council if it is still not resolved within 15 days. The decrees of this organisation have the weight of tribunal decisions under Spanish law.

5.4.5 Enforcement

Under TRUSTe if a website fails the review an escalated investigation is conducted; depending on the severity of the breach, the investigation can lead to an on-site compliance review by a specifically authorised auditing firm, or the revocation of the site's trust mark license. Firms authorized to conduct such onsite compliance reviews include PriceWaterhouseCoopers or KMPG and can review practices at the licensee's physical

location. This manual investigation and auditing process has been criticised for being lengthy.³³⁸ Extreme violations are referred to the appropriate authority (e.g. in the US: attorney general's office, Federal Trade Commission, Consumer Protection Agency). Despite these enforcement procedures in place, according to 2006 statistics only one organisation has ever been suspended from the TRUSTe system. Other data for 2006 indicate that there were:

- 2951 investigations,
- 3241 trademark violations investigated and
- about 2900 complaints (such as inappropriate sharing of Personally Identifiable Information, public abuse, violation of privacy policies and other privacy concerns).³³⁹

TRUSTe has been criticized for not being responsive enough to punish those who have a seal with expulsion and unwilling to revoke seals on those that violate its standards. However, TRUSTe claims that doing so does not help to create an environment of trust and that its aim is to help business improve their practices (and therefore measuring effectiveness by numbers of enforcements is not appropriate). Issues that present an obstacle to the speedier resolution of non-compliance include the fact that TRUSTe has to undertake an independent investigation and the contractual requirement that enforcement is limited to its own standards (so if an issue emerges not covered by the organisations standard then enforcement cannot be undertaken).

No organisations have as yet been removed from the Confianza Online Trustmark. Using the out of court dispute resolution mechanism (either via AUTOCONTROL or AECCEM), in 2004 there were 155 complaints, in 2005 266 complaints, in 2006 186 complaints and 182 complaints in 2007 until September. This compares to the number of enquiries which are far higher – e.g. in 2007 there were 1119 enquiries of a variety of types.

5.4.6 Impact

It is difficult to judge or objectively assess the contribution that such seal programs make to eCommerce trust generally. In the case of eBay for example, it may be that their internal reputation management system is more of an effective self regulatory mechanism than any kind of mark or seal. A number of studies have been completed on the effectiveness of such trust-mark initiatives and derived varying conclusions as to their effectiveness. Some have also gone so far as to detail the functioning of economic factors behind consumer decisions to 'trust' e-commerce sites on the basis of the presence or absence of such marks.

³³⁸ Interview with Steve Abernathy, CEO, Squartrade, 18th September 2007

³³⁹ Statistics for 2006 showed: 3257 watchdogs, 2951 investigations, 1 company terminated, 3241 trademark violations investigated, about 2900 complaints (including: Unable to unsubscribe: 325; Felt PII was shared improperly: 43; Wanted account closed and/or PII deleted: 320; Children's information (under 13): 5; Network Advertising Initiative (NAI) - Opt-out cookie: 39; Spyware/software: 42; Unwanted or excessive email: 40; Received email spam: 18; Email sent w/out permission: 52; Phishing: 92; Inaccurate disclosure at point of collection: 1; Unable to contact licensee: 23; Unauthorized profile with my information: 27; Transactional/monetary/billing: 426; Account access/creation -- password issue: 635; Public abuse: 143; Illegible/nonsensical/undefined: 425; Data Spill/Data Compromise: 1; Email sent by non-TRUSTe web site: 16; Violated privacy policy: 13; Other privacy concerns: 222).

5.4.7 Outputs

The percentage of companies who use trust seals is very low, comparable in many ways to the use of ICRA labelling. In the same way, without any compulsion, it may be criticised as a regulatory tool without an apparent market.

A key emphasis revealed in much of the data on trust-marks surrounds their evolution as a form of filtering. Two distinct developments can be identified. The first development is indicative of a natural market process as consumer use of Web 2.0 technologies redress the information asymmetry in the environment for trust. More and more consumers are using sites such as www.epinions.com, www.ciao.co.uk to exchange ratings on different e-Commerce providers – a form of filtering in itself. Similarly, the Amazon rating & review scheme (where customers can write a review of a product) is another example of a filtering mechanism. A second development is where a service provider not associated with a trust-mark or seal system attempts to filter information based on their own selected criteria. A key example of this is with Google and its requirement that pharmaceutical companies provide evidence of their licensee status in order to be able to apply for an AdWords account.³⁴⁰

Developments in the market structure stem from the use of automated tools to enforce privacy policies – although Platform for Privacy Preferences (P3P) was regarded as the ideal example, it has not been widely adopted (see W3C case study above). Squaretrade's automated trust-mark system which users can click on to give them an instant, up to date status report on the website using the seal is another example. However in general expert views are that the use of machine readable privacy policies has a long way to go.

5.4.8 Outcomes

Some research indicates that the numbers of people who read privacy policies is relatively small.³⁴¹ When this figure is matched against the number of e-commerce websites having some kind of privacy policy then we see that the opportunities for privacy seals (which are usually backed up by some kind of privacy policy adhering to a code or guidelines) are even smaller.

Other research illustrates that although awareness of the point of a privacy seal is high amongst consumers, recognition of legitimate seals is dubious and there is an absence of understanding about the way in which seals are meant to represent a privacy policy (that should also exist and be displayed on the website bearing the seal).³⁴²

Although those operating Confianza Online are sure of the impact of this SRO, there has been no independent assessment taken of its impact. Whilst the rising number and nature of enquiries (from 790 requests for information in 2005 to 1119 in 2007) is indicative of greater awareness of the SRO, the fact that no-one has yet been removed from the system may not necessarily mean that each and every organisation is in constant compliance with the Code of Conduct. In 2007 there were 164 companies adhering to its Code of Practice,

³⁴⁰ Google's Online Pharmacy Qualification Process available at: http://www.google.com/adwords/pharmacy_qualification.html

³⁴¹ Cranor, L.F., Reagle, J., and Ackerman, M. S., Beyond Concern: Understanding Net Users' attitudes about Online Privacy AT&T Labs Research Technical Report (AT&T) 1999

³⁴² Moores, T. Do Consumers Understand the Role of Privacy Seals in eCommerce? Communications of the ACM Vol. 48 No 3 March 2005

almost double the 88 in the first year of its existence. The Trustmark is now present in 260 websites representative of eCommerce and Interactive advertising. According to those involved with the mechanism, the consumer awareness of Confianza Online is also growing and a network links Confianza Online to consumer advice offices all over the country.

5.4.9 Sustainability and Reform

Recognising that the privacy of children is a particularly sensitive issue, TRUSTe and other seal systems (e.g. BBBOnline) have begun to focus on the area of breaches of children's privacy online. Whilst not directly related to helping to create trust in e-Commerce environments but rather on requiring sites that collect and use information from children under the age of 13 to follow certain guidelines, these child-specific initiatives are an attempt to address increasing concerns of users. Furthermore, they may be seen in the context of further government intervention in this area as with the US Children's Online Privacy Protection Act (COPPA).

TRUSTe in particular is also expanding its activities toward the Software Download market providing assurances to increase confidence that downloaded software is what is purports to be (addressing the question of trust as it relates to 'spyware', 'adware' and other forms of software that may or may not contain 'malware'). The exact nature of this arrangement is not clear and some have surmised that this may be some form of revenue sharing deal with TRUSTe cross promoting its programs with other commercial companies however, this has not been clarified.

Confianza Online has not changed its scope as it was only recently founded. Furthermore its remit, dictated by the new legal text (from which flows the rules of the Code of Conduct) encompasses mobile devices (SMS, MMS traffic) in addition to the Internet (although not voice).³⁴³ Although fax transmissions are excluded digital television (due to its interactive nature) is included. However, substantive changes and developments have been driven by a legal change in the Spanish law (chiefly a major evolution in 2005) which transposed the eCommerce Directive.

5.4.10 Evaluation

Some key dynamics can be identified from observation of how seals operate to inform an evaluation of their effectiveness. A number of computer scientists have evaluated the effectiveness of trust-marks in the widest sense of the word, asking questions as to if consumers actually read the privacy policies and understand what the label is representing.³⁴⁴

Development of privacy seals is a response to the threat of legislative intervention. However, in the face of continued privacy breaches (e.g. with the US Toysmart case), the drop in seal applicants might be seen as an indication that companies see legislation as inevitable and therefore the benefits of obtaining a seal are not all that great. This will have an undoubted impact for the long term future for trust-marks.

³⁴³ Interview with Marta Ayed, General Manager, Confianza Online 20th Sept 2007

³⁴⁴ Moores, T. Do Consumers understand the Role of Privacy Seals in eCommerce? Communications of the ACM Vol. 48 No. 3 March 2005

A criticism that has been levelled at trust-mark systems as a mechanism for filtering is the fact that privacy policies are often written in complex legal language incomprehensible to the average consumer. This is related to the conceptual basis of trust-marks and whether their role is to illustrate that the company adheres to good privacy practices or merely conforms to its own policy (which may still elucidate the widespread transmission of sensitive personal information amongst partner companies and third parties). This leads to a greater question of whether seals are self-perpetuating the poor privacy practices of companies. US privacy advocacy group the Electronic Privacy Information Center (EPIC) propose that companies should do business without obtaining personal information in such great quantities.³⁴⁵ Privacy seals and trust-marks can be seen as a way of legitimising such behaviour effectively telling the consumer: ‘we will use your personal information anyway – the seal merely shows that we are doing so in a manner consistent with a policy’. Some have indicated that those running trust-marks and seal systems such be looking to aim higher than just managing behaviours already in existence and instead focus on encouraging companies to find ways of doing business using less or no sensitive personal information or personally identifiable information.

Despite dissatisfaction with TRUSTe due to the fact it is seen as toothless and its policies are regarded as unenforceable³⁴⁶ there has been no significant evaluation of the operation of the organisation as a whole, nor any widespread representative longitudinal evaluation of the effectiveness of the seal systems (merely a number of studies conducted as to the perceptions of the seal system against others).³⁴⁷ Similarly with Confianza Online, there has been no published evaluation of the operation of the system although it may be assumed that the organisations that receive the Annual Reports conduct some form of assessment of the outputs against the operation of the organisation itself.

5.5 London Action Plan against spam

London Action Plan Against Spam: LAP

Researchers: Ian Brown/Chris Marsden

LAP was founded in 2004, with leadership by the UK Department for Trade, OECD Anti-Spam Toolkit, and US Federal Trade Commission. 27 countries joined initially, and membership also includes corporations and intergovernmental bodies. It works as a legally extremely informal mechanism that focuses on building trust between enforcers – data protection and other anti-spam consumer agencies. Government agencies contribute (small amounts of) resource in kind to fund the ‘virtual’ secretariat and website. Companies are encouraged to sponsor events but have so far refused to provide any larger resource. The overall lack of resource means even basic metrics are not monitored or evaluated. It has led to greater enforcement interest in a multi-stakeholder holistic approach, and broader forms of malware, including Denial of Service ‘zombies’.

³⁴⁵ Hoofnagle, C., J., Privacy Self-Regulation: A Decade of Disappointment Electronic Privacy Information Center (2005) available at:

<http://www.epic.org/reports/decadedisappoint.html>

³⁴⁶ See Wired.com Just How Trusty is TRUSTe? <http://www.wired.com/techbiz/media/news/2002/04/51624>

³⁴⁷ Kim, D.J., Steinfeld, C. and Lai, Y., Revisiting the role of Web Assurance Seals in Consumer Trust ICEC’04 Sixth International Conference on eCommerce ed.

Marijn Janssen, Henk G. Sol and Rene Wagenaar

Table 41: Summary of LAP Case Study

Was there a government mandate initially?	Yes
What kind of government involvement is there?	Sharing of best practice, hosting of meetings, monitoring, liaison and evaluation of sector – growing membership
Which other stakeholders are involved and how?	Commercial security firms
How is transparency ensured?	Web publication of rules, website and other efforts
What is the enforcement mechanism, is it effective, at what cost?	Cooperation mechanism
What is the relative size of administrative burdens?	Very low but no dedicated resource
Is financial independence assured/how?	No.
Which internal factor most impacts success?	Resource dedication by individual agencies especially leading members e.g. US and UK
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: Continued enforcement interest. Market/technology: potential new initiatives to help abate problem.
Lessons for European policy	New type of cooperation in technocratic arena– but is it applicable to other areas? Relationship to ENISA. Dynamic coalitions in IGF may prove a testing ground for wider application of model.

5.5.1 Interests and Policy Needs

The security threats from spam, viruses and Denial of Service (DoS) attacks, mean the public Internet is fragmenting fast, with firewalls driving a segmentation of the public Internet³⁴⁸. The techno-economic arguments for faster progress in Internet development relies on development of the logical layer – the Internet protocols. The need for a halt to the levels of viruses, Trojans and particularly hijacked networks of Personal Computers (PCs) is immediately apparent³⁴⁹. The Cambridge-MIT Institute's Communications Research Network (CRN) Denial of Service Working Group (DOS WG)³⁵⁰ has discovered that the strength of distributed DOS networks has reached the millions³⁵¹, in the case of a 2005 Netherlands-based hacker who was prosecuted. The estimates for the percentage of email that is spam are in the 55-75% range, roughly that of postal mail in Anglo-Saxon countries³⁵². However, this is generally pre-filtered by Internet Service Providers (ISPs), with 80% of all email sent to AOL members removed as spam in

348 This is despite earlier predictions that open source software and more global standards could maintain progress in interoperability. See Crowcroft, J. and Philips I. (2001) TCP/IP & Linux Protocol Implementation: Systems Code for the Linux Internet, Wiley & Co.; see also Eltzroth, Carter (1999) E-Commerce: Open for Business, Study on the Classification of Standardisation Requirements in Electronic Commerce for World Bank and the European Commission DG MARKT

349 For definitions, see Edwards, Lilian (2005) Chapter 2 in Edwards, L. (ed) (2006) The new Legal Framework for E-Commerce in Europe, Hart Publishing, Oxford, at <http://www.hart.oxi.net/pdf/1841134511.pdf>

350 See <http://www.communicationsresearch.net/dos-resistant/>

351 Estimates vary from 1.5-3million PCs infected and linked in the largest DDOS network yet discovered. Source: emails within CRN DOS WG on file with the author.

352 Australia Post reports that over half of all postal mail in the US and UK is 'promotional' mail, compared to only 15% in Australia, reflecting very wide differences based on national direct marketing maturity and consumer acceptance: Australia Post (2005) Annual Report 2004 at http://www.auspost.com.au/annualreport2004/lett_direct.asp

2005. In Anglo-Saxon countries, with highly efficient spam filtering systems in place, spam concerns peaked in late 2003 and have since subsided³⁵³. Of continued and rising concern are the more sophisticated types of Internet crime, especially those involving distributed attacks using ‘hijacked’ PCs.

Most sectors of the information infrastructure are privately owned and cannot be controlled by governments deciding what levels of connectivity or security should be available. Companies and individuals ultimately decide what levels of broadband speed they want, and the risk they will tolerate, and thus what level of security “interference” they are prepared to accept, as well as broadband speed for which they will pay.

International bodies such as the International Chamber of Commerce, Organisation for Economic Co-operation and Development, European Union, Council of Europe and G8 can also encourage shared approaches and solutions where markets cannot provide on their own. The WSIS, as well as its forerunner the Digital Opportunities Taskforce (2002), and the Global Alliance for ICT and Development are also engaged in ensuring that multi-stakeholder discussions take place around these vital issues. As broadband networks and their security form the basis for the networked ICT applications that drive the Information Society, it is unsurprising that the governance of these networks is increasingly a subject for a broader public policy debate.

Although the Internet and its associated information infrastructure is clearly a global phenomenon, it is uniquely vulnerable in local ways, for instance because it is end-to-end and anonymous – a virus attack uses the same powerful properties of the Internet that make its other uses so compellingly beneficial. Network security requirements at European level must be implemented in national law. They impose costs on the network in addition to existing costs for spam filtering and protection against Distributed Denial of Service (DDoS) attacks, phishing and other crimes that Internet Service Providers typically incur in order to protect their subscribers from the worst excesses of Internet traffic. Businesses also have an internal responsibility to keep data they use, in whatever form, safe and secure. If not managed properly, the risks stemming from poor data security practices and global vulnerabilities as described above serve to undermine trust and confidence in the Internet. This is a growing problem as dependence on broadband (as a key element of the critical information infrastructure) grows and as ICT moves towards pervasive computing, and the ‘Network of Things’ (ITU 2005). There is an escalating ‘arms race’ as attack and opportunistic behaviour become more sophisticated (Brown 2006).

The responses are a mix of technological and ‘soft’ strategies, developed and deployed at both individual enterprise and wider levels. These include protected ‘walled garden’ environments with users kept safe behind their ISP’s ‘firewall’ or even the national ‘Great Firewall of China’, and the security of corporate Virtual Private Networks. A potential loss of Internet openness and end-to-end connectivity is one potential casualty of security concerns. Another is privacy, which in some ways is the mirror of security. There are differences between the developed and developing world, which are significant both in terms of the coherence and pace of technological development and because these worlds interact strongly (with hackers residing in Ukraine or North Korea, for example, while

³⁵³ See AOL Time Warner (2005) Press Release http://media.timewarner.com/media/newmedia/cb_press_view.cfm?release_num=55254499 at 28 December.

spammers use the hijacked computers to send spam from Florida).

Addressing this problem is not within the powers of any one sector or organisation. Solutions require public and private organisations to collaborate with each other and with citizens. Industries and businesses have the technical and organisational scope to change produces, services and processes. The state has the power to regulate areas of life and business. The citizen, too, can take some responsibility. For instance, the main source of vulnerability to DDoS attacks is unprotected home computers connected to high speed, always on broadband links. Resolving this requires a mix of consumer responsibility (keeping computers protected and up to date), industry action (for example, Internet Service Providers using methods to mitigate the effects of such attacks), and government action (adjusting criminal law to make such activities punishable, and trying to ensure robust enforcement).

5.5.2 Design & organisation of the Institution

The London Action Plan has influenced and been influenced by the design of co-regulatory regional anti-spam initiatives. In 2005 regulators from nine Asia-Pacific countries along with three industry associations signed the Seoul–Melbourne Anti Spam Memorandum Of Understanding. This set up a structure with very similar aims and procedures as the LAP, including information sharing, points of contact and regular online and physical meetings (Duffy 2007c).

Duffy (2007a) summarised the problems that led to the Plan as follows:

- Governments are faced by a fast-changing, global Internet that in turn is speeding up the process of globalisation.
- The Internet has no borders, border patrols or single laws.
- Spam and related problems have demonstrated the limits of national law and law enforcement.

The Plan builds on anti-spam work by the OECD Spam Task Force, the International Telecommunications Union (ITU), the European Union (EU), the International Consumer Protection Enforcement Network (ICPEN), and the Asia-Pacific Economic Cooperation (APEC). Participants met in London on 11 October 2004 to discuss international collaboration, publishing an initial agreement (FTC 2004) and opening it for signature by other anti-spam entities. Plan members are keen to maintain the flexible nature of their cooperation, rather than developing a more political treaty-based approach.

5.5.3 Inputs

The London Action Plan (LAP) on International Spam Enforcement Cooperation is an agreement between public agencies from 27 countries concerned with reducing unsolicited commercial e-mail messages. It includes data protection authorities, telecommunications regulators and consumer protection bodies. Companies such as Telefonica, Microsoft and the London Internet Exchange also participate.³⁵⁴

The London Action Plan secretariat is hosted by the UK Office of Fair Trading and the

³⁵⁴ A full list of participants is at <http://londonactionplan.org/?q=node/5>

US Federal Trade Commission, and is contactable by e-mail. The Plan has no formal budget. Participating organisations' staff undertake activities on a best-efforts basis. As an example, there are between 10—15 people across the UK government with some involvement in the Plan (Sahel 2007). In general each participating agency has two members of staff involved. They also provide resources to host meetings and conferences.

Table 42: Members of London Action Plan at August 2007

Europe	General Inspectorate for Consumer Protection of Hungary Hungary Department of EU Coordination Hungary Directorate of Informatics Regulation Danish Office of the Consumer Ombudsman Finnish Consumer Agency and Ombudsman Ireland Data Protection Commissioner Latvia Consumer Rights Protection Centre Lithuania Communications Regulatory Authority UK Office of Fair Trading UK Information Commissioner Office (ICO) UK Ofcom UK Department for Business, Enterprise and Regulatory Reform Swiss State Secretariat for Economic Affairs SECO Swiss Ministry of Transportation and Communications Norwegian Consumer Ombudsman Spanish Data Protection Agency Swedish Consumer Agency/Consumer Ombudsman IFAP (Russia) European Commission DG Information Society and Media
Americas	Industry Canada Office of the Privacy Commissioner of Canada US Federal Trade Commission Mexico: Procuraduria Federal del Consumidor Mexico: Comision Federal de Telecomunicaciones Chile National Consumer Service (SERNAC)
Asia	Japan Ministry of Internal Affairs and Communications Japan Fair Trade Commission (JFTC) Korean Information Security Agency (KISA) Korea Consumer Protection Board China: Union Network Beijing Internet Society of China Malaysia National ICT Security and Emergency Response Centre (NISER) Malaysia Communications and Multimedia Commission Malaysia National ICT Security and Emergency Response Centre (NISER) Taiwan Network Information Center Taiwan Independent Post & Telecommunication Authority

Oceania/ Africa	Australian Communications & Media Authority (ACA)
	Australian Competition and Consumer Commission (ACCC)
	Nigeria Economic and Financial Crimes Commission
International	OECD/DSTI
	UNESCO
Corporate and Non-Governmental Bodies: Spammatters; Federation of European Direct and Interactive Marketing; LACORS; VIRCOM; Germany ECO; Hong Kong Outblaze Limited; Malaysia Digi.com; Verizon Online; Latham & Watkins LLP (for AOL); Telefonica; APCAUC; CAUCE; IPOS; UK LINX; ISPA UK; Nominet UK; Wanadoo UK plc; MessageLabs; Checkbridge; The Spamhaus Project; Microsoft EMEA; Chilean ISP Association (API); Santiago Chamber of Commerce	

5.5.4 Activities

The Plan's aim is "to promote international spam enforcement cooperation and address spam-related problems, such as online fraud and deception, phishing, and dissemination of viruses." (FTC 2004).

Each participating government agency agrees to nominate a point of contact for enforcement communication, and to encourage communication across national government on this issue; to take part in quarterly conference calls; and to support the involvement of less developed countries. Private sector representatives similarly agree to nominate a point of contact; encourage cross-industry communication; report into select conference calls; and assist in training. Companies invited to participate include "financial institutions, Internet service providers, telecommunications companies, information security software providers, mobile operators, courier services, commercial mail receiving agencies, industry membership organizations, consumer organizations, payment system providers, credit reporting agencies, domain name registrars and registries, and providers of alternative dispute resolution services." A new company participant may be vetoed by a member agency (FTC 2004).

5.5.5 Enforcement

The LAP acts as an informal mutual legal assistance mechanism. It builds trust between participants as they exchange information about spam, helping government agencies to shut down foreign sources of spam (Sahel 2007). Governments receive information on the effects of legislation, new threats and the results of their efforts. Businesses share data and experience (de Natris 2007).

5.5.6 Outcomes

Members of the Plan have recently held teleconferences every two months, and met for the fourth time in Washington DC in October 2007 (de Natris 2007). Current agency participants are from Australia, Belgium, Canada, Chile, China, Denmark, Finland, Hungary, Ireland, Japan, Latvia, Lithuania, Malaysia, Mexico, the Netherlands, Nigeria, Norway, South Korea, Spain, Sweden, Switzerland, Taiwan, the United Kingdom and the United States. Private sector participants are from Australia, Belgium, Canada, Chile, China, France, Germany, Hong Kong, Malaysia, Spain, the United Kingdom and the United States. There are observers from Belgium, France, Russia and the United Kingdom.

5.5.7 Outcomes

The London Action Plan has been successful in building cooperation across its participant nations and shutting down significant spam sources; but its members do not keep detailed statistics. Developing trust across governments and the private sector is a key goal. Duffy (2007a) summarised the main benefits of the Plan so far as follows:

- Enforcement personnel are put into direct contact with each other.
- Government participants gain valuable information on the effects of law, needs of enforcement agencies, statistics on problems, new threats and the results of enforcement activity.
- Private business shares data and experience on the problem and responses.

Members have also cooperated with the OECD on a survey of malicious software and the value chain behind organised crime involvement in online scams. This included pinpointing the actors involved and how they communicate, giving some options by which law enforcement agencies can disrupt these activities (Sahel 2007).

5.5.8 Sustainability and Reform

Plan members are keen to involve other government agencies, Internet Service Providers and relevant parties from around the world in their work. While most governments maintain or sponsor Computer Emergency Response Teams, these do not tend to include policymakers, and hence are not on their own broad enough to cover the work on the LAP in each nation (Sahel 2007).

Further resources would allow the engagement of consultants to undertake work such as surveys of members. Such resources would be more likely to come from private sector participants than government agency members.

Initiatives to tackle spam and related security issues run the full span of the regulatory spectrum, from government-led action, through co-regulatory institutions such as the London Action Plan, to self-regulatory industry groups.

During 2007 the Organisation for Economic Cooperation and Development and APEC are researching an Analytical Report on Malicious Software that will inform the OECD ministerial meeting on the Future of the Internet Economy in Seoul next year. This builds upon OECD-APEC workshops in 2006 and 2007 on the problem. The report will provide information on malware, the malware economy and possible incentives and disincentives in these markets (Carblanc 2007).

The International Telecommunications Union Development sector is carrying out a work program between 2007—2009 to assist developing countries with cybersecurity. As well as specific anti-spam measures this will include more general capacity-building and monitoring initiatives as well as foster regional cybersecurity cooperation (ITU-D 2007).

European data protection authorities meet regularly in the Article 29 Working Party set up by the EU Data Protection Directive, and have collectively developed opinions and recommendations on spam-related subjects, most recently on the adequacy of their enforcement powers within the European legal framework (Art. 29 WP 2006). Many of these authorities are also members of the European Contact Network on Spam

Enforcement, set up by the European Commission (EC 2004), which has further agreed to share information and pursue complaints across member-state borders. The European Network and Information Security Agency (ENISA) has also undertaken a survey of ISPs and regulators on the measures they have taken under the European telecommunications privacy framework (ENISA 2006), which is being repeated during 2007.

The e-crime dimension of the EC is controversial, given acknowledged flaws in the EUROPOL system and the role of the Council of Europe Convention on Cybercrime. Member States including the Slovak Republic have previously criticised the Third Pillar approach (which allows decisions short of consensus, unlike the First Pillar which arguably was more intended to serve as the instrument for pan-EU criminal enforcement) to the Data Protection Directive, and it can be anticipated that more resistance will be offered to the idea of any new cybercrime legislation.

One of the other significant activities at the European level is the Task Force Computer Security Incident Response Team (TF-CSIRT), a Task Force of the Trans European Research and Education Networking Association (TERENA). TF-CSIRT supports the co-ordination of CSIRTs from both private and public organisations across Europe and also runs a number of relevant activities, including the Trusted Introducer program (where existing members of TF-CSIRT can 'nominate' other teams that are not yet members) and the TRANSITS (Training Course for Incident Response Teams). The global FIRST (Forum of Incident Response Teams) has recently signed a Memorandum of Understanding with the TRANSITS programme, to jointly develop the syllabus for CSIRTs and CERTs (TERENA 2006).

More direct regulatory action is being undertaken by government agencies such as the Australian Communications and Media Authority, who recently prosecuted a major spammer that was fined AUS\$4.5m. ACMA's SpamMATTERS reporting facility, which allows members of the public to report spam messages using software plugins for mail software such as Microsoft's Outlook, was used by 207,000 people to report 25m messages in its first year. ACMA have also funded a four-year initiative to report compromised machines to 25 Internet Service Providers (Duffy 2007b).

At the self-regulatory end of the spectrum, the most significant global industry anti-spam and security initiative is the Messaging Anti-Abuse Working Group. MAAWG has over 100 members including ISPs responsible for operating over 750 million mailboxes. The group has developed a number of technical recommendations for its operators such as a code of conduct for message system operators and sender best communication practices (Jones 2007). MAAWG is mirrored by national industry associations such as the Japan Email Anti-Abuse Group, which has 30 company members and 2 government observers and undertakes similar activities to MAAWG at the national level (Sakuraba 2007).

Servida (2007) explains that self regulatory systems do not operate in a vacuum. There needs to be a synergy between regulatory frameworks and self-regulatory systems. This is because of the complexity of pathologies and complexity of the heavily distributed organizational structure of the Internet. Personal internet security is a complex area and very often there is no understanding of the implication of the fact that organizations responsible are not the same as those which suffer the consequences. Self-regulatory systems can achieve the following:

- Awareness raising (amongst the citizen / end user but also across the private sector, in particular SMEs)
- Defining Responsibility – the need for a sort of approach involving the many stakeholders
- Helping to address loopholes in law – awareness of the lack of commonality of and the existence of loopholes in legal frameworks.

He believes that self regulation in the area of personal internet security can assist because this is a rapidly changing area and possible legal loopholes can be exploited by malicious actors, therefore ‘softer’ regulatory measures, which are more flexible, may be very effective in dealing with these challenges. Although self-regulatory systems are industry-driven, they can be helped by the existence of a legal framework – even though they can still exist in the absence of a legal framework (they may not need to have the force of the law behind them to be useful, in particular when they address new problem areas). Addressing the cultural issues is important in self regulatory systems – they must be tailored to the specific cultural considerations which may differ. Co-operation of the private sector is important, but an inclusive approach including other stakeholders should always be pursued. Precisely assigning/ distributing responsibility across the Internet value chain is still an open issue. It may be impossible to value measures such as LAP without an associated enforcement/auditable scheme with metrics. Watchdog systems are another example of a self-regulatory system (other than LAP).

Clayton (2007) suggests that LAP helps deal with trading standards but not hardened criminals. With no resources it is very challenging to catch the major spammers. How do you understand the economic value chain? Spamhaus says there are 200 major spammers when he suggests that for resource reasons the police want to hear that there are “five real monsters”. In fact, he suggests that the majority of ISPs and financial websites conduct their own internal security and investigations to prevent rather more serious problems such as Denial of Service and phishing attacks.

5.5.9 Evaluation

European data protection commissioners and consumer protection agencies lead the work of the London Action Plan. Policy transfer may be achieved by the international comparisons and wider adoption of the public-private partnership model, though it is too early to audit such potential outcomes. As the LAP is not a regulatory organisation but a cooperative venture and has no staff nor reported activities beyond conferences and best practice sharing, information to support evaluation is likely to be intergovernmental and confidential.

5.6 Internet Governance Forum

Internet Governance Forum

Researcher: Adam Peake

The Internet Governance Forum is an annual United Nations-convened multi-stakeholder summit, with no members, and no formal decision making. There is much cynicism as to its real political impact. Its mandate grew out of the World Summits of 2003 and 2005, and a five year mandate from the Secretary General for 2006-2010:

Athens, Rio, New Delhi, Egypt, and Eastern Europe. The funding is by corporate and state (Swiss, UK, hosts) supporters, but the secretariat is severely under-funded. It has been described as an 'exemplar' of multi-stakeholder representation in the presence of the Congress of Non-Governmental Organisations (CONGO) despite these shortcomings. The role of experts is increasingly reflected in new Dynamic Coalitions. With the second IGF just completed, evaluation is on an event-by-event basis.

Table 43: Summary of IGF Case Study

Was there a government mandate initially?	Yes
What kind of government involvement is there?	United Nations summit with 5 year mandate and major host countries – growing membership
Which other stakeholders are involved and how?	Commercial and civil society groups
How is transparency ensured?	Web publication of rules, website and other efforts
What is the enforcement mechanism, is it effective, at what cost?	Cooperation mechanism – enhanced cooperation untested
What is the relative size of administrative burdens?	Very low but no dedicated resource
Is financial independence assured/how?	No. Dependent on host country and other variables
Which internal factor most impacts success?	Resource dedication by participants, goodwill of governments
Which external conditions impact success/failure (e.g. competitive situation, technology, etc)?	Governmental: Continued interest. Market/technology: relevance and perceived need to participate in Summit. Civil society: perceived usefulness of Dynamic Coalitions and process.
Lessons for European policy	New type of discussion forum, but unclear that it has any regulatory effect beyond sharing of practice with developing countries and private sector-civil society. Dynamic coalitions in IGF may prove a testing ground for wider application of model.

5.6.1 Interests and Policy Needs

The Internet Governance Forum (IGF) was created as a new arena for multi-stakeholder dialogue about Internet-related international public policy issues. These issues include, inter alia, critical Internet resources, the security and safety of the Internet, and developmental aspects and issues affecting the use of the Internet. The IGF has the potential for significant 'soft power', but does not, as yet, have a direct self-regulatory or co-regulatory impact.

The IGF was an outcome of the World Summit on the Information Society (WSIS), a pair of United Nations global summits on Information and Communication Technology (ICT) issues. The first phase of the WSIS process culminated in a Summit held in Geneva in December 2003, which created a common vision and declaration of principles of the information society and a plan of action for building an inclusive development-oriented information society. The second phase focused on refining and implementing the plan of action and addressing unresolved issues from Geneva, with a Summit held in Tunis, November 2005.

WSIS clearly identified the Internet as essential to economic and social activity and

development, and Internet governance as a central element of information society. However, governments and other stakeholders could not agree about their respective roles in Internet public policy issues, or about control over the Internet's core resources. The IGF was an outcome of the Tunis Summit as part of a consensus-based solution to a very heated debate. The IGF is a compromise that allowed the Summit to proceed and for discussion to continue.

WSIS made two key recommendations on Internet governance of particular importance to the IGF. First it provided a set of principles, known as the Geneva principles on Internet governance, or simply Geneva principles, that have become a touchstone when considering Internet governance processes, these principles state: "The international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations. It should ensure an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet, taking into account multilingualism." These are foundation of the multi-stakeholder principles that give IGF its organizational characteristics.

Second, WSIS produced a definition of Internet governance as "the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet."³⁵⁵ This broad definition defines the scope of the IGF in addressing all Internet-related public policy issues.

Internet Governance became the primary focus of the Tunis phase of WSIS. Negotiations in the preparatory process (PrepComs) were difficult, with developing nations in particular concerned that oversight of critical global resources by one government, the United States, was inappropriate. Disagreements ran so deep as to threaten Summit participants' ability to agree on the final outcome documents. Negotiations on the most contentious parts of the Tunis documents continued to the eve of the Summit and in the end a compromise emerged with a two-part proposal:

1. Creation of a dialogue for "enhanced cooperation", taken to mean the creation of a process to allow governments to take a more active role in the public policy issues related to the management of critical Internet resources, i.e. ICANN and matters relating to the domain name system, and
2. Creation of the Internet Governance Forum (IGF) as a place for multi-stakeholder dialogue on Internet policy issues. The IGF should be a global multi-stakeholder forum to address Internet-related public policy issues with an emphasis on dialogue rather than decision making. It should be open to all stakeholders on an equal footing, and particularly foster the full participation of developing nations. The IGF should be non-duplicative and adopt a lightweight organizational structure based on open consultations and multi-stakeholder participation.

³⁵⁵ Early discussions about Internet governance in WSIS focused on issues around Internet names and numbers, and activities of the Internet Corporation for Names and Numbers, ICANN, and role of the US government in oversight of these functions.

5.6.2 Design and organization of the Institution

The IGF was created as a new space for dialogue all Internet governance-related issues place for multi-stakeholder dialogue on Internet policy issues.

The Tunis Agenda provides the following text about the creation and mandate of the IGF, paragraph 72 reads:

"We ask the UN Secretary-General, in an open and inclusive process, to convene, by the second quarter of 2006, a meeting of the new forum for multi-stakeholder policy dialogue -- called the Internet Governance Forum (IGF). The mandate of the Forum is to:

- a) Discuss public policy issues related to key elements of Internet governance in order to foster the sustainability, robustness, security, stability and development of the Internet.
- b) Facilitate discourse between bodies dealing with different cross-cutting international public policies regarding the Internet and discuss issues that do not fall within the scope of any existing body.
- c) Interface with appropriate intergovernmental organizations and other institutions on matters under their purview.
- d) Facilitate the exchange of information and best practices, and in this regard make full use of the expertise of the academic, scientific and technical communities.
- e) Advise all stakeholders in proposing ways and means to accelerate the availability and affordability of the Internet in the developing world.
- f) Strengthen and enhance the engagement of stakeholders in existing and/or future Internet governance mechanisms, particularly those from developing countries.
- g) Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations.
- h) Contribute to capacity building for Internet governance in developing countries, drawing fully on local sources of knowledge and expertise.
- i) Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet governance processes.
- j) Discuss, inter alia, issues relating to critical Internet resources.
- k) Help to find solutions to the issues arising from the use and misuse of the Internet, of particular concern to everyday users.
- l) Publish its proceedings.³⁵⁶

The IGF's mandate is potentially very broad. With the inclusion of access and affordability and misuse of the Internet it even expands on the definition of Internet governance adopted in the Tunis Agenda.

The IGF is unfunded, is convened by the Secretary General adjunct to any formal UN process so it does not have priority access to UN resources such as interpreters and meetings rooms, yet fulfilling the mandate potentially involves a great deal of work. It is also as notable for what the Tunis Agenda says it should not do as much as what it should:

³⁵⁶ "Tunis Agenda for the Information Society", outcome document of the Tunis phase of the World Summit on the Information Society, November 2005.

The IGF "would have no oversight function" and would not replace any existing arrangements or entities, it should be a neutral, non-duplicative and non-binding process. It will have no involvement in day-to-day technical operations³⁵⁷. In terms of outcomes, the forum's mandate simply says it will publish its proceedings, it may only make recommendations regarding emerging issues and then only "when appropriate". It will be subject to periodic review and the desirability of continuing the forum should be reviewed within five years of its creation.

IGF was clearly created to be a forum for public expression and discussion, not deliberative body, and not to replace any existing agency, or to take on governance powers of its own.

The Tunis Agenda required the IGF to be convened in an "open and inclusive process". This has been achieved through a repeated pattern of public calls for contributions followed by public meetings. The process evolves when first a set of issues or problems that need to be considered are identified, a call for comments on these matters is then published and a consultation held to discuss the contributions and other ideas. The first consultation included inviting public comments on the nature, character and structure of the IGF, on its substantive priorities and how to organize the first meeting. In consultations held to date all stakeholders, including individuals, had the right to speak and contribute as equals.

The Tunis Agenda instructed the Secretary-General to "establish an effective and cost-efficient bureau to support the IGF, ensuring multi-stakeholder participation". This "bureau" would help the Secretary-General in convening the IGF, and in early consultations many referred to it as a programme committee. The lower case "b" in "bureau" used in the Tunis document was deliberately used to emphasize that the concept being suggested was not an intergovernmental "Bureau" as typically understood when used in the UN system³⁵⁸.

In May 2006, the Secretary General announced he had established an Advisory Group to assist him in convening the Internet Governance Forum. Decisions about how to prepare future meetings and future structure and working methods of the IGF would be taken in light of experiences gained during the preparatory process for the Athens meeting, the Advisory Group's mandate was limited to the Athens meeting.

The original Advisory Group had 47 members from all stakeholder groups, including a large number representing the Internet technical community³⁵⁹. Governments remained the single largest stakeholder with approximately 50% of membership. The Internet community had slightly greater representation than civil society and the private sector, however, during the WSIS private sector and Internet community interests had been very much aligned and they continued this close cooperation in the IGF and Advisory Group. Consequently, civil society's participation in the Advisory Group can be considered low

357 Para 77, Tunis Agenda *ibid*

358 In the UN system a "Bureau" is inward looking structure in that it encourages each stakeholder group to develop positions which are then fixed negotiating points when meeting with the other stakeholders. As a result there is less room for discussion and a typical Bureau structure can be considered the opposite of the intended opportunity for dialogue among all stakeholders that was the motivation behind the creation of the IGF. However, a Bureau structure would be easier for some governments to engage with, there is a tradition of how to involve the main geopolitical groups of countries in Bureaus, and the structure favours governments as they tend to have the final negotiating rights in them.

359 This was the first time the Internet's operators and creators had been recognized as a unique stakeholder group in the UN system.

compared with that of other interests.

The Secretary General also appointed an Advisory Group Chairman, who in turn appointed five special advisors to assist him in his work. These "special advisors" participate as full members of the Advisory Group. When Brazil, as the host country of the 2007 IGF meeting became co-chair in August 2007, the Brazilian chair appointed seven "special advisors", all Brazilians, all of whom participate in the Advisory Group. This significant increase in the number of government appointed Advisory Group members, particularly as Brazilian members are taking an active role in substantive discussions not just logistical issues as the government of Greece did during the 2006 IGF process, raises questions about multi-stakeholder balance in the group.

There is no formal process to decide the location of IGF meetings. During final negotiations of the Tunis Agenda the government of Greece volunteered to host the first meeting, Brazil, India, Egypt, Lithuania and Azerbaijan later followed³⁶⁰. Their offers were gratefully accepted, hosting the meeting is expensive and time consuming. However, if the host is to have a direct influence on substantive issues of the meeting, particularly the agenda and any outcomes, then the ad-hoc process for selecting the host nation may need to be reconsidered.

The Advisory Group's role is to agree on the themes, format and speakers for the meetings, members have also worked on logistical issues. The group was not created as an executive body, its recommendations should reflect stakeholders' views expressed during consultation processes. All final decisions regarding "convening" of the IGF meetings rest with the Secretary General.

5.6.3 Inputs

Secretariat of the Internet Governance Forum (IGF), Palais des Nations, CH-1211 Geneva 10, Switzerland.

Advisory Group Co-Chairmen:

Mr. Nitin Desai United Nations Secretary-General's Special Adviser for Internet Governance

Mr. Hadil da Rocha Vianna, (for the IGF 2007 host country) Minister, Director for Scientific and Technological Affairs, Ministry of Foreign Affairs, Brazil

The IGF is supported by a small secretariat, which has a core of two staff and relies heavily on consultants and interns posted from other organizations interested in Internet governance issues. The secretariat is held in high regard by stakeholders and seen as one of the reasons for the IGF's successes to date. The secretariat is severely under funded. Secretariat Staff: Markus Kummer, Executive Coordinator; Chengetai Masango, Consultant

Administrative support is provided by consultants, usually around the time of public

³⁶⁰ Lithuania and Azerbaijan have both bid for the 2010 meeting, no decision has been made on which will be successful.

consultations and other meetings as required, and by interns posted to the Secretariat as available.

The IGF has an initial five-year mandate. Dialogue currently focuses around annual meetings convened through a series of open consultations conducted as face-to-face meetings with online input accepted during public calls for contributions. To date all consultations have been held in Geneva. The first IGF meeting was held in Athens, Greece, from 30 October to 2 November 2006. The second IGF will be held in Rio de Janeiro, 12-15 November 2007, future meetings will be organized in India and Egypt in 2008 and 2009 respectively, and the Governments of Lithuania and Azerbaijan have bid for the 2010 meeting³⁶¹.

The IGF is convened by the United Nations Secretary General and meetings are held under the UN flag, but is not organized under formal UN procedures and is adjunct to normal UN activities, does not fall within the UN budget and is not part of the official UN calendar.

The budget of the IGF has not been published, and there is no official record of donations. However, during public consultations in 2006 and 2007 the government of Japan announced it would donate 10 million yen as annual contributions to the Secretariat. During a consultation in 2007, the government of Canada announced it would provide CA\$100,000 to be used to support participation of people from developing nations.

The Secretariat's activities are funded through extra-budgetary contributions paid into a multi-donor Trust Fund administered by the United Nations³⁶².

361 Within five years of the IGF's creation the UN Secretary-General in consultation with IGF stakeholders will examine the desirability of the continuation of the Forum, and make recommendations to the UN Membership in this regard.

362 Details of contributions made to this fund are not known, however the following are known to have made contributions:

Swiss Agency for Development and Cooperation (SDC)

Ministry of Economic Affairs of The Netherlands

Ministry of Foreign Affairs of Norway

Department for Business, Enterprise and Regulatory Reform, United Kingdom.

Internet Corporation for Assigned Names and Numbers (ICANN)

Number Resource Organization (NRO)

Nominet UK

The Swiss Education & Research Network (SWITCH)

The Internet Society (ISOC)

Afilias Global Registry Services

Nic.at The Austrian Registry

UNINETT Norid AS

Coordination Center for TLD RU

auDA Australia's Domain Name Administrator

Siemens Aktiengesellschaft - Communications

NIKKEI DIGITAL CORE

Verizon Foundation

Pledges to the Trust Fund have been made by:

European Union (EU)

Ministry of Internal Affairs and Communication of the Government of Japan

Five public consultation meetings have been held and several hundred substantive written contributions have been received. In addition online discussions where input to the consultations has also been solicited have also been held.

5.6.4 Activities

Progress and events - IGF consultations:

December 2005, open call for contributions on the nature, character and structure of the IGF, its substantive priorities and organization of the Athens meeting.

16-17 February 2006: Open consultations. (Geneva)

31 March 2006: Conclusion of online consultations on issues to be discussed.

18 April 2006: Deadline for submissions for Multi-Stakeholder Advisory Group membership.

19 May 2006: Open consultations on the convening of the IGF in Athens. (Geneva)

22-23 May 2006: IGF Advisory Group meeting. Closed. (Geneva)

7-8 September 2006: IGF Advisory Group meeting. Closed. (Geneva)

30 October - 2 November 2006: Inaugural IGF meeting, Athens, Greece.

12-13 February 2007: IGF stock taking meeting. (Geneva)

23 May 2007: Open consultations to discuss programme and agenda for Rio de Janeiro IGF meeting. (Geneva)

24-25 May 2007: IGF Advisory Group meeting (originally closed, open when membership and mandate of the Advisory Group not renewed by the Secretary General). (Geneva)

20 August 2007, mandate and membership of the IGF Advisory Group renewed.

3 September 2007: Open consultation on the programme and schedule of the Rio de Janeiro IGF meeting. (Geneva)

4-5 September 2007: IGF Advisory Group meeting. Closed. (Geneva)

12-15 Nov. 2007: 2nd IGF meeting, Rio de Janeiro, Brazil

2008: 3rd IGF meeting (India)

2009: 4th IGF (Egypt)

2010: 5th IGF (Lithuania or Azerbaijan)

No record of the number of participants at the open consultations is kept. However the secretariat's records show approximately 300 people representing all stakeholder groups attended the first meeting in February 2006, and 185 registered for the consultation in February 2007, and final attendance was probably 250. Anecdotal comments suggest that attendance at consultations usually number between 200-300 people.

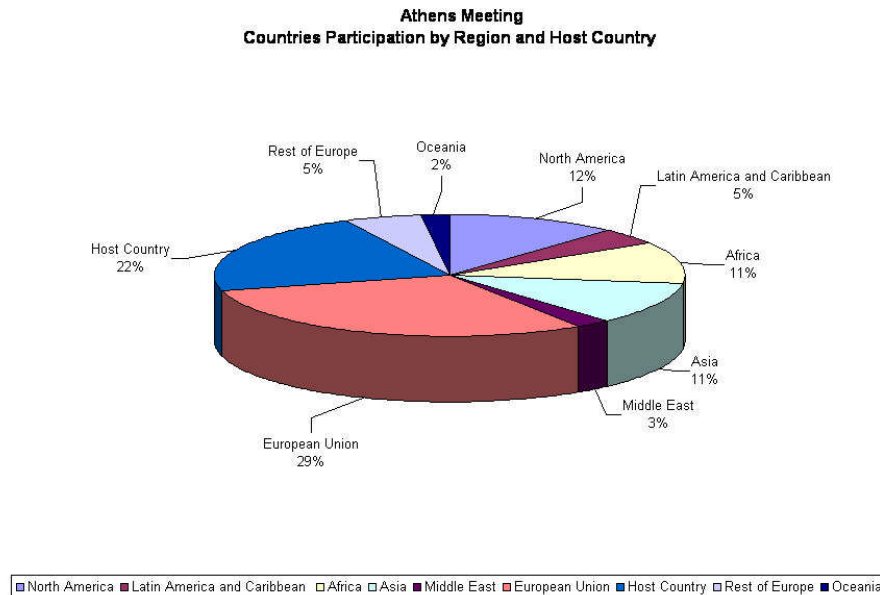
In-kind contributions have been received by:

The United Nations Office in Geneva (UNOG)

Agence Intergouvernementale de la Francophonie- Institut Francophone des Nouvelles Technologies de l'Information et de la Formation (INTIF)

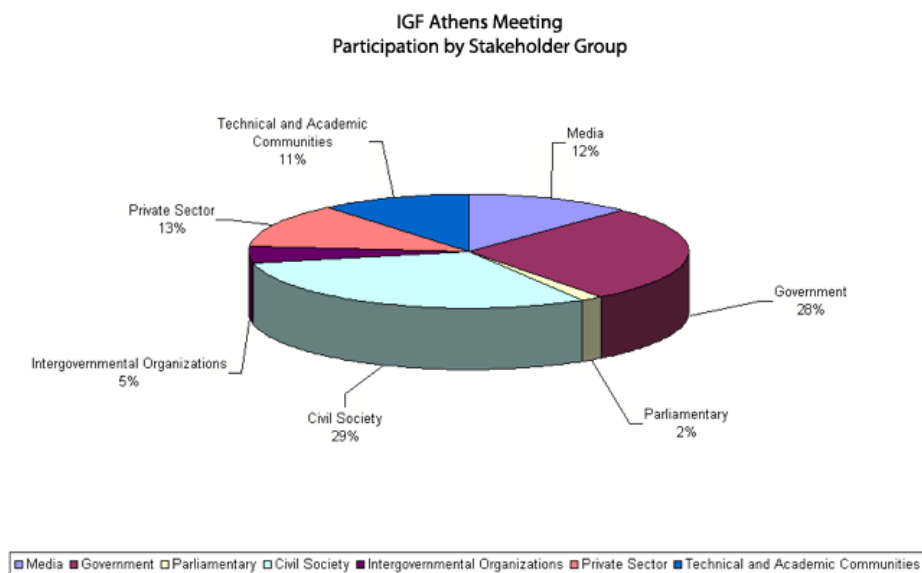
Approximately 1350 people attended the first IGF meeting in Athens.

Figure 28: Athens Meeting Attendance by Region and Host



Source: IGF secretariat

Figure 29: Athens Meeting Participation by Stakeholder Group



Source: IGF secretariat

It should be noted that standard evaluation of conflicts of interest do not necessarily work in multi-stakeholder activities – many consultants work for non-profits, for corporates, and for government in various capacities. Carr (2007) is a case in point, having worked for End Child Prostitution and Trafficking (ECPTA) International as pro bono advisor and also

for MySpace and other commercial interests. In his ECPTA capacity, he wrote a theme paper for the Child Safety World Congress in Yokohama in 2001. He states that

“there are substantial resource implications for civil society ... if National Children’s Homes had not paid me as a consultant, it would not have been possible to have the wherewithal to do this.”

He originally registered as an individual stakeholder in the ICANN process³⁶³. He understands the dilemma governments face in dealing with consumer or citizen groups: “How can they represent the world? That’s what governments are for.” He argues that this can be overcome but that this requires “some notion that they represent something substantial, not just crackpots”. He himself is represented on international regulatory fora as Chair, Children’s Charities Coalition on Internet Safety, a coalition of nine independent charities in the UK. As a result he has to agree policy positions with the nine charities’ representatives in order to present them as ‘official’ policy. Audit of all civil society representativeness of their claimed stakeholder position may not be at all feasible, but the example demonstrates the legitimacy and transparency civil society stakeholders can bring to the fora.

However, resource implications in attending for instance the IGF are very challenging even for established civil society stakeholders from developed countries. Carr states that child safety groups ensured coverage of their concerns in the 2005 Tunis declaration, but child protection vanished from Athens conclusions, where the “reason was very very clear – there were no budgets for child protection organisations to go to Athens”. This is a continual resource issue. Remote participation is no substitute in his view:

“simultaneous webcasts not in any way a satisfactory way to participate in policy making procedures ...if you’re not there, you’re not on the agenda – the children’s reps are not there.”

The IGF meeting in Athens addressed four important but non-contentious issues, Openness, Security, Diversity and Access. The atmosphere at the end of the meeting was positive, people felt they had participated in a successful and valuable new event. However, in a consultation held in February 2007 to evaluate the Athens meeting and process that convened the meeting, many participants emphasized that while it was a successful first step, in the future the IGF should become more results oriented and adopt modalities more in keeping with typical UN meetings.

Disagreements were by and large put aside during the first year, but surfaced again once that initial experiment was over. The IGF was created out of a spirit of compromise, but the issues that caused severe disagreement before its creation remain just as contentious today. As a relatively new organization with this unstable background the future of the IGF and its development is difficult to predict.

During the preparatory process for the Athens meeting the host country government, Greece, limited most of its activities to logistical matters. The Greek government was a member of the Secretary General's multi-stakeholder Advisory Group providing him with advice on convening the meeting, but acted as a member equal with other stakeholders

³⁶³ His understanding is that initially ICANN assumed that consultants were a front for business, not the consumer.

with only one representative participating in the group of 47 people. In the late spring and summer of 2007 the influence of the host government increased significantly when the government of Brazil, host of the 2007 IGF, accepted the role of co-chair of the Secretary General's Advisory Group and the number of individuals participating from the host country increased from one to eight. Brazil has become involved in substantive matters relating to the content or organization of the forum suggesting government stakeholders may overtime become the senior partner in this multi-stakeholder partnership.

5.6.5 Enforcement

The IGF does not produce regulations, standards or other forms of advice. Discussions during recent consultations have suggested that it should make recommendations in the future, however this is the subject of significant disagreement among stakeholders and is unlikely to be easily resolved.

The IGF is open to any entity or individual wishing to contribute. All substantive written submissions sent in response to calls for contributions are recorded on the secretariat's website. Participation in meetings is open to all entities accredited for the World Summit on the Information Society. Other institutions and persons with proven expertise and experience in matters related to Internet governance may also apply to attend.

Internal Management structure:

When the Secretary General renewed the Advisory Group's mandate in August 2007 it was asked to enhance the transparency of the IGF preparatory process by ensuring a continuous flow of information between its members and the various interested stakeholder groups. The Advisory Group was also requested to make proposals on a suitable rotation among its members, based on recommendations from the stakeholder groups involved.

5.6.6 Outputs

Discussions about Internet governance in WSIS resulted in the creation of the IGF and a process on enhanced cooperation. To date enhanced cooperation has been considered a parallel and separate activity from the IGF, however over the coming months this may change as a process overseen by the United Nations Economic and Social Council (ECOSOC -- and the ultimately the UN General Assembly) monitoring progress of all WSIS related activities has requested the UN Secretary General to report on enhanced cooperation by May 2008.

Enhanced cooperation was not clearly defined by Tunis documents, but is generally understood to mean the creation of an intergovernmental process to allow governments to take a more active role in the public policy issues related to the management of the Internet's logical infrastructure and resources, i.e. ICANN and matters relating to the domain name and root server systems³⁶⁴. Defined in this way, enhanced cooperation was and remains the most contentious issue of the Internet governance debate.

To date, the lack of specificity in the Tunis documents as to what should be done by the Secretary General to start a "process towards enhanced cooperation" has meant that very

³⁶⁴ para 71, Tunis Agenda *ibid*.

little has actually been done, much to the frustration of many developing country governments. However, with ECOSOC requesting a report on progress by May 2008, some process towards enhanced cooperation can be expected to start before the end of 2007.

The Commission on Science and Technology for Development (CSTD) organizes annual WSIS reporting meetings for ECOSOC. These meetings are intergovernmental and only allow limited participation by non-government actors. Civil society and the private sector have requested that enhanced cooperation be discussed in a multi-stakeholder process with the full involvement of all stakeholders, not under usual CSTD rules and procedures. While neither stakeholder wants enhanced cooperation brought within the scope of the IGF, if such discussion is to be multi-stakeholder then the IGF may be seen as the logical home for it. The creation of a second multi-stakeholder discussion process seems unlikely when the IGF already exists. Combining discussion of enhanced cooperation with the IGF process would greatly expand the forum's role and potential influence.

5.6.7 Outcomes

The IGF meeting in Athens was broadcast over the Internet and the main sessions were transcribed in real-time. The audio record of the meeting and text transcription is available on the secretariat website and forms a verbatim record of the event. The secretariat also provided an unofficial summary of the main sessions. All IGF consultations have been webcast to enable remote participation, and the audio or video files of these meetings are archived on the secretariat website. All consultations have been transcribed and the text transcripts are also available. The text transcriptions form a complete record of IGF discussions. The success or otherwise in attracting a sufficiently large “market” is impossible to determine with accuracy, as is the estimate of the wider ‘audience’ who in some participated directly or indirectly in the IGF thus far.

5.6.8 Impact

The IGF is a new organization and a new type of organization, it has not been active long enough to have a significant impact on Internet policy issues³⁶⁵. Its main effect to date is as a place where, as noted above, stakeholders have been able to discuss important and complex issues and gain a better understanding of other's points of view without the normal pressure of international negotiations.

The IGF has a low-level media profile. Media covering the computer and technology industry reported the IGF meeting in Athens extensively, and the IGF process has been the subject of articles in leading national newspapers. However, the IGF and Internet governance generally is not the subject of sustained media attention. A record of media coverage is available on the IGF secretariat website: <http://www.intgovforum.org/media.htm>

5.6.9 Sustainability and Reform

The atmosphere at the end of the Athens IGF meeting was very positive, people felt they

³⁶⁵ The IGF is convened by the Secretary General and held under the UN flag, but is adjunct to any formal UN process and UN rules of procedure are not applied. It is not part of the UN calendar and does not have priority access to UN resources.

had participated in a successful and important new event. The process of convening the meeting during 2006 was also generally considered to have been successful, it is notable that the Athens meeting --a large international conference-- was arranged in approximately six months, the draft programme was released at the end of May 2006. However, taking into consideration the IGF's origins in WSIS the meeting addressed important yet largely non-contentious issues. Critical Internet resources, which had been the cause of severe disagreement in WSIS and the main reason for the creation of the IGF was not discussed as a main agenda theme largely because stakeholders accepted that if the new and experimental process was to be successful then it should avoid controversy and disputes.

The first consultation after the Athens meeting was a "stock taking" session held to discuss what worked well and what worked less well during the first year of the IGF. It became clear at these consultations that some stakeholders saw it as a priority for the IGF to address all relevant Internet policy issues³⁶⁶. They were not satisfied the IGF was fulfilling its mandate, particularly that critical Internet resources must be on its agenda in 2007, that discussions had not begun to consider emerging issues in meaningful way, and more generally that it has not systematically approached the mandate as an agenda the forum should address. These are the same issues that caused negotiations during the Tunis phase of WSIS stall, disagreements that ran so deep as to threaten Summit participants' ability to agree on the final output documents.

The overall theme of the IGF is Internet Governance and Development, with a focus on capacity building. The 2006 stock taking discussions noted geographic diversity of participation, particularly the number stakeholders from developing countries was inadequate. As can be seen in Figure 1, only 11% of participant came from Africa and just 5% from Latin American and Caribbean. Funding for developing nation participants was emphasized as a priority, however fund raising has been less successful than anticipated and developing country participation in the IGF is again likely to be poor. Support for developing nation participation will be raised again as a concern in post-Rio de Janeiro evaluations.

As noted above, the management structure of the IGF is being questioned, and demands are being made for the process to produce more concrete outcomes. Combined with disagreements about the content IGF should address, the process faces significant challenges in satisfying the demands of all stakeholders. There are indications the IGF will not be able to address these concerns any more effectively than was possible in WSIS.

During consultations held to convene the 2007 IGF, a number of governments made comments that suggest they wish to see the IGF develop from the soft-power entity that emerged during the convening of the Athens meeting, into something where governments had a more direct role in shaping public policy related to the Internet. They expressed the view that the IGF should be able to reach written conclusions, whether they were a report, recommendations, or a concluding statement that would be a record of the meeting. Regarding the format of the meeting, while there was continued support for multi-stakeholder participation, any change to this was not under consideration. They also said

³⁶⁶ Stakeholders notably included the governments of Brazil (the IGF hosts in 2007), Iran, China, Russia, Saudi Arabia, and the GRULAC block of Latin American and Caribbean countries. They wished all issues described in the IGF mandate, para 72 of the Tunis Agenda (above) to be addressed.

further opportunities for dialogue between governments were needed, particularly if new legal frameworks were to be considered.

The consultations also heard requests for the Advisory Group structure to be replaced by a more formal Bureau. The government of Brazil has actively promoted this view, it believes a Bureau constituted still along multistakeholder lines, but with more formal procedures and the ability to take decisions, would be more effective than the current Advisory Group.

The Tunis Agenda requires the management structure of the IGF be subject to periodic review, and within five years of the IGF's creation all stakeholders should participate in a process to review the desirability of it continuing. As mentioned above, when the Advisory Group's mandate was renewed in August 2007 it was asked to enhance the transparency of the IGF preparatory process and requested to make proposals on a suitable rotation among its members.

A stock taking consultation will be held to evaluate the convening and outcome of the Rio de Janeiro IGF meeting. Problems identified after the Athens evaluation not addressed by the Rio de Janeiro process notably include funding of developing nation participation. This is a matter that must be resolved if the IGF is to achieve long term legitimacy. Content of the Rio de Janeiro IGF meeting can only be evaluated after the event, but the current agenda includes critical Internet resources as a main theme, and the forum's mandate will also be discussed.

It was anticipated that the period between public consultations scheduled for February and May 2007 would be used to prepare draft agendas, particularly to begin discussion about adding new themes such as critical Internet resources, and to start seeking potential speakers in preparation for formal approaches to be made later. Agreement on the overall agenda and modalities of the meeting should also be reached. The Advisory Group, responding to input received during public consultations had been expected to undertake these tasks. The emphasis placed on increasing participation from developing nations suggested this period would also be used for fund raising, and there was some indication the multi-stakeholder Advisory Group would be able to use its network to support the secretariat in seeking funds. The first IGF was organized in less than six months, preparations for the Rio de Janeiro meeting should have had more time, however, the mandate of the Advisory Group was not renewed during this period, and less progress was made as a result. It is not known why renewal of the Advisory Group's mandate was delayed by the Secretary General's office, however there is speculation that it may have been caused by negotiations over the role of the host country in the preparatory process of the Forum.

The forum's mandate simply says it will publish its proceedings, it may only make recommendations regarding emerging issues and then only "when appropriate". While some stakeholders have begun questioning this limited influence, many others commented following the Athens IGF meeting that the opportunity to discuss issues in an open manner and to learn about different perspectives was valuable outcome in its own right, and was made possible because unlike typical UN summits and meetings there was no

pressure to reach agreement on negotiated text³⁶⁷.

However, it is clear something must emerge from the process of dialogue, five-years of education and awareness-raising could not be the only aim of the IGF, and many stakeholders accept that some structure capable of influencing Internet governance activity that could lead to real results at the ground level is required. To this end the IGF produced one significant type of outcome, a number of ad-hoc multistakeholder working groups called "Dynamic Coalitions". These new groupings emerged mainly from partnerships developed from the multistakeholder teams that organized workshops during the Athens IGF meeting.

Dynamic Coalitions are voluntary groupings of stakeholders formed around a particular issue or theme. They are seen as being able to facilitate ongoing dialogue between interested stakeholders on issues of mutual interest so continuing discussion between the annual IGF meetings. Dynamic Coalitions are not a formal part of the IGF process, their work has not been adopted or agreed by IGF participants, the advisory group or the Secretary General, they are free to work on issues as they see fit. However, as entities that emerged from the first IGF meeting, they have been given the opportunity to present their work and progress at future IGF meetings, for example they are part of the official program for the IGF meeting in Rio de Janeiro³⁶⁸.

Dynamic Coalitions may provide a means by which the IGF can make recommendations and influence other processes, all be it indirectly. A coalition may make progress on an issue to the extent that members could then take action in another venue. In this way the IGF could be the catalyst to start discussion, but any outcomes and recommendations would happen independent of the IGF itself.

5.6.10 Evaluation

Headline issues for evaluation are:

- Financially, the IGF is dependent on host country and other variables
- The major continuing success factor internally is resource dedication by participants, goodwill of governments
- The main external conditions impact success/failure are:
 - Governmental: Continued interest by the broader UN membership.
 - Market/technology: relevance and perceived need to participate in Summit.
 - Civil society: perceived usefulness of Dynamic Coalitions and process.
- Lessons for European policy are that it is a new type of discussion forum, but

³⁶⁷ A number of governments, lead by Brazil, have expressed a vision for the IGF to become a results oriented body able to provide the international community with substantive recommendations on Internet governance issues. The idea of a Bureau that will have policy-making powers is central to this vision.

³⁶⁸ The number of Dynamic Coalitions fluctuates: there is no formal process for accepting Dynamic Coalitions and any group has been able to create a coalition and have it associated with the IGF process. This will continue to the Rio de Janeiro IGF meeting after which the process will be reviewed, with a view to placing some kind of qualification on entities wishing to create a Dynamic Coalition linked to the IGF process.

unclear that it has any regulatory effect beyond sharing of practice with developing countries and private sector-civil society. Dynamic coalitions in IGF may prove a testing ground for wider application of model.

The IGF's management structure, particularly the Advisory Group has been less effective than hoped during 2007, it has not developed from the experiences of the Athens phase. The Mandate of the 2006 Advisory Group ended with the conclusion of the Athens meeting, and it was expected that the group's membership and mandate would be renewed quickly so it could continue working. This did not happen, and the new mandate was only issued in August 2007.

The IGF faces significant challenges, disagreements that almost caused the failure of the WSIS negotiations in Tunis have returned, and stakeholders have fundamental differences over the structure and organization of the forum.

As a new organization the IGF can be expected to evolve, and it is unclear at this time whether the desire of some governments (mainly non-industrialized country governments) to give the forum more direct powers will be successful, or whether the IGF's influence will come through dialogues and less direct means.

Comparative Analysis of Case Studies and Gap Analysis

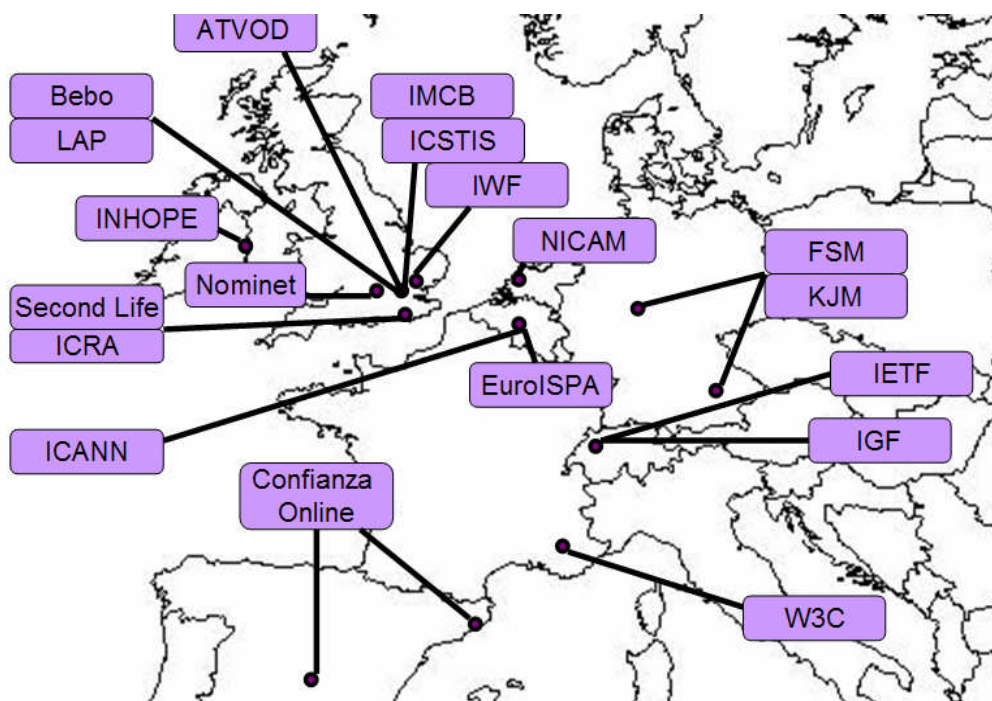
6.1 Case Study and Gap Analyses

In this concluding chapter, we complete our Phase 2 work by conducting a comparative analysis of the case studies, and following this with a gap analysis as required by the Terms of Reference, in order to identify gaps in co- and self-regulation of the Information Society.

6.2 Analyzing Case Studies

The European case studies are sited (or those US case studies with European subsidiaries/offices) as seen below.

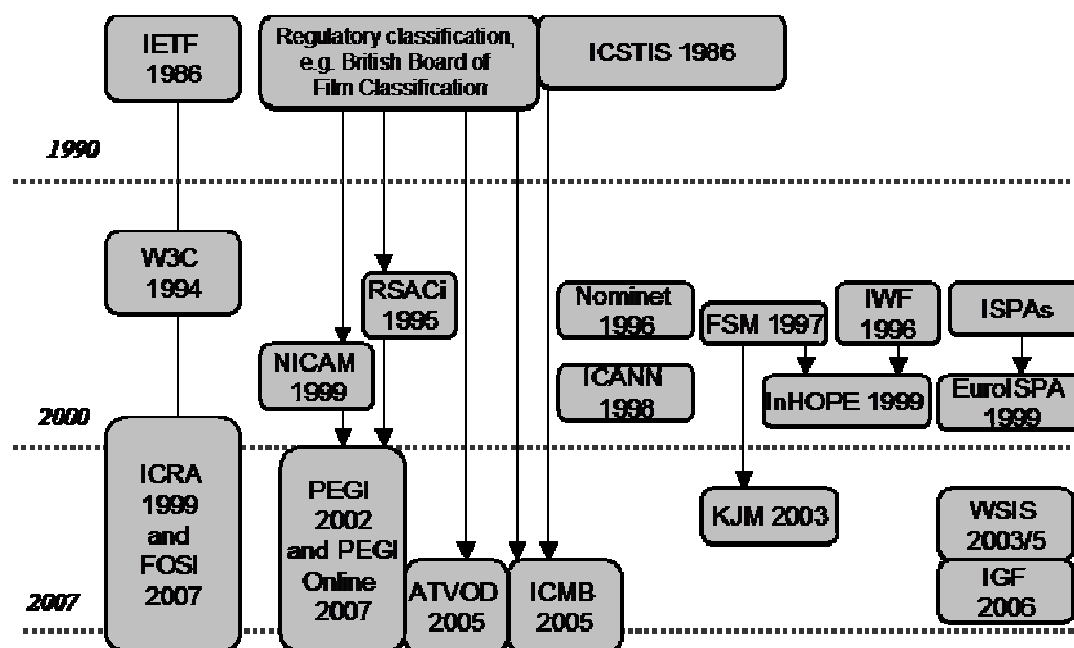
Figure 30: Selected SROs in Europe



We note that the case studies tend towards northern European examples, sited in Brussels, Geneva or five of the six largest economies in Europe (with the exception of Italy)³⁶⁹. Several case studies have their headquarters in the United States, but 'branch' offices in Europe³⁷⁰.

In the interviews, it was stressed that case studies were based on previously observed SRO practice. We can represent this figuratively in Figure 31³⁷¹.

Figure 31: SROs and their Development and Associations



These relationships formed the basis for our reordering of the case studies from the Phase 1 analysis. At that time, we chose to follow the analysis of the United Nations WGIG, but discovered through the case study analysis that the SROs conformed to the categorisation we present in detail below.

Table 44: Grouping Case Studies According to Scope and Interconnectedness

Internet Infrastructure and Standards	Internet Self- and Co-Regulation	Content and Filtering/Rating Case Studies	Emerging Self-Regulation Areas
ICANN	IWF	ICSTIS	<i>SecondLife</i>
Nominet	INHOPE	IMCB	Creative Commons
IETF	EuroISPA	NICAM	<i>Bebo</i>
W3C	KJM	PEGI	Trustmarks
ICRA	FSM	ATVOD	London Action Plan
			IGF

³⁶⁹ Note that INHOPE is based in Dublin and marks the exception.

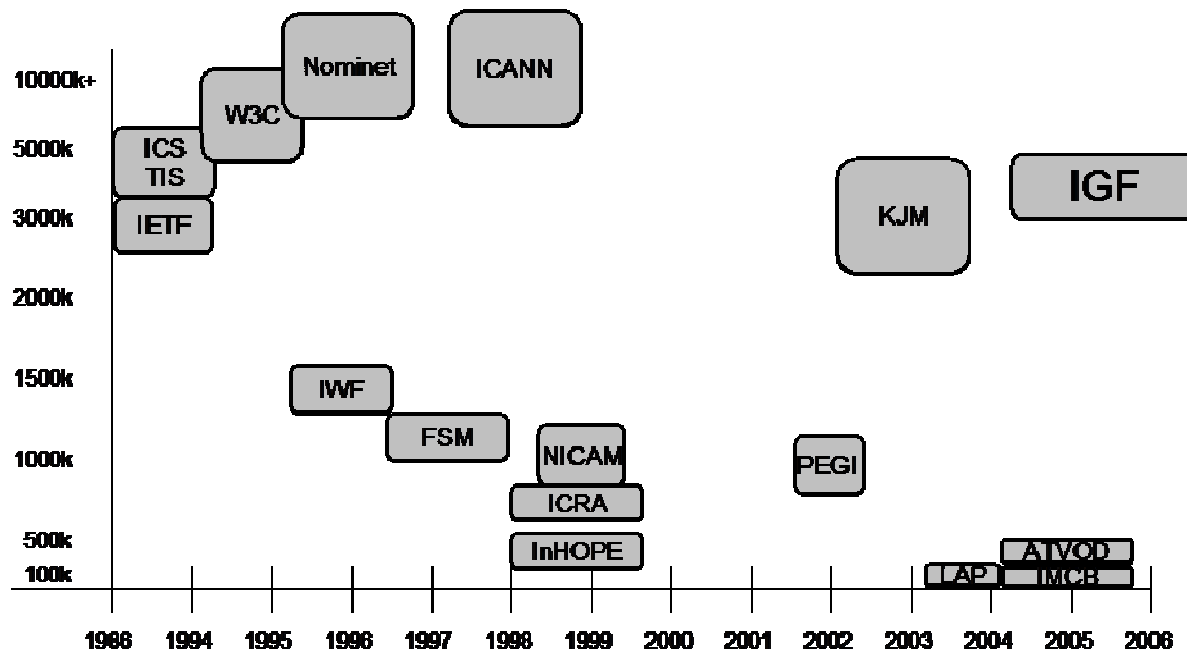
³⁷⁰ SecondLife, Bebo, Creative Commons, IETF, W3C.

³⁷¹ Note that in order to aid comprehension, this representation does not include the trustmark case studies or London Action Plan.

6.3 Financing and Budget of SROs

The Figure below illustrates the year of foundation and budget of SROs – in constructing the Figure we estimated budgets for those organisations which declared staff numbers but not annual budgets. It reveals that the year of foundation of the SRO is not significant in its later budget, but its relationship to government and the degree to which it could be considered to be performing a vital function in the operation of markets were very important.

Figure 32: Budget of SROs by Year of Foundation



How is financing secured? Typically, the main source of income is membership fees. These are supplemented by government (including EC) and corporate funders beyond fees, as for instance in hotline funding. In addition, sponsorships of events and other activities of SROs can form a major part of funding, as for instance in IETF meeting fees. Operational funding is an important item for SROs including PEGI, NOMINET, NICAM, where their classification and other activities are charged on a per item basis.

Two caveats apply to an overall picture of under-funded SROs:

- Market makers: SROs producing critical resources for markets, or those assumed to deliver a necessary function (historically) for that market to gain consumer acceptance, appeared better resourced. Examples included Nominet, ICANN, but also the IWF, as well as the standards bodies.
 - Rather obviously co-regulatory schemes received statutory backing for their resource demands on industry and therefore form a special category, but one might count these as a sub-category of market makers declared essential to market formation by government: NICAM, ICSTIS, KJM are examples.

- Market-funded: those organisations paid for volume of output in growing markets also secured resource based on market growth rather than membership fees, for instance Nominet as above, also ICSTIS, FOSI, and PEGI, and standards bodies W3C, IETF where membership increases with market participant increases.

Additionally, a strong theme of both Phase 2 interviewees and the Deliverable 4 workshop was that ‘hidden resources’ play a powerful role on SROs, greater in relation to the formal resources than in direct state regulation. These hidden resources came in three forms: direct member resources, self-implementation activities by individual members, and third party pro bono activities. Member resources devoted to the SRO’s direct activities were considered substantial in for instance the work of ATVOD and EuroISPA (the latter not regulatory in function). Member resources devoted to self-implementation under SRO protocols include for instance in British Telecom’s Cleanfeed initiative, AOL’s hotlines and anti-abuse teams, Bebo’s activities (the latter unregulated). Third party resources devoted through pro bono activities included university and independent funding for IETF, W3C (both initially in any case), and Creative Commons.

Also note that the interviewees for case studies all represented successful companies, either start-up or established businesses. Therefore, it represents the ‘leading edge’ of Internet businesses rather than the broad membership of the thousands of companies involved in for instance EuroISPA or Nominet membership. Interviewees with substantial experience of these environments stressed that many Internet companies have neither the resources nor the incentive to perform compliance functions beyond the bare minimum required. In particular, companies with no interest in avoiding users who are concerned with avoiding harmful content (and especially companies who have incentives to ensure wide viewership of content that may be offensive to some), will have no incentive to contribute to SROs whose mission this is. Therefore, the activities of a social network such as Bebo are not representative of the activities of the class of social networks, any more than is AdultfriendFinder³⁷².

The range of funding of SROs is very broad, with several SROs essentially skeleton activities. The focus for evaluation in examining SRO funding is to establish whether the SRO is fully resourced, and also the vital question of the extent to which funding dictates form and function. In our examination of corporate governance below, we explore the extent to which the SRO is ‘captured’ by the design of an independent funding council, or takes measures to widen its corporate governance to include non-executives who are also not corporate members, via advisory boards or government participation in some form.

6.4 Dynamics of Self-Regulation

We stated in the response to the Invitation to Tender that many Internet SROs have founding ‘myths’. We therefore noted in the case studies the references to the histories of the SROs and focussed in the empirical interviews on what reform could reveal for the reconsideration of the foundation settlement of the SRO’s mission and form. In order to

³⁷² Note that AdultfriendFinder was the subject of a regulatory enforcement action by the US Federal Trade Commission on 7 December 2007 related to its intrusive advertising activities.

do so, we had to gain access to those who were present at foundation or at the key moments of reform of the organisation. In general we were successful, with interviewees active in the foundation of the institutions and continuing their association³⁷³.

The lessons of regime formation can be divided into two classes, the emergency response and the market-forming. However, given the usual incentive problems in formation of SROs, we asked: why would anyone but the incumbent choose to be ‘first-mover’ and why would the incumbent run the risk of accusations of anti-competitive regime formation? Despite the risks of being considered anti-competitive (as expressed particularly in the IMCB and EuroISPA case studies), the latter motive tends to dominate.

6.4.1 Internal Evaluation and Reforms Undertaken

How is reform undertaken? The case study SROs themselves identified via internal consultations and self-evaluation many requirements for reform during the study period. Substantial reform was observed in the SROs under examination, ranging from:

- the very public (PEGI, Nominet, FOSI, and European mobiles), to
- the very political (ICSTIS, ICANN, IWF, INHOPE) to
- the private (ATVOD, SecondLife, Bebo).

The choice of method was very deliberately selected by the SRO executive and membership, with regard to exogenous forces where these were felt particularly relevant – as in the public or political arenas chosen for reform discussion. The extent to which reform was undertaken with publicity of various kinds reflects the responsiveness of SROs to their wider policy environment: in general, the more the publicity, the greater a policy impact intended.

Some SROs saw no pressing need for structural reform, notably the standards organisations W3C and IETF. Others are of such recent vintage that reform could be seen as presumptuous without an opportunity for governance arrangements to ‘bed in’ – notably IMCB, LAP, IGF and FSM search engine regulation. In these cases, the pressing requirement appears to be increased legitimacy and stakeholder acceptance through activity.

Where reform was taking place during the survey months of June-September 2007, we identify types of reform relating to: scope, stakeholders, governance structure, reporting, media literacy, government relations, external evaluations. These relate to our evaluation framework used for the individual case studies and the summary notes those items which the SROs themselves considered important factors in their reform. To reiterate our methodology in the response to the Terms of Reference, the examination of reform during the survey period was intended to revisit the issue of regime formation, in that reform begs the question of prior and original institutional design.

373 Weitzner (W3C), Clark (IETF), Boyle (Nominet and ICANN), Benhamou (ICANN and IGF), Swetenham and Hoff (ICRA and INHOPE), Clayton, Hutter and Carr (IWF and EuroISPA), Callanan (INHOPE), Christensen (KJM, FSM), Borthwick and Whiteing (IMCB), van Dijk and Bekkers (NICAM), Bekkers and Chazerand (PEGI), Millwood-Hargrave (ATVOD), Ondrejka (SecondLife), Sahel (LAP), Kummer and Banks (IGF). We also interviewed those associated with trustmark and social network site formation. The notable exception is ICSTIS as a twenty-one year old co-regulator, but which published an ‘official’ history to mark its anniversary (ICSTIS 2006).

6.4.2 Scope

Expansion of the scope of SROs included those of PEGI, IWF and Creative Commons. Where reform took place, the scope extension was largely undertaken through existing resources or on the basis of projected resource increases associated with the new activities (membership increases etc.). Expansions of scale (i.e. internationalisation) was seen in the PEGI and LAP examples.

6.4.3 Stakeholders

Reform to better encompass 'third sector' (charity, consumer, volunteer, user) input was seen in the new formal arrangements undertaken by FOSI in its reinvigorated Advisory Board, Nominet through its Best Practice Challenge and UK Internet Governance Forum, IGF – through Dynamic Coalitions - and IWF through outreach, but was explicitly rejected by the PEGI process, in which the end-user's input was assumed to be included in the member companies' activities. For LAP and for the standards bodies such activities remained a matter of activity-based inclusion. In general, multi-stakeholderism was a matter of ad hoc consultation and web-based input rather than formal management structures. Where SROs decided on board structures with a majority of non-industry members, such as ICSTIS and IMCB, multi-stakeholderism could be considered to be institutionalised in the method of governance chosen. However, given the 'chameleon' nature of many individuals in this area, with commercial, voluntary, academic and even government roles in their portfolio of interests, we caution that even the apparent exclusion or alternately the 'hard wired' multi-stakeholder governance models may conceal a range of practices that are much more inclusive or exclusive respectively. We note in particular that the use of the SROs' websites, listservs and other discussion lists to encourage a pluralistic response to consultations and ongoing activities as well as the use of instant reporting tools (hotlines, abuse buttons etc). This is developed further in our discussion of 'Regulation 2.0?' in the final report.

6.4.4 Governance Structure

Membership structures affected the pace and direction of reforms. Therefore the 'veto' on IWF reform posed by its Funding Council, or the need for a poll of the entire membership for fundamental Nominet reforms affect any change to its original mission. By contrast, W3C features a particularly direct form of leadership which favours rapid reform. We note the particular case of 'Government Advisory committees' of some form for PEGI, IGF and ICANN, and the difficulty in such a formal role translating into understanding the true influence of such committees. Typically the government members believe that their real influence is overblown by non-members while civil society observers believe that it is greater than theirs – a case of mutual mistrust perhaps. We examine this further in Section 6.5.

6.4.5 Enforcement

The enforcement of the rules of SROs appears to be an area demanding continued scrutiny. Given the subtlety and flexibility of application of norms regarding to these organisations, enforcement often amounts to:

- [a] moral censure;
- [b] expulsion or suspension of membership; or
- [c] market refusal to adopt the standard/filter/technique/trustmark.

None of these techniques should be under-estimated: a reputation of bad faith attracted to a researcher or organisation in a standards body can entirely undermine their effectiveness as much work relies on building alliances and persuading others of one's cause. Equally, membership termination can be of great importance, ranging from expelling a member or removing a trustmark from an organisation to suspending or terminating an individual's membership of a social network or virtual world, as much "reputational capital" may have been developed in friendship networks, recommendations and so on. Finally markets that do not adopt standards, distributors who ignore kitemarks and filtering guidelines, and consumers who do not trust the regulatory technique, make such SROs entirely redundant, a danger admitted by trustmark organisations, standards bodies, and filtering organisations alike. The case studies and previous empirical research guide these findings. More extensive quantitative and qualitative research is needed into the methods and techniques used by Information Society SROs to maximise market and consumer knowledge and adoption of the proposed SRO solution.

6.4.6 Reporting

Reporting by SROs appears to be gaining greater importance in their reform agendas. In addition to the ICANN example above (the paradigm with the IGF of international participation), many organisations held public meetings, including webcast meetings, to report on their work and discuss and receive views from the interested constituency often including the general public³⁷⁴. It is clear that Internet SROs are paradigms of reporting and public engagement, unsurprisingly using the Internet as a major source of distant communication without excluding the need for 'live' personal meeting opportunities. Where criticisms were made, they often related more to the overload of information available than the lack thereof. In particular, civil society stakeholders often claimed that simply keeping up with the volume of work produced by an SRO was a full-time job, and that was impossible for both this group and many developing country and smaller country experts to stay informed of the vital activities of for instance the LAP, ICANN, IGF and other international regulatory mechanisms. This is an obvious resource gap that some SROs are attempting to cover by use of summaries, monthly bulletins, and annual activities reports, recognising that many interested parties cannot keep up to date with the entirety of several SRO activities.

6.4.7 Media literacy

Media literacy is an element of SRO activity which was continually stressed by interviewees – including those not directly responsible for the SRO. Thus notable efforts to engage with

³⁷⁴ Members of the RAND project team attended public meetings held by ICSTIS, Nominet, ISPA UK, PEGI, ICANN, IGF, IETF, LAP, FOSI in person during or immediately before the project, and invitation expert meetings with SecondLife, Creative Commons, W3C, ICSTIS, IMCB, TRUSTe, ATVOD, FSM, KJM, NICAM (the final four all at the German Presidency media self-regulation meeting in Leipzig May 2007).

the public were stressed by SROs varying from standards-based (W3C) to labelling (PEGI, FOSI, NICAM) to hotline (INHOPE, KJM) to self-organising (Bebo, SecondLife, Creative Commons). These activities are dedicated resourced activities in addition to those of their members and the reporting-type expert/stakeholder meetings referred to above. However, we note that public knowledge of any of these bodies is extremely poor, and of the overall framework itself weak. The Eurobarometer surveys commissioned by DG INFSO in 2003/4/5/7 are an essential evidential contribution to public perceptions and knowledge of SROs³⁷⁵.

6.4.8 Government Relations

With regard to SRO engagement with government, we note the formal review of ICSTIS and KJM, and requirements to appear before the parliament and Ofcom, as well as deliberate and extensive outreach by various bodies (e.g. Nominet, EuroISPA, IWF, PEGI) to both politician and government audiences. Many SROs in case studies were partially funded by the Safer Internet Action Plan and formal reviews (as well as financial and project reporting and continued informal engagement) took place during 2006/7.

6.4.9 External evaluations

Evaluations of SROs was limited to those that we class as co-regulatory, notably the entire German system for Internet co-regulation evaluated by JMM and partners, NICAM's ongoing evaluation³⁷⁶, the UK system for media self-regulation by Latzer, Price and Verhulst for Ofcom³⁷⁷, and the OneWorldTrust evaluation of ICANN. We also note the continued reflection on video co-regulation undertaken in connection with the future implementation of the Audio-Visual Media Services Directive, though note that this was only considered directly relevant to ATVOD.

Several UK reform proposals referred to:

- the UK 'Better Regulation' framework (Nominet, ICSTIS) and
- the Cadbury corporate governance reform proposals (IWF, Nominet).

ICANN continued its experiment with an ombudsman and also appointed a public participation manager to encourage outreach to its constituency.

It is evident from the case study groupings that significant overlaps and connections have been found. While the final report of the project will focus on cross-cutting issues and lessons for impact assessment of SROs in the Information Society, in this final concise chapter we concentrate on the connections and gaps that interviewees and the literature

³⁷⁵ See Safer Internet For Children: Qualitative Study In 29 European Countries - Summary Report (2007)

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1227&format=HTML&aged=0&language=EN&guiLanguage=en>

³⁷⁶ See Stoel, A. L. van der, et al. (2005) Self-regulation in audiovisual products. Final Report

commissioned by the Youth Policy Directorate of the Ministry of Health, Welfare & Sport.

<http://www.ivir.nl/publicaties/vaneijk/Wijzerkijken.pdf>

³⁷⁷ Latzer, Michael, Monroe E. Price Florian Saurwein Stefaan G. Verhulst Katharina Hollnbuchner Laura Ranca (2007) Comparative Analysis of International Co- and Self-Regulation in Communications Markets, Austrian Academy of Sciences.

have revealed.

6.4.10 Public Awareness of SROs

Significant gaps appear to exist in public knowledge of even the best-resourced and most well-known examples of Information Society self-regulation, and many case studies illustrate attempts at outreach and media literacy (notably ICSTIS, NICAM, IWF and KJM). Most members of the public appear to continue to believe that content should be reported to the police, government regulator or ISPs for instance, rather than the various SROs.

6.4.11 Corporate Governance and Interest Group Capture

The now long-established standards (IETF, W3C) and technical infrastructure (ICANN) bodies are accused by critics of being captured by their industry supporters, but can claim significant mandates from industry, government and users, acclaim for their technical expertise and widespread market adoption of their interoperable standards. Labelling (trustmark) and rating (ICRA) schemes continue to show innovation but are not well-known by the public or widely adopted by industry. The Table that follows this section shows the board composition and governance for the SROs – note that this cannot capture the complexity of ICANN, while several of the firm-level SROs are simply directors of private companies, and therefore there is no requirement to grant independent directorships nor any level of representation for user-civil society groups. In any case, the boards should exercise good corporate citizenship, and we note that responsiveness to corporate social responsibility can exercise a level of good governance and environmental (social and sustainable) consideration even absent any acknowledgement of the regulatory agenda.

Table 45: Types of managing instrument in each SRO

SRO	Number of board directors	Non-Executives	Independent Funding Board	Advisory Board	Executives on board
ICANN	15 plus 6 non-voting	Appointed by Nominating Comm.	No	Yes	President / CEO <i>ex-officio</i>
Nominet	2 execs and 4 non-exec	2 non-executives; 2 others as representatives of [a] 8 nominated organisations and [b] 8 Nominet members	Executive set budget; presented to board	Policy and Advisory Body	CEO
IETF	Administrative Oversight Committee (AOC)	IETF Chair appointed by IAB (also sits on AOC)		Internet Architecture Board (IAB) selected by Nominations Comm.; approved by Internet Society board of trustees	Administrative Director appointed by AOC
W3C			No	Advisory Board elected by members	Director sits on board
FOSI/ICRA	16	Majority	No	Advisory Council: 9 members	Yes- CEO sits on board
IWF	10	Yes	Funding Council	Board of trustees	CEO: executive comm. of Chair and 2 members
INHOPE	4 – including President and Vice	Board is executive	No	General Assembly 30 members	No
EuroISPA	Governing council	1 per governing council member	Treasurer		President
KJM	12 delegated by state media authorities; 4 by supreme state youth authorities; 2 by supreme federal authority for protection of minors				Chair
FSM	7	By FSM membership			Chair on Board of Directors; also Managing Director
ICSTIS	10		Budget approval OFCOM	15 on Industry Liaison Panel	Chair on board; also Chief Exec.
ICMB	4	3	No	Board co-opted from ICSTIS	Chair and Director
NICAM	10 General and Executive Board		No	Advisory comm. 27 members	Chair independent of board
PEGI	15			Government advisory board	Yes
ATVOD	8	1 plus 2 special advisors	No	Board; 2 independent advisors	Run by Chair

SecondLife	LindenLabs Board: 5			No	CEO
CC	Board of founders			No	CEO
Bebo	Board of Directors			No	CEO
TRUSTe	17			No	CEO
Confianza	Board Members come from AUTOCONTROL and AECCEM			Board	Director
LAP	Ad hoc	Not relevant	Ad hoc per event	No	No executives
IGF	Chair appointed by UN Secretary General: no members		No	47 member Advisory Group	Secretariat to chair

6.5 Further Analytical Steps for Final Report

The selection of a heterogeneous group of case studies provides a more holistic view of Internet regulation than a more tightly conscripted group such as only statutory regulators, only television or media regulators, or only technical regulators, all of which have been studied previously. It is also the case that national surveys (as for instance in Germany or Austria) cannot reveal more than nationally determined characteristics, even if pan-sectoral experiments such as KJM can be examined. This wider series of case studies shows the complex interdependency and inter-relationships between apparently distinct regulatory environments, and though we arranged the case studies into chapters which provide distinct groups based on subject matter regulated, there are clear cross-cutting concerns such as interoperable standards, pan-sectoral classification, or the regulation of intermediaries.

The complexity of the regulatory environment may at first sight have appeared intimidating and offering too much complexity to the analytical task, however a key finding from interviewees was that many of the primary actors in Internet regulation live within these multiple overlapping jurisdictions, sectoral and national, on a daily basis. Therefore, the primary claim made in the Inception Report, that an interdisciplinary international approach was needed to make sense of the regulatory approach to the Information Society's self- and co-regulatory organisations, is proven.

Proof that the complexity demands a holistic oversight makes simplistic clarifying recommendations much harder to deduce.

1. It is the primary role of the final Phase of the project, and the final report to the Steering Committee, to explain where recommendations for future regulatory strategy make sense, and – equally importantly – where the regulatory environment should continue to be allowed to evolve.

That is not to state that there is a state of virginal non-regulation for any of the organisations examined, as the participants and founders of the SROs are sufficiently politically and socially aware to understand their role in ensuring successful Internet ventures liaise with and inter-relate with human rights requirements, national laws and norms of conduct.

2. A second requirement of the final report is thus to examine the complexity of the 'shades of grey' involved in the relationship between regulation and the various forms captured under the encompassing term we have used: 'SRO'.

The third requirement is to imbue these analyses, of regulatory strategy and SRO compliance with socio-legal norms and laws, with the innovation and competitiveness agenda which is at the centre of European policy, particularly in the area of Information Society policy.

3. A core requirement here is to ensure that national regulatory settlements do not place governmental or other barriers in the way of pan-European innovation and the development of European Information Society markets.

This could be the result of national policies which protect the public good at the disproportionate cost of impeding entry into new markets, or of market actors colluding

(with or without government approval) in forming anti-competitive SROs that make entry for those outside the SRO more difficult without corresponding social or economic benefit.

The final report will therefore:

- map the basis for regulatory interventions against the case study evidence as well as regulatory literature and theory,
- identify evaluation techniques that help identify when SROs are more effective than national regulatory arrangements in growing new markets (and vice versa), and
- help the Commission to identify the grounds for European intervention in creating more competitive, innovative markets which respect the rule of law and human rights.

We conclude this chapter and report with a further gap analysis intended to revisit and restate the gaps discovered in the Phase 1 report, and to further identify the means to address those gaps in future research.

6.6 Gap Analysis

6.6.1 Policy Gaps: Innovation and Competitiveness

The analysis of the case studies has shown that the lack of compulsion or state involvement has led to significant private or non-profit innovation in several sectors: trustmarks; SNS; virtual worlds; copyright. Sharing of global best practice between governments and other stakeholders has been seen from both top-down (IGF) and more heterarchical (LAP) initiatives. The problems of illegal and inappropriate content have led to significant private sector initiative on both individual company (i.e. BT Cleanfeed) and more sectoral levels (IMCB in mobiles, ATVOD in video on demand, FSM in search engine self-regulation).

The regulation of content in Next Generation Networks has been recently highlighted by several leading authoritative analysts of Internet regulation³⁷⁸. Though 'net neutrality' and the contractual relations between content providers and network owners is outside the scope of this study, it is evident that significant tensions based on divergent business models and regulatory inheritances exist. Whereas network owners are active in building self-regulatory organisations, such as ATVOD, IMCB, IWF, KJM and others, content providers from a more 'start-up' culture continue to rely on their distinctive use-based and mediated self-organisation forms: this is true of SecondLife, Bebo, Creative Commons and others.

378 Frieden, Rob (2007) Neither Fish Nor Fowl: New Strategies for Selective Regulation of Information Services, Paper presented at 35th Research Conference on Communication, Information and Internet Policy, September 29

Faratin, Peyman, David D. Clark, Patrick Gilmore, Steve Bauer, A. Berger, William Lehr (2007) Complexity of Internet Interconnections: Technology, Incentives and Implications for Policy, Paper presented at 35th Research Conference on Communication, Information and Internet Policy, September 30

Bauer, Johannes M. and Erik Bohlin (2007) Dynamic Regulation: Conceptual Foundations, Implementation, Effects, Paper presented at 35th Research Conference on Communication, Information and Internet Policy, September 29

6.6.2 Policy Gaps: Intellectual Property, Privacy, Freedom and Filtering

The primary substantive concerns that arise from the regulation perspective remain those of the balancing of interests, a primarily political equation³⁷⁹. These include the rights of intellectual property holders and the interest in innovation, and the right balance to strike for copyright and other rights in an evolving and more user-centred and generated innovative environment.

The second such trade-off is between the public interests in unfettered freedom of expression for Internet users, versus the various public safety concerns including inappropriate and harmful content and ‘malware’ (spam, viruses etc.) as well as criminal content or that promoting criminal activity.

Further concerns arise in regards to entrepreneurial attempts to adapt their services to new commercial opportunities versus the interests of many users in maintaining a privacy opt-out from exposure of their personal information to either strangers or commercial presence. IPR, freedom of expression, crime fighting and privacy are all policy fields in which government has substantial interest in maintaining sound policies for public benefit, and none of these fields can be left to self-regulation without continually refreshed impact assessment and review of the public interest.

Comparisons with non-Information Society SROs may prove useful in analyzing this type of risk-based regulation. Innovation in SROs in areas of both complex technology and profound citizen ethical interest has been undertaken in biotechnology (for instance in the case of genetically modified crops), biomedicine (human embryology), environmental protection, and nuclear safety. The idea of engaging experts with citizens directly in such cases, with the immediate emotive mass media reporting of these topics, has been broadly evaluated.

6.6.3 Institutional Gaps

Institutionally, we identify significant innovations but also increasing resource constraints on SROs. Adoption of the multistakeholder paradigm and the inclusion of user interests is increasing from a low base, encouraged by the minimal co-regulation involved in government monitoring and oversight of such multistakeholder discussions, as well as more formal policy tools including funding and support for such activities. The introduction of formal appeal mechanisms, ombudsmen and formal opportunities for dialogue, as well as open consultations, is increasing. As expected, the use of online discussion fora is well-developed and public participation via this means (short of e-voting) is flourishing. Both government and civil society have a role here in ensuring maximum

³⁷⁹ Benhamou (2007) offers a considered analysis of these problems:

- there is a need for transparency at technical interfaces.
- o Anticompetitive dominance is a real concern – especially over scarce resources such as spectrum, numbering space, and APIs for dominant search engines.
- o Search engine regulation must be transparent – consider National Science Foundation ‘Signposts in Cyberspace’ (2004).
- o A particular problem to him is vertical integration of mobile devices with networks (e.g. lack of Wifi or 3G functionality in the iPhone).
- Another concern he has is for “the need for a citizen-centric approach, which does not exist as there is no global view of the rights of the citizen online”.
- o An example is privacy and control of information. He takes Spock.com as an example of new meta-search people sites – using LinkedIn public information. He considers Open ID: a new form of federated identity creates possibilities for interoperability to create ‘big brothers’ on a federated data level.

transparency and effectiveness of decision making, while maintaining high standards of efficiency in implementation of the SRO goals.

Budgets for SROs are often extremely low by government regulatory standards, which may prove either:

- the greater efficiency of the private sector,
- resource gaps to ensure maximum transparency and good governance or that
- the true costs of SROs lie in the individual and combined members' activities
 - both in serving the SRO directly and in
 - the policies adopted at the individual company/service level.

6.6.4 Methodological Gaps

The Internet survey was useful only for those areas in which several correspondents completed more than the first page of questions. As a demanding survey in terms of accuracy of detailed knowledge required of participants, this was anticipated.

To illustrate this, interviewees were asked to examine (or where possible complete) the survey prior to interview, and in several cases explained in the interview that they could not complete several categories of questions in the survey. This may illustrate both the survey's demanding nature and the lack of intimate knowledge of self-regulatory organizations by even their participants.

In fact, particularly in the case of budgets, respondents exhibited very little knowledge, with 2 respondents answering regarding the W3C out of 19 (an 11% rate) but with separate answers of either \$200,000 per annum budget and \$5,000,000. This type of response was therefore not especially illuminating except inasmuch as it revealed the expected lack of detailed knowledge of SROs³⁸⁰. That suggests that only detailed researched and audited examination of such institutions can explain the functioning of the institution.

The more informal surveys of participant behaviour evidenced in chat fora run by for instance the standards organizations (as well as best practice in ICANN, IGF, Creative Commons, *SecondLife*, and SNS and so on) can give a better indication of activist opinion on present issues. However, for a truly representative user sample, one would need the resources of Eurobarometer, World Internet project, or an equivalent commercial market research organization.

6.7 Conclusion: Impact Assessment Gaps

In regard to impact assessment, we can state – subject to our further analysis of cross-cutting issues and relevance to i2010 and competitiveness agendas – that the model used appears to produce a dilemma. The questions asked of SROs and experts appear to reveal significant and often constructive tensions in the role and reform of the SROs, and the proper role for both SRO and government intervention.

The lack of individual resource per case study means that results are of necessity interim

³⁸⁰ Of 19 respondents on W3C, only 3 believed they knew the identity of the chief executive, for instance.

and cautious conclusions only can be drawn. However, the SROs themselves and stakeholders actively participated in the study and showed great willingness to engage with government in assessing more fully their individual and collective impact on trust and efficiency, amongst other goals, in the Information Society.

A programme of such impacts has been carried out via independent research in several countries (for instance Austria by Latzer et al 2006; Germany by Schulz/JMM 2007, UK by Latzer et al for Ofcom 2007; France by the Forum des Droits sur l'Internet on ongoing basis), in addition to the independent evaluations carried out on behalf of the Safer Internet Action Plan and other DG INFOS activities (including for privacy and standard setting policy). Several institutions have carried out evaluations of their processes or commissioned research to evaluate processes (notably ICANN and ICSTIS in our survey).

It is clear that the necessity for evaluation of SROs in the Information Society must include the interaction between national, European and global initiatives, and respondents welcomed the ambitious multi-sectoral and inter-disciplinary approach taken in this survey, which revealed for instance the connections in labelling between ICRA, NICAM, IMCB and PEGI on one hand, and ICRA with ICANN (through FOSI's interaction with .xxx), W3C and ultimately IETF and IGF on the other. The interconnectedness of the various SROs was very much a feature that emerged from the elite interviews conducted.

Finally we note the logframe that we populate in our final report analysis, and recall the need for aggregated analysis to produce meaningful evaluation of Information Society SROs.

Figure 33: Logframe Example for SROs

Regulatory Scheme	Constitution	Scope	Finance	Governance	Context
Effectiveness	All members?	Clearly defined and achievable	Fit for purpose	Clear transparent rapid decision-making; appeal process	National-Regional-Sectoral
Efficiency	Suitability for stakeholders	Problem resolution	Cost benefit	Decision making	National-Regional-Sectoral
Sustainability	Obedience and Enforcement	Responsiveness to market conditions	Duration	Development and legitimacy	National-Regional-Sectoral
Innovation	Amendment Arrangements	Reform Process	Membership Criteria	Reform	National-Regional
Competitiveness	Flexibility and standing	Comparative international institutions	Comparative costs – to regulation and self	Comparative and best of breed performance	National-Regional-Sectoral
Competition	Cartel conditions?	Horizontal or vertical?	Barriers to entry?	Transparent and conforming?	National-Regional-Sectoral

The final report will consider the cross-cutting lessons from the case studies against the features identified in this summary chapter.

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APPENDICES

Appendix 1: Interview Schedule and Protocol

Abernathy, Steve (2007) CEO Squaretrade, 18 September 2007 Telephone Interviewer Neil Robinson

Archer, Phil (2007) Chief Technology Officer, ICRA-FOSI 13th September 2007 Telephone Interviewer Chris Marsden

Aust, Tom (2007) Bond Analyst (Buy-side), GE Capital, (formerly Deputy to Commissioner, New York Public Utilities Commission), 29 July, New York, Interviewer Chris Marsden

Ayed, Marta (2007) General Manager, Confianza Online 20th Sept 2007 Telephone Interviewer Neil Robinson

Banks, Karen (2007) Association for Progressive Communications, 28 August 2007 Interviewer Chris Marsden

Benhamou, Bernard (2007) Senior Lecturer Paris Pantheon Sorbonne University 31 August 2007 Telephone Interviewer: Chris Marsden

Borthwick, Rob (2007) Vodafone, UK 10 August 2007 Telephone Interviewer: Chris Marsden

Callanan Cormac, INHOPE (2007) 10 September, Telephone Interviewer: Chris Marsden (note Mr Callanan left INHOPE on 20 September).

Carlberg, Ken (2007) Science Applications International Corporation, 21 August 2007. Telephone Interviewer: Ian Brown

Carr, John (2007) Independent Consultant, 08 August 2007 Interviewer Chris Marsden

Cecil, Andrew (2007) Regulatory Affairs, Yahoo! Europe, Paris, August 10 2007 Telephone Interviewer: Chris Marsden

Christiansen, Per (2007) AOL Deutschland, Regulatory Direction, 26 August, 2007 Telephone Interviewer: Chris Marsden

Clark, David C. (2007) Head, FINE programme, National Sciences Foundation, Washington D.C. 29 September 2007 Interview and paper presentation Chris Marsden

Clayton, Richard (2007) Research Fellow, Cambridge University Computer Laboratory, 28 August 2007 Telephone Interviewer Chris Marsden

Delgado, Juan (2007) Yahoo! Europe search engine business unit, 26 July, 2007 Telephone Interviewer: Chris Marsden

Doria, Prof. Avri (2007) Interview for an explanation of the GNSO PDP process, ICANN Board Meeting San Juan Puerto Rico, June xx Interviewer Adam Peake

Eijk, Nico Van (2007) Professor University of Amsterdam, informal interview and paper presentation Istanbul 3 September 2007 Interviewer: Chris Marsden

Frank, Sabine (2007) Managing Director of FSM. Phone interview. July 25th 2007. Telephone Interviewer: Lisa Klautzer

Graham, Sir Alistair (2007) Chair, ICSTIS, ICSTIS Scope review round table lunch, 25 June 2007 Rapporteur Chris Marsden.

Guadamuz, Andres (2007) Edinburgh Law School 26 October 2007; Interviewer Chris Marsden

Hoff, Ola Kristian (2007) Norway-based independent legal advocate 14 September 2007 Telephone Interviewer Chris Marsden

Hogge, Becky (2007) Managing Director, Open Rights Group, 30 August 2007 Interviewer Chris Marsden

Hunsinger, Jeremy (2007) Co-Founder, Association of Internet Researchers, 27 July, New York, Interviewer Chris Marsden

Hutty, Malcolm (2007) Policy Officer, LINX, Treasurer INHOPE, 30 August 2007 Telephone Interviewer Chris Marsden

Ito, Joi (2007) Chair, Creative Commons, Board member ICANN, 14 June 2007, Interviewer Chris Marsden

Kiedrowski, Tom (2007) Ofcom Strategy Manager and head of Ofcom Self- and Co-Regulation Study, 20 September 2007 Interviewer: Chris Marsden

Latzer, Michael (2007) Professor, Austrian Academy of Sciences, informal interview and paper presentation, Istanbul 3 September Interviewer Chris Marsden

Millwood-Hargrave, Andrea (2007) Secretary, ATVOD, 26 September Interviewer Lorna Woods

O'Connell, Rachel (2007) Chief Safety Officer, *Bebo*, 30 August 2007 Interviewer Chris Marsden

Ondrejka, Cory (2007) Chief Technology Officer, *SecondLife*, 08 August 2007 Telephone Interviewer Chris Marsden

Poel, Martijn (2007) Senior Analyst, TNO, informal interview and paper presentation, Istanbul 3 September 2007 Interviewer: Chris Marsden

Robbins, Peter (2007) Chief Executive, Internet Watch Foundation, 17 August, Telephone Interviewer: Chris Marsden

Sahel, Jean-Jacques (2007) Department for Business Enterprise and Regulatory Reform, UK 24 August 2007. Interviewers: Ian Brown and Chris Marsden.

Selloni, Dr. Cristina (2007) Deputy Head of Cabinet to the Minister of Communications, Italy, Telephone Interview Lisa Klautzer 15 July 2007

Servida, Andrea (2007) DG INFSO Telephone Interviewer Neil Robinson

Swetenham, Richard (2007) DG INFSO, 4 July 2007 Telephone Interviewer Chris Marsden

Taylor, Emily (2007) Legal and Public Policy Director, NOMINET, 30 June 2007 Interviewer Chris Marsden

Verhulst Stefaan (2007) Head of Research, Markle Foundation, 26 July, New York, Interviewer Chris Marsden

Weitzner, Danny (2007) General Counsel, World Wide Web Consortium, London 17 September 2007 Interviewer Chris Marsden

Whiteing, Paul (2007) Director, Independent Mobile Content Board, 31 August 2007
Interviewer Chris Marsden

Wolfson, Alex (2007) Global Strategy, Nokia (formerly Deputy Director, CITI Columbia University), 27 July, New York, Interviewer Chris Marsden

Interview Protocol

Interests and Policy Needs

- How was the organisation formed? What functions does it fulfil? What is its mission?
- A brief history of the organisation, including:
 - Where it is based?
 - Name of the Chief Executive or Chairman?
 - Does the institution file accounts?
 - If so, where? Does it report to a regulator (other than financial)? Approximately what is the budget per annum? Where does the funding come from – e.g. advertising? How many staff work there?) – Answers to these questions may be available elsewhere – i.e. annual report.
- How does the organisation fit with formal legal and declared political pressures to regulate its original sector?
- Is it expanding or being reformed? How (new sectors, countries)? Why?
 - o How does this affect regulation?
 - o How is redesign of the institution being carried out?
- Does the organisation innovate?
- Please state the primary driver for change in the organisation's mission or function:
 - o Internet usage or design
 - o Government requests or instructions
 - o Competition in the market
 - o Members' suggestions
 - o Civil Society request for greater inclusion
 - o Merger of functions and / or management
- Is its regulation model replicable or an exception to other regulatory forms?
- Is the organisation responsible for liaison with other Internet self-regulatory bodies?

Design & organisation of the Institution

- Is regulation for your organisation a function required by law? Which laws?
 - o Is your organisation co- or self-regulatory? Details?
- How does your organisation fit in with government regulations? Are they relevant?
- Are there other organisations with similar missions and regulatory regimes? How are they different?

The board and strategic direction

- How independent is the board of directors from the executive of the organisation?
- Are there committees independent of the board, for instance for finance or audit?
- How are civil society stakeholders involved in its work? Other stakeholders?
- How is policy made?

- Does the annual general meeting attract a large audience?
- o Is there sufficient press coverage of its activities?
- o Are its activities well-known to its members?
- o Is it well-known to Internet users?
- o Are any reform proposals circulated?
- How transparent is the organisation to:
 - o Board members? Ordinary members? Internet users? Governments?
- How accountable is it?
- How accessible is management information?

Enforcing regulations

- Is there a tribunal or other enforcement arm?
- How many enforcement actions occur each year?
- What types of enforcement actions are undertaken?
- Is there an appeal process or ombudsman?

The market

- Do you believe there is competition against this institution and/or its functions? Who are the competitors?
- Is there commercial value in the work of the organisation?
- Can you define the market, if any, in which this institution functions?
- What is the impact of this “Market dynamic” on your organisation?
- If the institution does perform a market function, how large is the total market?
 - o What share of the market does the institution take?
 - o How is the market split (i.e. what share does the largest other institution take)?
- Does the organisation impact on economic performance?

External studies (or internal?)

- Have there been external reviews of the institution? What are they?
- Are you aware of studies into regulation on your organisation or similar organisations?

Appendix 2: Web Survey Analysis

Introduction

This Appendix is structured in the following manner. An overview of the survey methodology is first presented, detailing the numbers of responses, sample and population and number of respondents. Then an overview of the quantitative and qualitative data is presented ordered according to question.

Survey population

A total of 316 ‘attempts’ were recorded on the *Survey for Options for and Effectiveness of Internet Self-Regulation*, which was conducted between 1 March and 31 October 2007. Out of the total number, there were 163 responses about organisations. Respondents had to provide their name, organisation (if applicable) and email address (which was required). Table 46 below illustrates the number of responses per organisation: the majority relating to Creative Commons and ICANN. This may be a result of one the following:

- The self-selective nature of the survey – as this was an online survey, those familiar with using the web were more likely to participate. However given the topic of the survey this may not be a challenge as responses from individuals not familiar with the Internet may not yield accurate or useful data.
- Invitations to participate – invitations were mailed out to a number of mailing lists of self-regulatory institutions known to the team. These included broad academic mailing lists but also mailing lists run by ICANN, W3C, Creative Commons etc. Therefore the respondents per organisation may be related to the size of the mailing list.

The final absolute number of recipients (the sample size) was not known, nor was the survey population size. The rest of this data analysis is presented in such a way so that the percentage of organisations per respondent can be easily identified.

Table 46: Breakdown of respondents per organisation

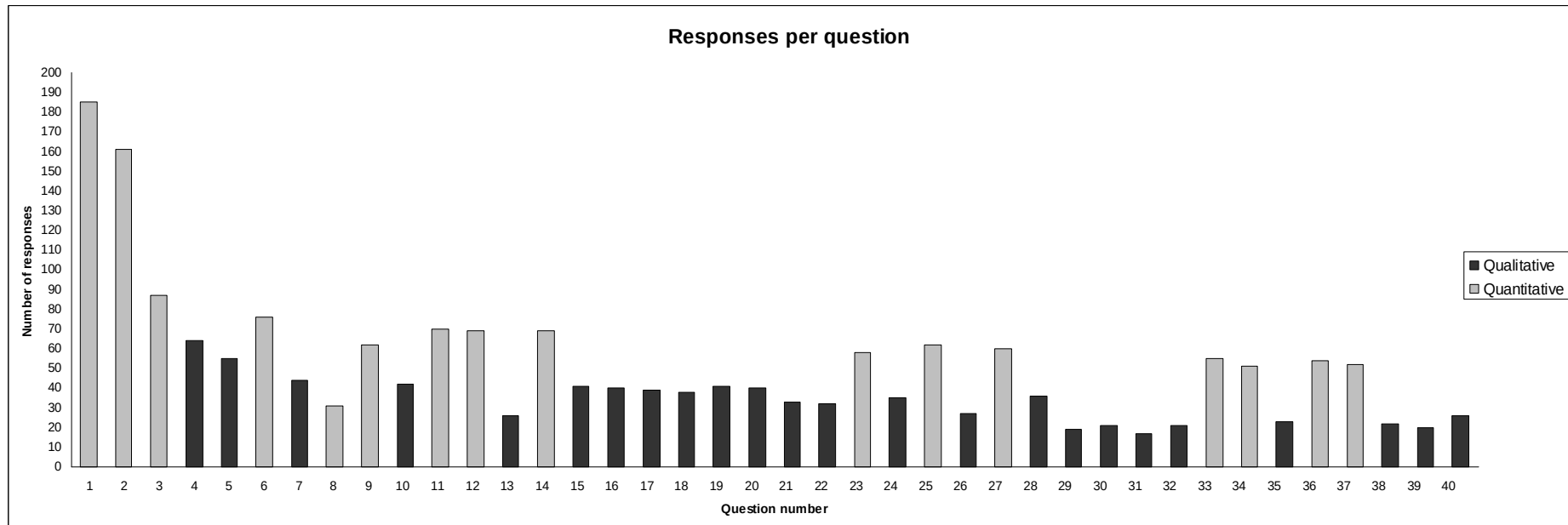
Organisation	Respondents
Association for Television on Demand (ATVOD) - UK	3
Bebo - Global	6
Commission for Youth Media Protection (KJM) - Germany	5
Creative Commons - Global	31
EuroISPA - Europe	3
FSM - Germany	5

Independent Committee for the Supervision of Standards of the Telephone Information Services (ICSTIS) - UK	3
INHOPE - Europe	5
Internet Content Rating Association (ICRA) - Global	2
ICANN - Global	28
Internet Engineering Task Force (IETF) - Global	10
Internet Governance Forum (IGF) - Global	9
Internet Watch Foundation 'Cleanfeed' - UK	4
London Action Plan on Spam - Global	4
NICAM - Netherlands	3
Nominet -UK	2
Pan European Game Information (PEGI) - Europe	6
SecondLife - US	15
World Wide Web Consortium (W3C) - Global	19
Total	163

As can be seen answers pertaining to both ICANN and Creative Commons dominate the responses, with SecondLife, W3C and IETF also being popular. No answers were recorded for ICMB or Squaretrade hence they are not included in either the qualitative or quantitative analysis. The responses have been aggregated in order to permit the analysis of meaningful conclusions across the remit of Internet self-regulatory institutions.

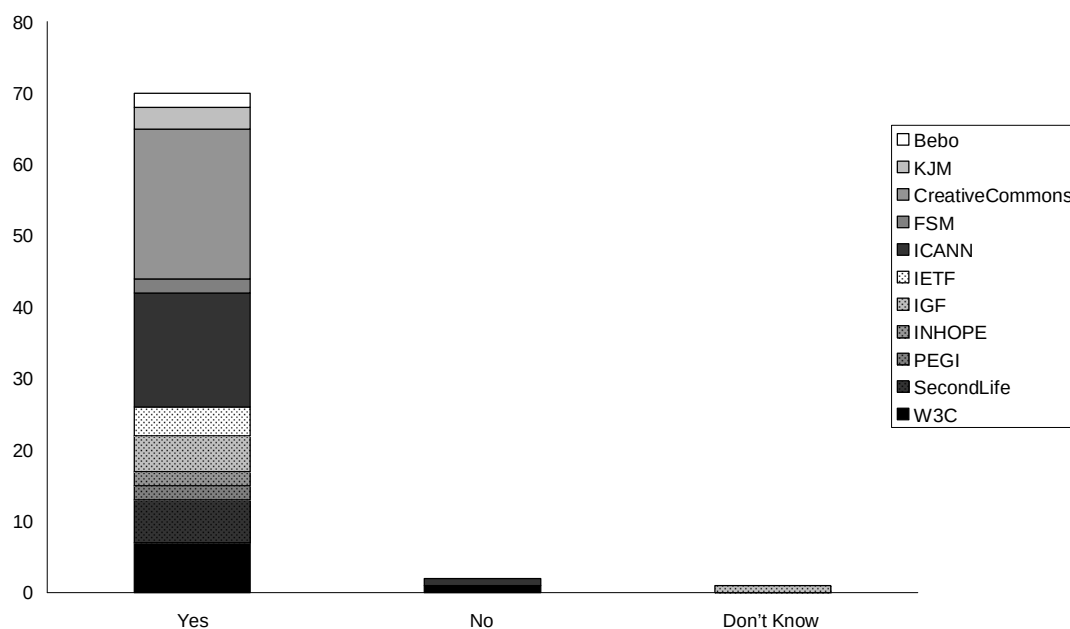
In the remainder of the quantitative analysis, those organisations with less than 5 responses are deliberately excluded in order to permit the clearer presentation of results. In the qualitative analysis, a summary of the responses for each question are presented and where appropriate, individual responses are highlighted in order to illustrate divergence from a trend or a specific example of particular interest.

Figure 34 illustrates the number of responses per question for both quantitative and qualitative questions. As can be seen there was a significant overall dip in responses over the length of the survey which was possibly a result of the long length and complexity of the survey. The other conclusion from this data analysis is the benefit that designing online self-fulfilling surveys with closed checkmark / option buttons brings for the maximisation of response rates. Finally, the creation of a long row of 8 qualitative questions (between questions No 15 and 22) was not conducive to a large number of respondents (although subjectively the quality of responses was high).

Figure 34: Number of responses per question split for both qualitative (open ended) and quantitative (e.g. yes/no) type questions

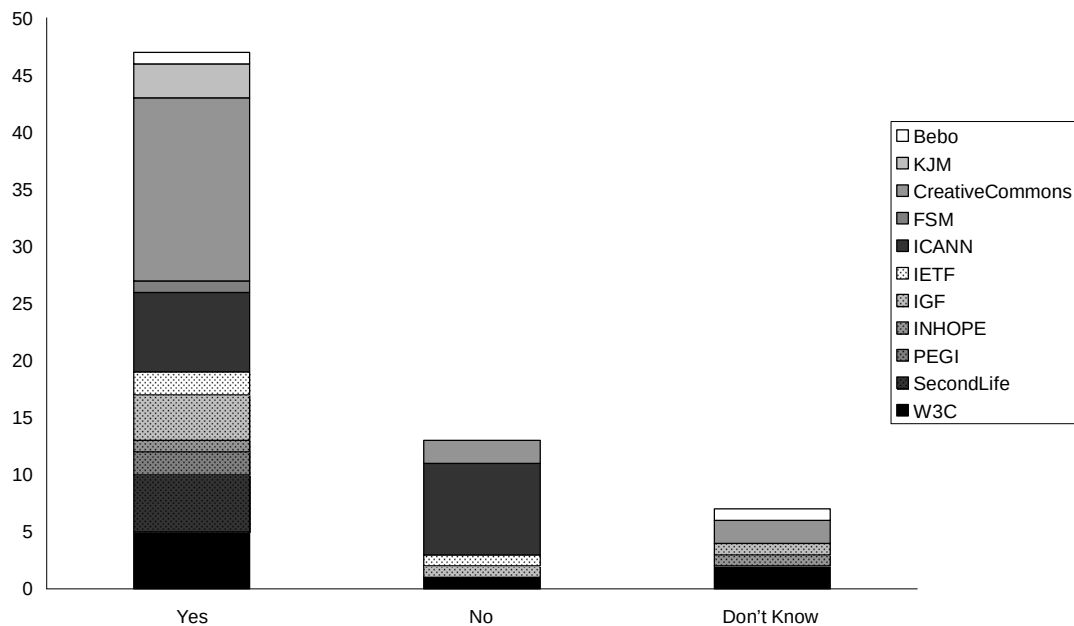
3. Design and Organisation of the institution

3: Design & organisation of the Institution a: Do you know the mission statement of this institution?



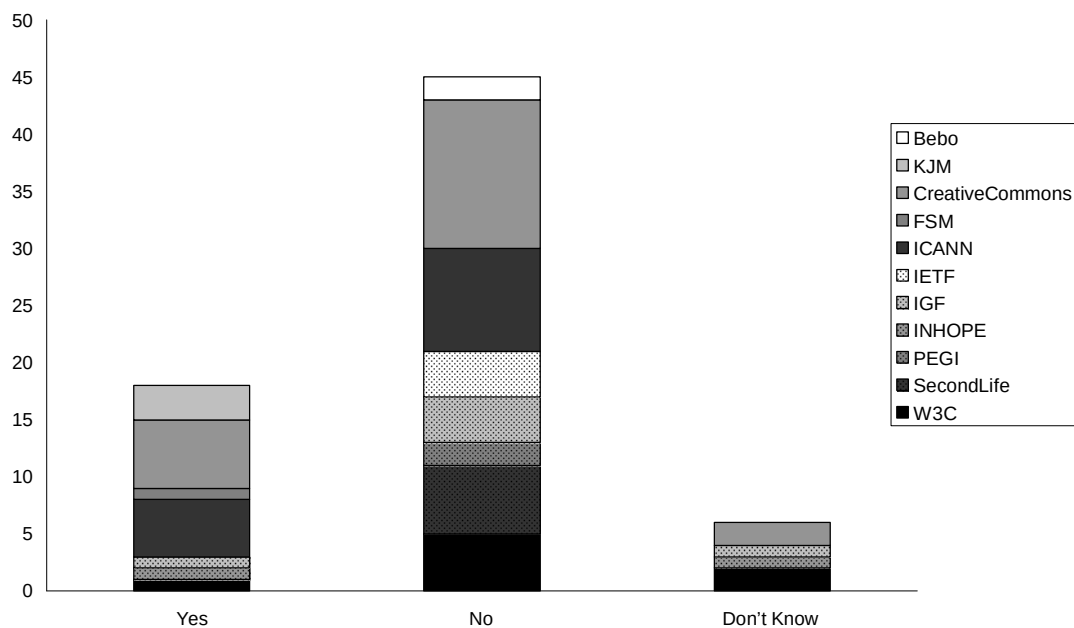
Overall most of the respondents knew the mission statement of the organisation they were answering about. As detailed in the methodology section most of the responses relate to Creative Commons and ICANN. These two organisations represent over 50% of the responses for this question. 94% of respondents commenting on other organisations knew their missions.

3: Design & organisation of the Institution
b: How well do you think it fulfils this function?



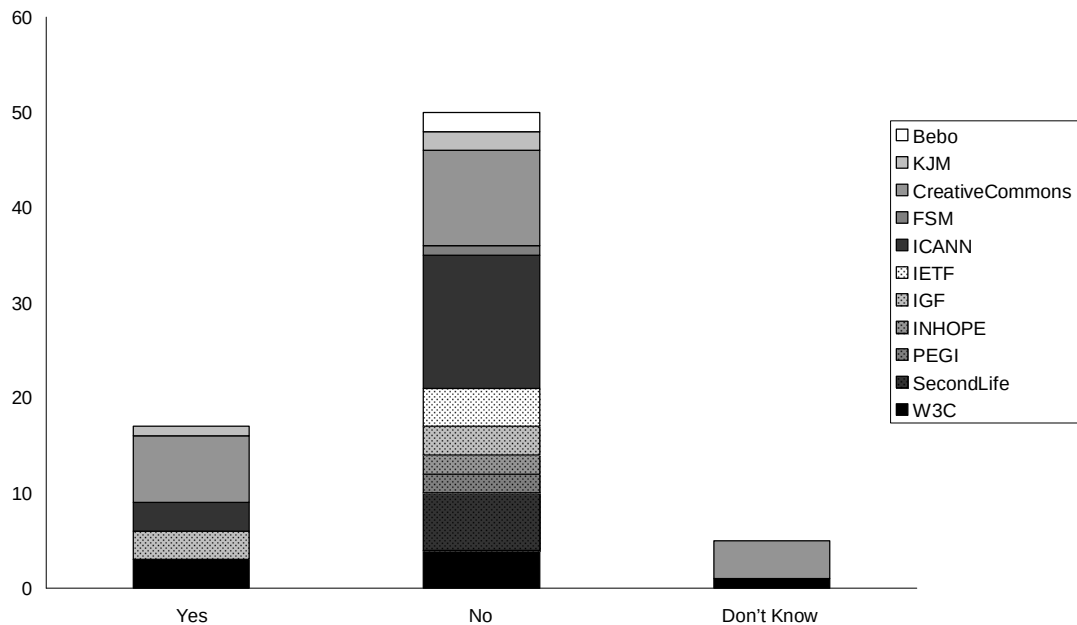
Most respondents, just greater than 70%, believe that the organisations fulfil their role well. However, for ICANN responses there was a slight majority lacking faith in the function of the organisation. The only other organisation for which doubt was significantly expressed was the W3C, but here there was still a majority of 63% convinced by its success.

3: Design & organisation of the Institution
c: Does it fulfil a function required by law?



Roughly 65% of respondents believe that the organisations are not fulfilling a legal obligation by the action of their work. This ratio is replicated within the specific responses for both Creative Commons and ICANN. Given the lower numbers of respondents relating to the other organisations, the results are more scattered, with several, KJM, FSM and INHOPE, held to be fulfilling a legal obligation.

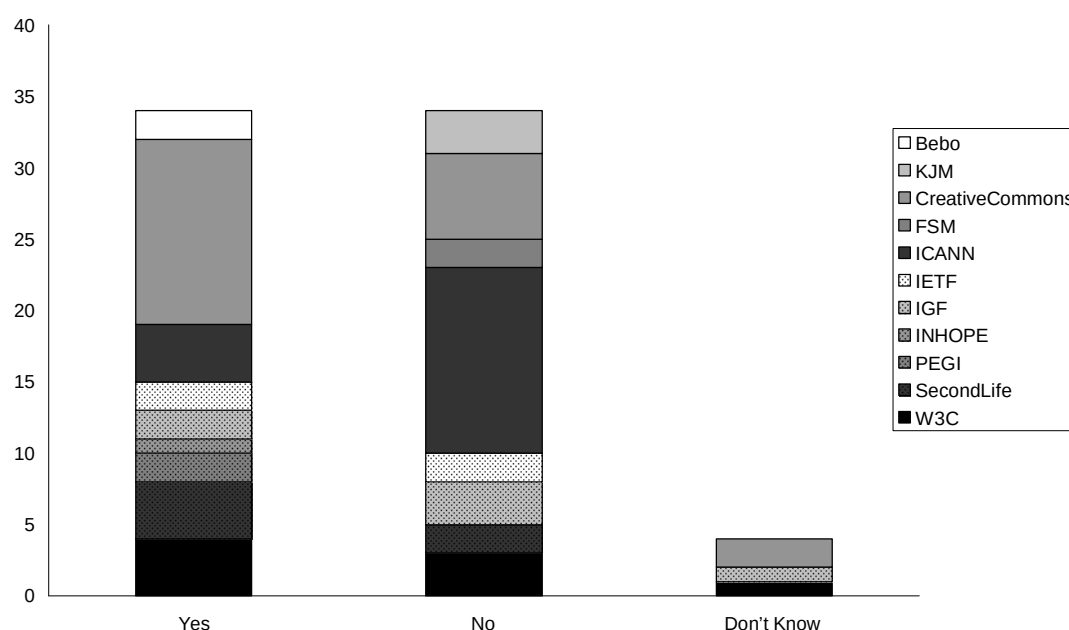
3: Design & organisation of the Institution
d: Should government (directly or indirectly) fulfil this function?



Two-thirds of respondents believe that the task fulfilled by the organisations should not be transferred to the government. Less than 50% of Creative Commons respondents believed that tasks should not be conducted by government. The IGF had an even split of respondents.

3: Design & organisation of the Institution

e: Do other institutions perform the same functions?



Overall responses related to the functions of organisations were evenly split between the tasks being unique and common, with variations: 28% of responses related to Creative Commons thought its tasks were unique, compared to 76% of ICANN responses. For Bebo, INHOPE and PEGI the respondents thought they conducted the same functions as other organisations, whereas for the IETF, IGF and W3C there is an almost even split of opinion.

4. What problem is it intended to solve?

Most respondents were aware of the function that the respective Self Regulatory Organisations (SROs) were intended to solve, although there was understandably some disagreement about the effectiveness of these organisations.

5. What other functions do you believe it fulfils?

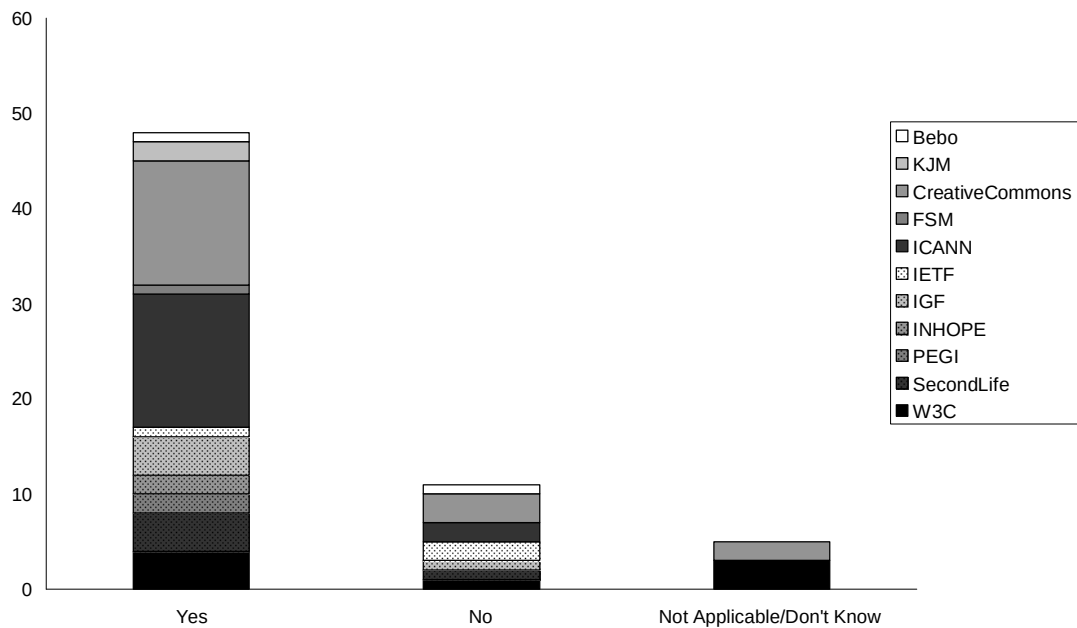
A number of respondents commented that the respective SROs fulfilled other functions than the stated mission. These were frequently softer and more difficult to define functions, such as “creation of a hub for creative people”, “sounding boards”, “a ‘political lightning rod’”; acting as a forum for a market where the participants do not normally share information; “an observatory of self-regulation” and finally as a model for similar organisations in other countries. Organisations like the W3C were seen as having a role in gathering the most important people and corporations together, while the IWF was seen as a model for similar organisations in other countries and a focal point for expertise. Finally, ICANN was singled out as an organisation which now performs functions that it was not originally intended to solve. It was also cited as an experiment that could provide

leadership about how to solve other problems that need global multi-stakeholder governance, both on the Internet and elsewhere.

6. Inputs

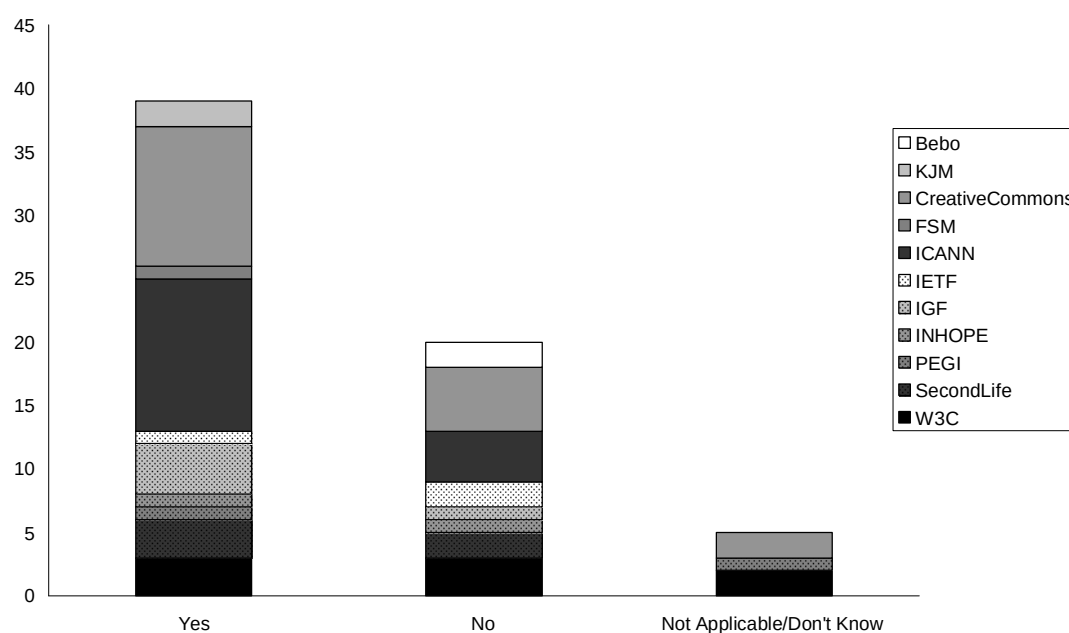
Three quarters of the respondents knew the geographical location of the organisation that they were responding about. This was reflected in all organisation specific responses.

6: Inputs
a: Do you know where it is based?



6: Inputs

b: Do you know the name of the Chief Executive or Chairman?



Over 60% of respondents knew the name of the Chief Executive or Chairman of the organisation that they were responding about. This is slightly down on the geographical location of the organisation, but still a sizable majority.

7. Approx budget p.a.?

A wide variation in knowledge of the budget of these SROs was recorded across the respondents. Estimates for the budgets for SROs covered by this survey ranged from \$50m (ICANN) to nothing (with the London Action Plan). Even within institutions there was a great range of estimates. For ICANN, estimates ranged from \$50m to \$2m. For some of the regional European SROs, budgets were €1 - 2 million. A number of respondents commented that they thought the resources were extremely limited (FSM and IGF) while only one respondent commented that it was too much.

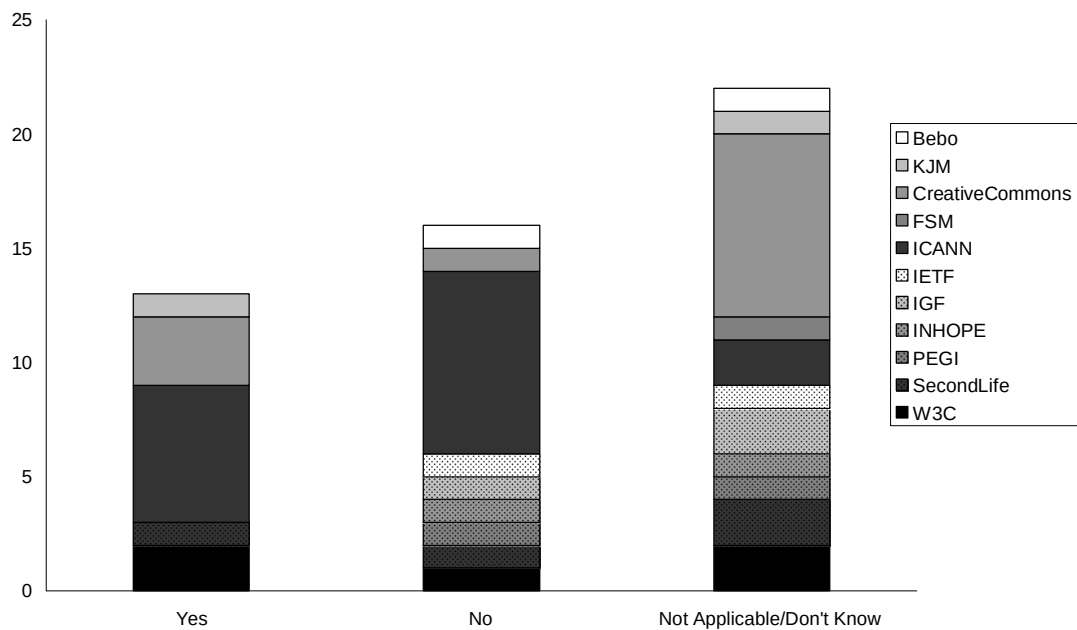
8. In what currency?

Given the respondents as outlined in the introduction, most respondents answered the above question in US\$.

9. Appropriateness of budget

On the question of budget a simple majority of respondents were unsure about appropriateness of its level. This is most prominently illustrated with Creative Commons, where 66% of respondent were unsure. However, for ICANN there was a roughly even split. Of the other organisations with significant numbers of replies, the W3C was thought to have an appropriate budget, but even this was only by 4% of respondents.

9: Inputs - Is the budget appropriate?

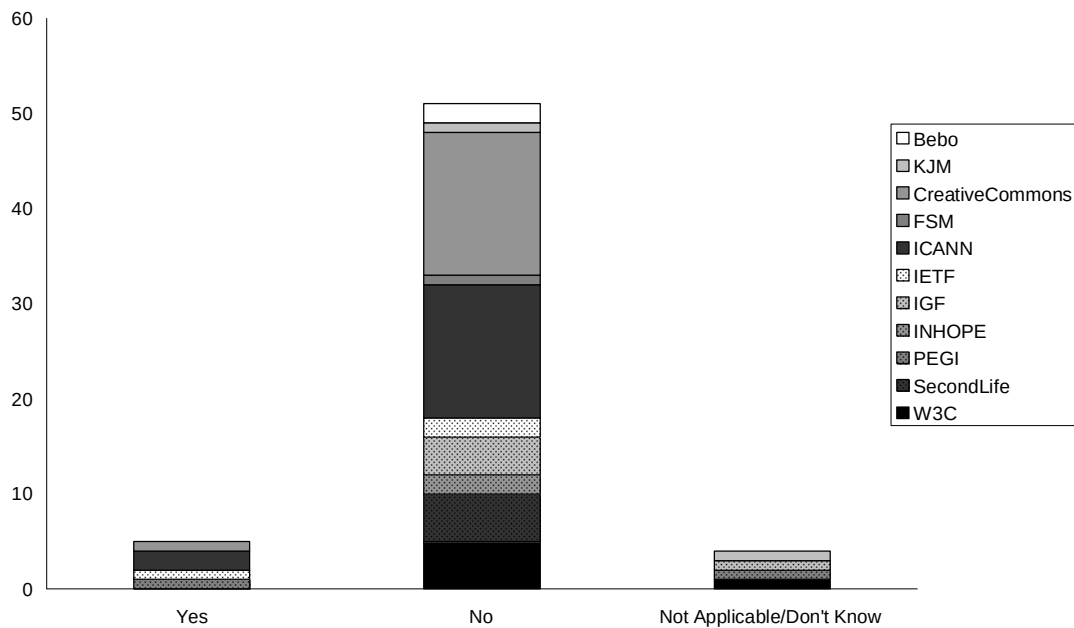


10. How many staff work there?

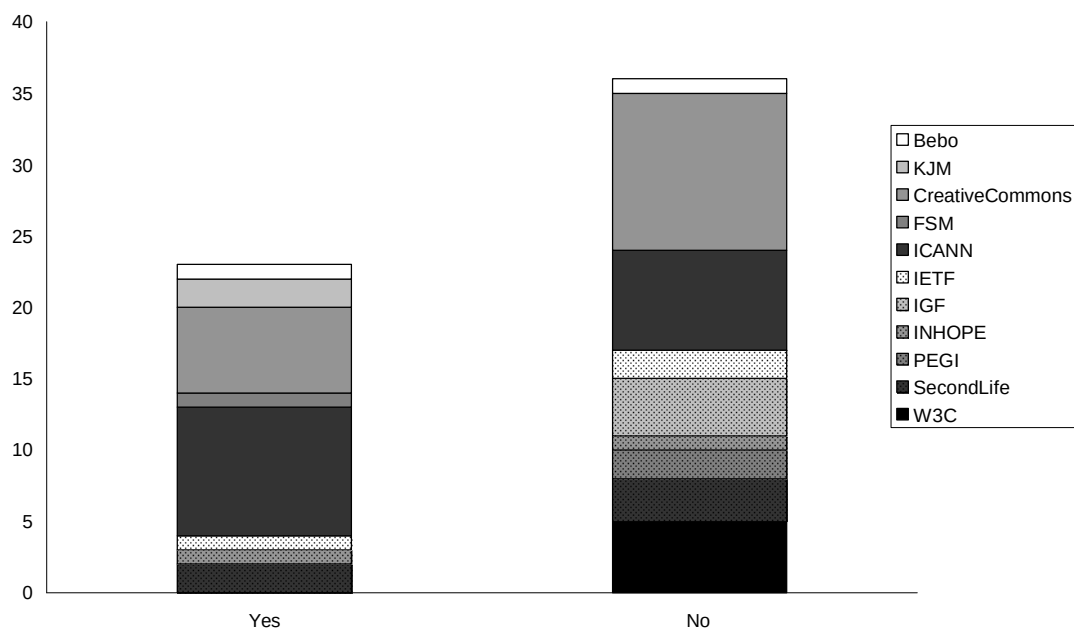
There was a great variation for ICANN in number of staff – most said between 80 and 100 but one or two respondents said this organisation had 10 members of staff. One respondent was not sure. There was great variation in the range of estimates for other SROs too. For example, for the Internet Governance Forum, the three respondents answered that they thought 2, 50 or 150 people worked for this SRO. Respondents for the smaller European SROs such as PEGI or the IWF were lower but more closely grouped.

11. Have you ever worked there?

Most of the respondents had no personal experience of working for the organisation upon which they were providing comment.

11: Inputs - Do you now or have you ever worked there?**12. Contribution to budget?**

Most respondents believe that they do not make a contribution to the budgets of the various organisations. This is reflected by Creative Commons, where 64% believe that they do not contribute. However, for ICANN the majority, 56%, believe that they do.

12: Do you contribute to the budget, either in fees or by grants/other contributions?

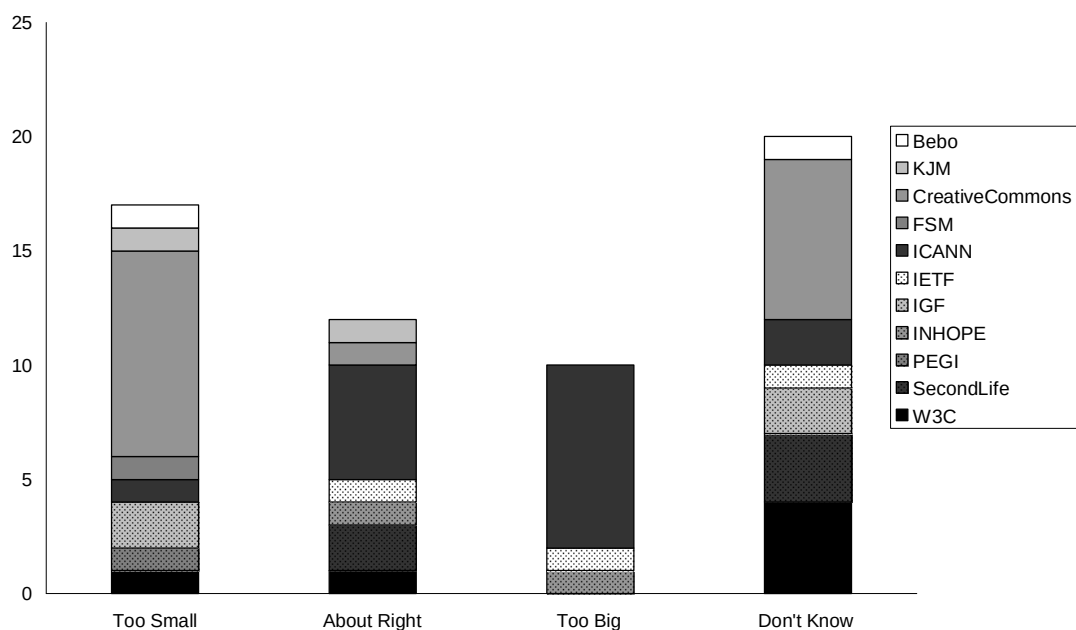
13. If so, what form does your contribution take?

Most of the responses to this question indicated they contributed to the budgets of the SROs via either an enforced tax (e.g. in the form of a percentage for the registration fee of a domain name going to ICANN) or donations (e.g. with Creative Commons). Other ways included an indirect contribution via labour or time or effort put into the ongoing activities of the SRO or the hosting of a website. Finally in a limited number of cases, more unusual form of contributions were recorded such as support to the publication of an evaluation of the SRO, grants (e.g. by Vodafone UK to the IWF) government financing by the state media authority (in the case of the KJM). For those organisations operating more like businesses, membership fees were also a popular way to make a contribution.

14. View on budget for this organisation?

Breaking down the responses to question 9, an overall simple majority did not know if the budgets of the organisations were of appropriate size. This was particularly illustrated for the organisations, such as Bebo, SecondLife and the W3C, that were poorly represented in the survey. For ICANN and Creative Commons, most respondents had a specific opinion on the budget size.

14: What is your view on the budget for this organisation?



15. How independent is the board of directors?

Respondents to this question indicated a range of opinion within and across the SROs covered. For example, for Creative Commons the board of directors was seen as somewhat independent by one respondent while another commented that it could be more independent as the CEO is a Board Member. There was broad agreement that with ICANN although independence was there in principle, this was not the case in practice and the board did not exercise enough control over management or staff. Overall, across all

organisations, there was agreement that boards were not really independent from the staff. In one case a respondent commented that legal action was brought against the SRO to enforce the basic rights of the directors.

16. Are there independent committees?

A minority indicated that they were aware of independent committees for the various organisations they were responding about. A far bigger number of respondents commented that there was no independent sub-committee for finance or audit for the organisation they were responding about. A few commented that in some instances whilst such committees did exist they did not do anything useful, lacking the expertise or mandate to properly enquire. Others commented that such subcommittees (e.g. in the case of ICANN) were present although not very active.

17. Are there civil society stakeholders involved?

A similarly bleak picture emerged regarding the participation of civil society stakeholders, in general respondents seem to indicate that such involvement was either non-existent or weak. Often civil society engagement would occur via advisory positions or as observers (e.g. with the London Action Plan). One or two respondents presented a more upbeat assessment, describing the involvement of civil society groups through advisory or complaints boards (PEGI) an advisory committee (NICAM) or as board members (IWF). Participation via mailing lists, events, workshops and other meetings were all recorded as different methods of involving such groups.

18. Does this institution file accounts?

Many of the organisations covered filed some kind of formal accounts either to the US government (as in the case of ICANN) or government backers (e.g. with KJM). A number of respondents for well known organisations such as ICANN indicated that they did not know whether the organisation filed accounts (despite the apparent transparency of its procedures). Given the bias of responses towards ICANN, many of the respondents here indicated that the State of California was the recipient of filed accounts although one respondent indicated uncertainty about the role of the US Securities and Exchange Commission (SEC) in regard to the accounts for Second Life.

19. Does it report to a regulator (other than financial?)

The role of the US government and Department of Commerce as the regulatory institution for ICANN was noted by a number of recipients to this question. Other examples included the system of enforced self-regulation of the Kommission for Jugendmedienschutz for FSM and the Media Commission in the case of NICAM.

20. Is there a tribunal or other enforcement arm?

There was an absence of strong perceptions on the presence of an enforcement arm for many of the SROs covered by the survey. In the main respondents who answered commenting upon ICANN indicated that they thought no enforcement arm existed. One or two noted the existence of the UDRP (trademark enforcement provision) mechanism. With regard to other SROs, the law enforcement community; state media authorities (for KJM) and a self-appointed PEGI enforcement committee were also identified as enforcement mechanisms. Finally for Second Life the presence of volunteers who act as

‘peacekeepers’ was noted by one participant.

21. How many enforcement actions occur each year?

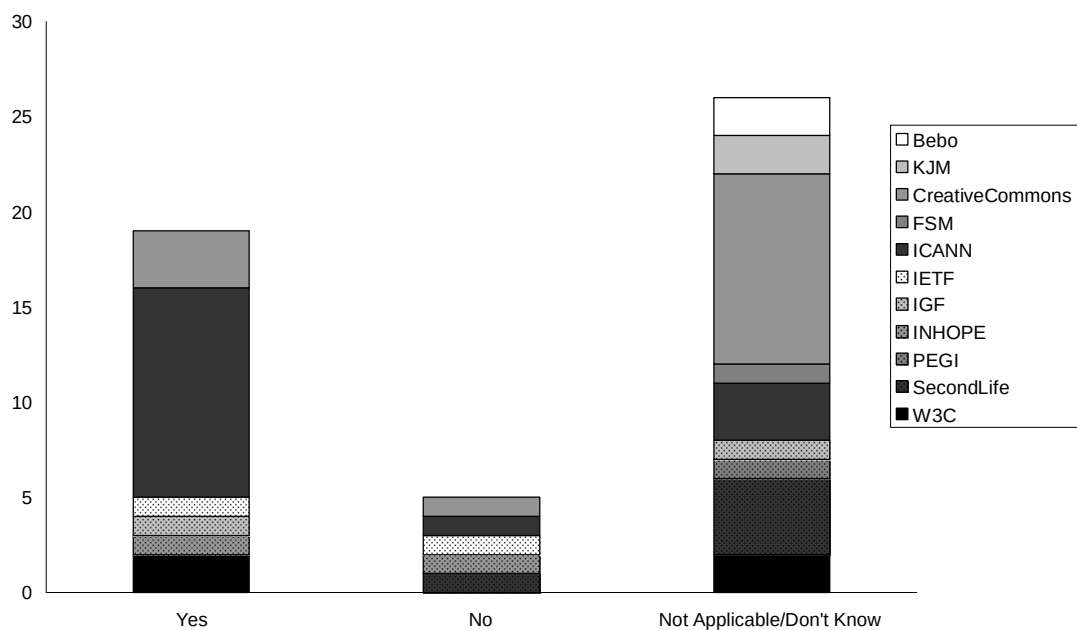
There was a broad lack of awareness as to the number of enforcement actions. A small minority of respondents indicated that between 5-10 enforcement actions for organisations like INHOPE and FSM occurred. PEGI meanwhile was remembered as only having 1 enforcement action. Views on the number of enforcement actions for ICANN again varied considerably, with some indicating none at all and others stating that the UDRP process had “a few thousand”.

22. What types of enforcement actions are undertaken?

Cease and desist was noted as a popular form of enforcement action undertaken across all the organisations. ICANN’s enforcement actions were identified as usually occurring via a legal process, in comparison to Second Life whereby people were “removed from the space” or asked to “cease bad behaviour”. Expulsion, shunning, “rejection of input” was also noted as a type of enforcement action for the IETF. Finally with the content related SROs (e.g. INHOPE), notification to the police was identified as a form of enforcement.

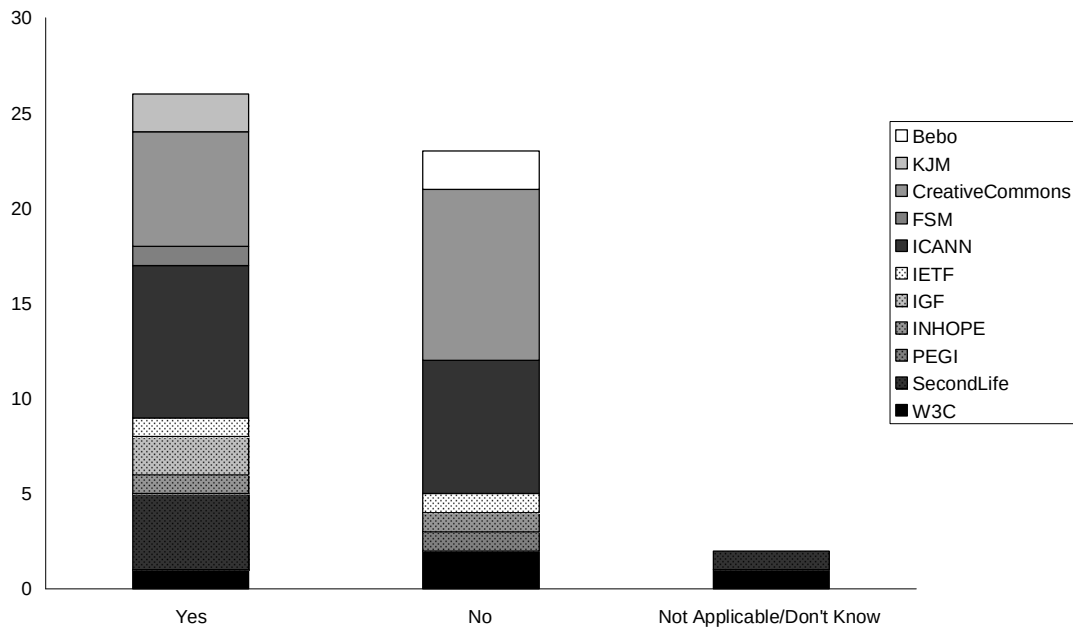
23. Outputs

23: Outputs
a: Does the annual meeting attract a large audience?



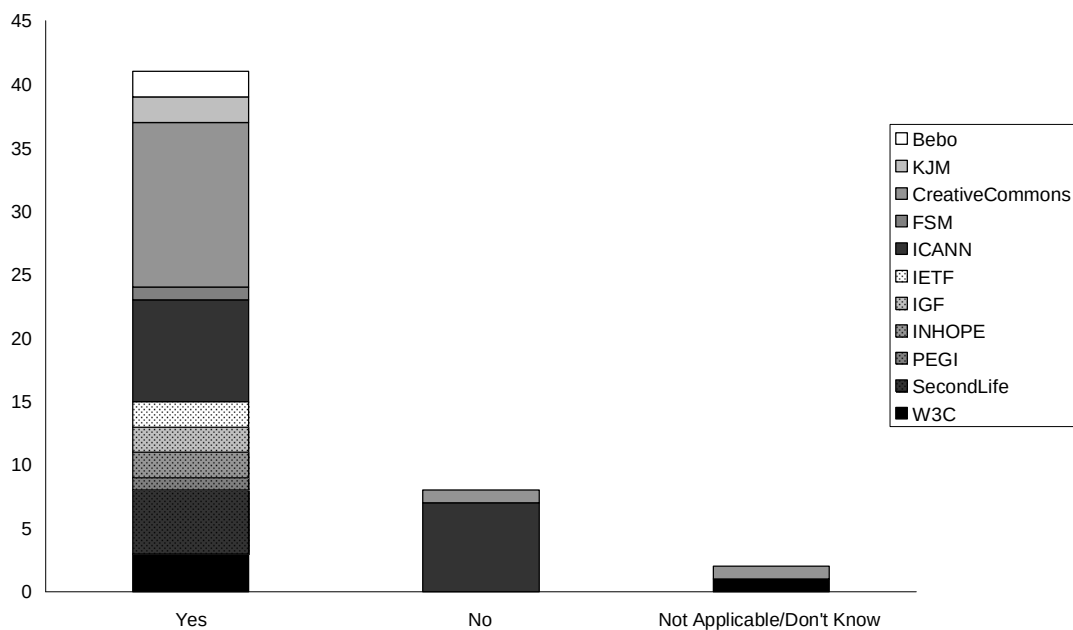
Overall, the attendance of the organisations annual general meetings is not well advertised to the respondents of this survey. This is illustrated by not only Creative Commons, but also by other organisations including Bebo, the KJM, FSM and SecondLife. However, ICANN respondents believe that the annual meetings do attract large audiences.

23: Outputs
b: Is there sufficient press coverage of its activities?



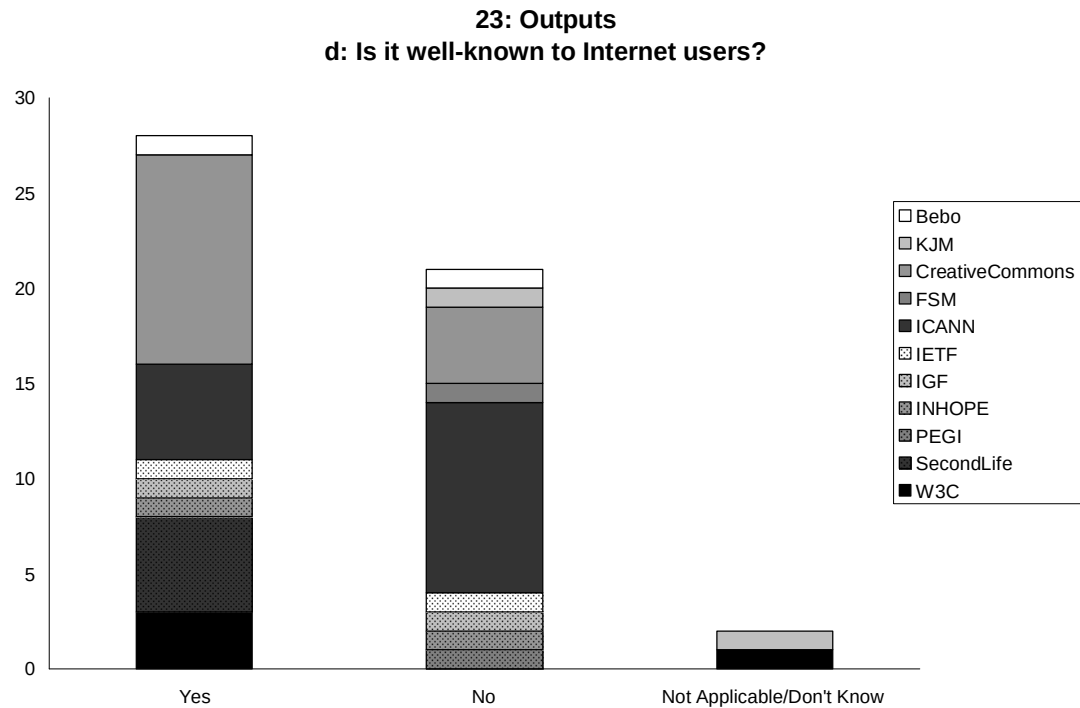
Opinions on the press coverage of the organisations' activities are evenly split, both overall and for specific organisations, with only 4% overall unaware of the coverage levels. This 4% was found in responses relating Second Life and the W3C, where the number of responses was low and therefore more subject to variance.

23: Outputs
c: Are its activities well-known to its members?



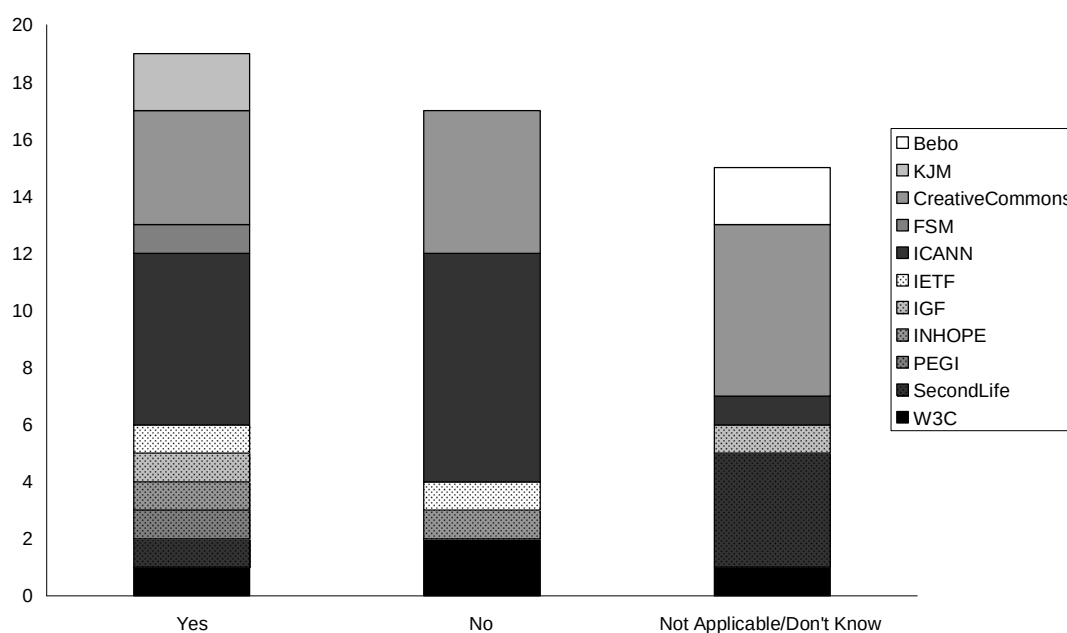
Over 80% of respondents believe that the organisations activities are well known to their

members. The exception is ICANN, where only 53% are convinced of the dissemination of information relating to its activities to its members. The ICANN responses skew the overall distribution for this question, as the majority become 92% without ICANN.



Overall, the respondents were evenly split on whether the output of the organisation was well-known or not to internet users. For ICANN 67% thought their outputs were not well known, but for Creative Commons 73% thought they *were*. Respondents commenting on Second Life and the W3C gave 100% and 75% positive responses regarding dissemination of information to internet users.

23: Outputs
e: Are any reform proposals well circulated?



Overall, the respondents were evenly split over whether organisational proposals were well circulated or not, or were not informed. This is clearly illustrated by Creative Commons. For ICANN most respondents were informed, but still evenly split on their opinions on the degree of circulation of new proposals.

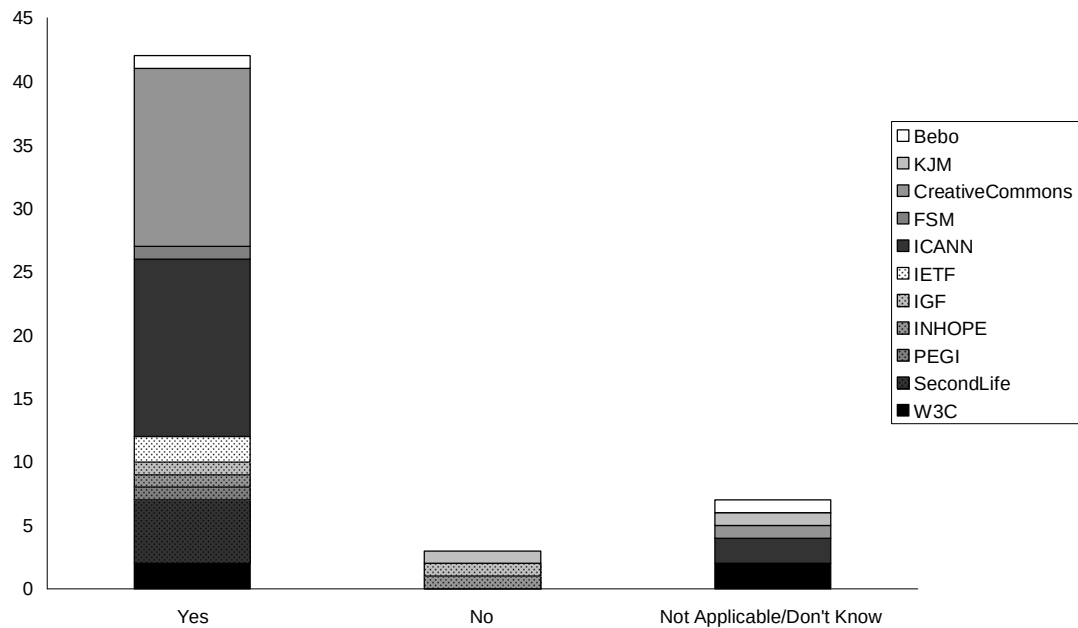
24 How is the agenda set and policy made?

According to respondents the general perception was that policy for SROs was set via staff or experts feeding into an executive or decision making body. A majority of respondents for ICANN agreed that policy for the organisation was set rather opaquely usually via staff making decisions that are then automatically endorsed by the board (e.g. “the staff decides” or “small group of insiders”). Although public policy making structures were in place for ICANN, respondents felt that they were not used very effectively. In other SROs such as FSM and Creative Commons the agenda was set via discussion lists and active debate between stakeholders. Similarly for the London Action Plan, policy was set between members via frequent telephone conference calls. For SROs like Bebo and Second Life, policy was set via the owner / financial backer (e.g. Linden Labs) or organisational management structure.

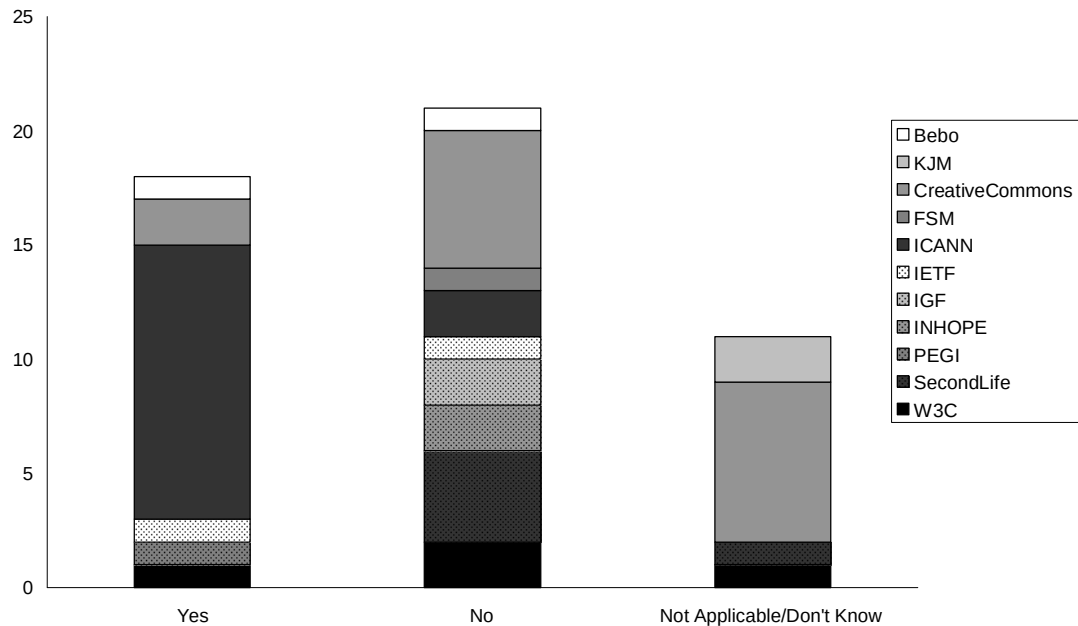
25. Outcomes

The general belief among the respondents is that all of the organisations that they answered about are currently growing in size. However, 13% were unsure about the organisation’s current evolution.

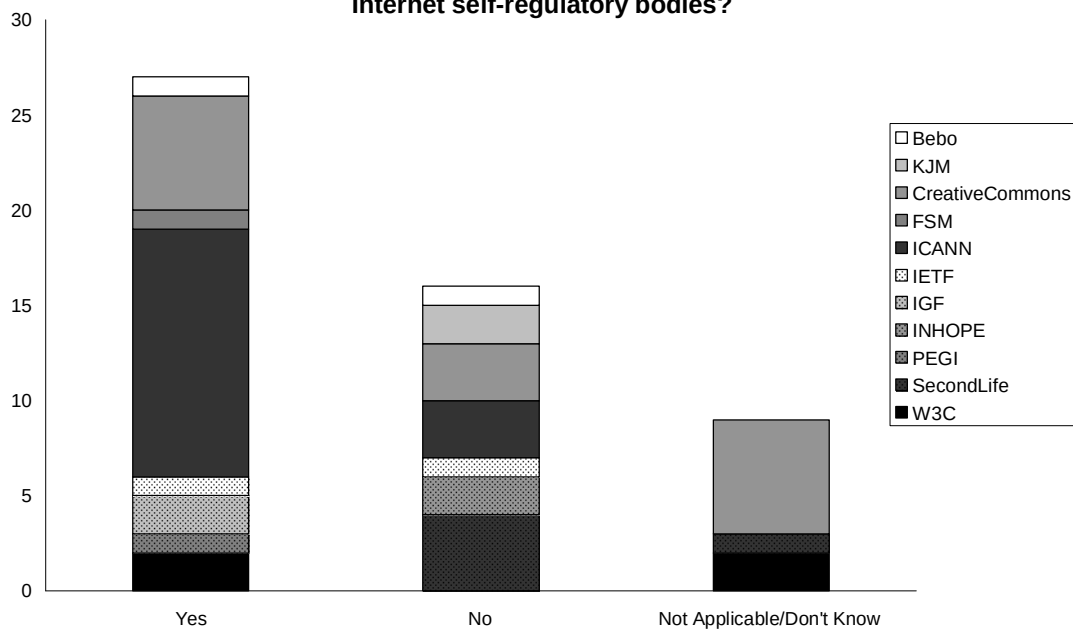
25: Outcomes
a: Is the organisation growing?



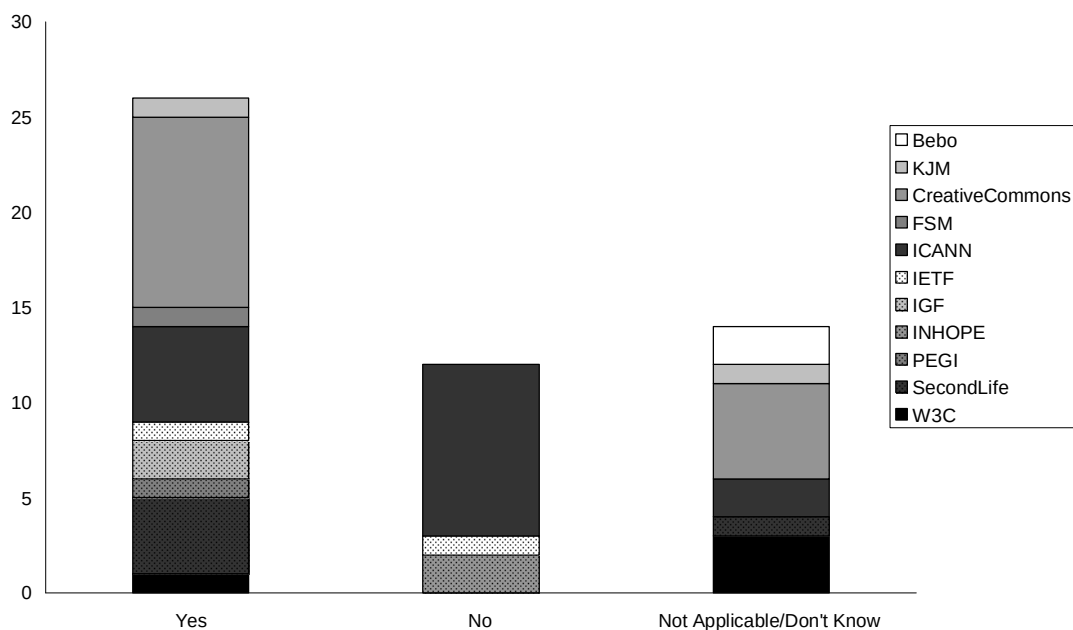
25: Outcomes
b: Is the organisation becoming closer to government?



There is a general belief, 85% to 15%, that ICANN is becoming closer to government, but across all of the organisations surveyed most are thought to be maintaining their distance, as typified by majorities of 100% for FSM and INHOPE. The overall majority was maintained despite 46% of respondents relating to Creative Commons been unsure.

25: Outcomes**c: Is the organisation responsible for international liaison with other Internet self-regulatory bodies?**

A majority of respondents thought that the organisations are in liaison with other self-regulatory bodies. For ICANN over 80% of respondents held this belief, but for Creative Commons the split was more even with 40% been unsure. Some respondents commenting on other organisations, such as Bebo and the IETF, were evenly split in their opinions on liaison.

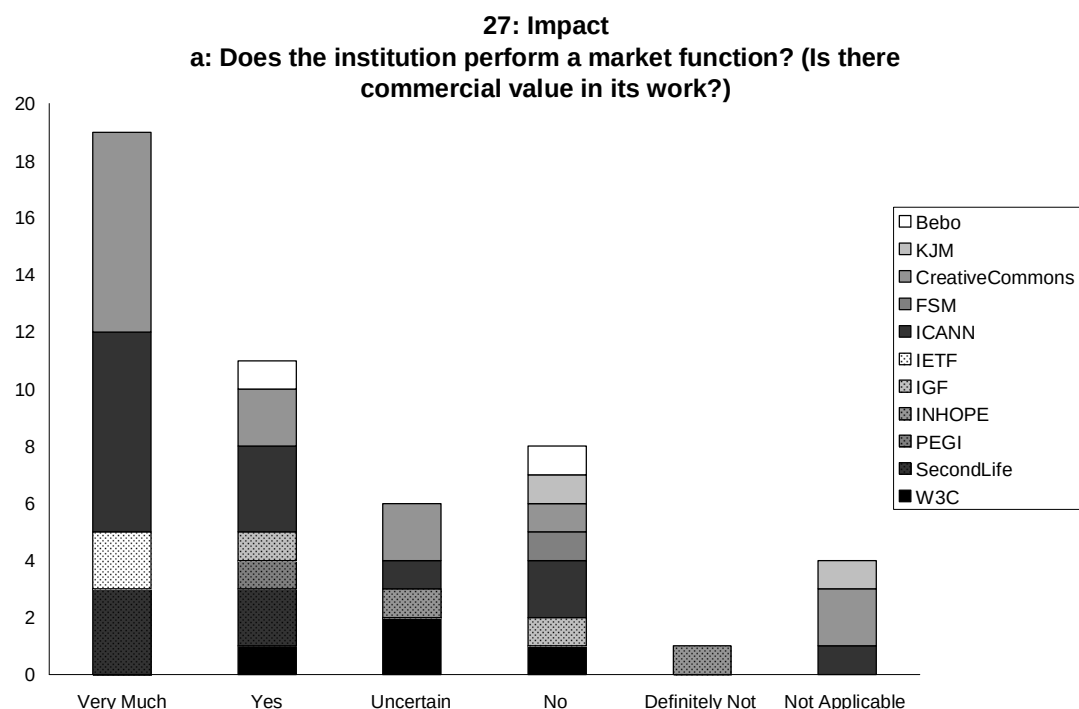
25: Outcomes**d: Do the staff appear to offer value for money?**

Overall, most respondents believe that the organisations staff offer value for money. However, 56% of respondents relating to ICANN were dissatisfied with the service they received, and 26% of Creative Commons and 75% of the W3C respondents were unsure.

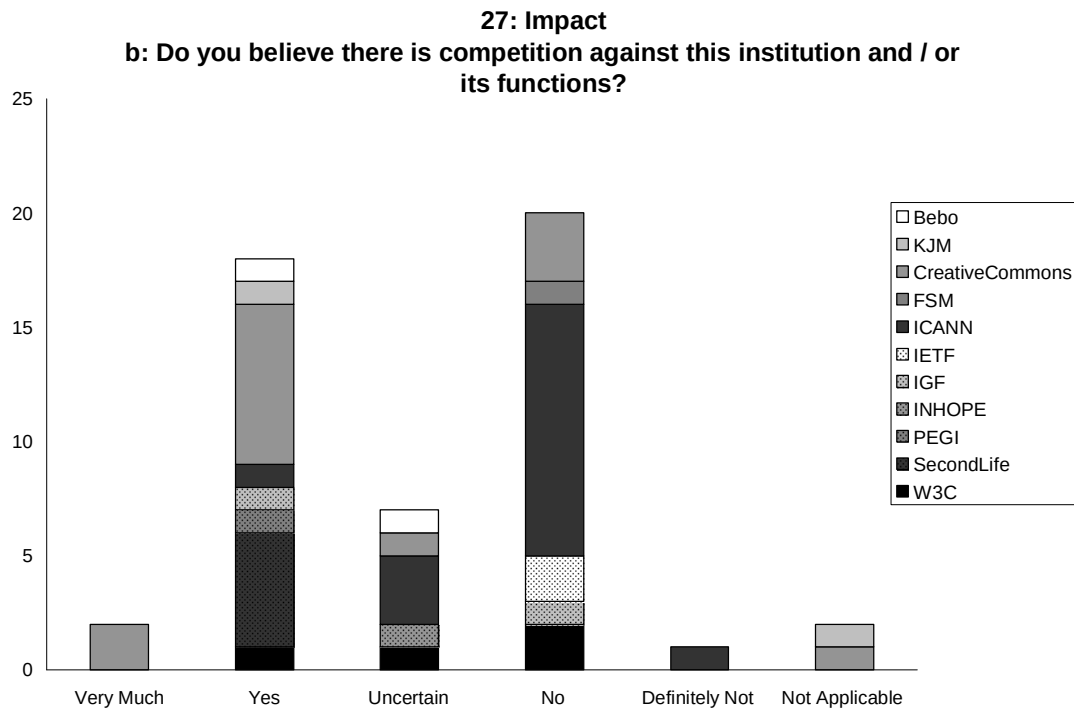
26. How is value for money measured?

Most respondents to this question understood it as asking for a judgement on whether value for money is provided rather than a description of the mechanism of doing so for each institution. Views reflected the broad range of institutions covered by this survey. Some could identify direct input such as the creation of additional value (e.g. Creative Commons) or the experience itself (as with Second Life). A number of respondents commenting upon ICANN indicated that it did not provide value for money – it was noted as being overstaffed and the organisation was seen to have grown used to the significant income stream it now receives. Respondents commenting about organisations with more difficult to measure policy objectives (e.g. FSM) indicated they could not identify any real way to measure value for money. Others still understood value for money in terms of the provision of customer support and a good level of service. A respondent talking about PEGI indicated that this SRO runs satisfaction surveys with those covered by the organisation. Finally, the London Action Plan (which has no budget) on Spam was seen to be offering very good value for money as it cost nothing to run.

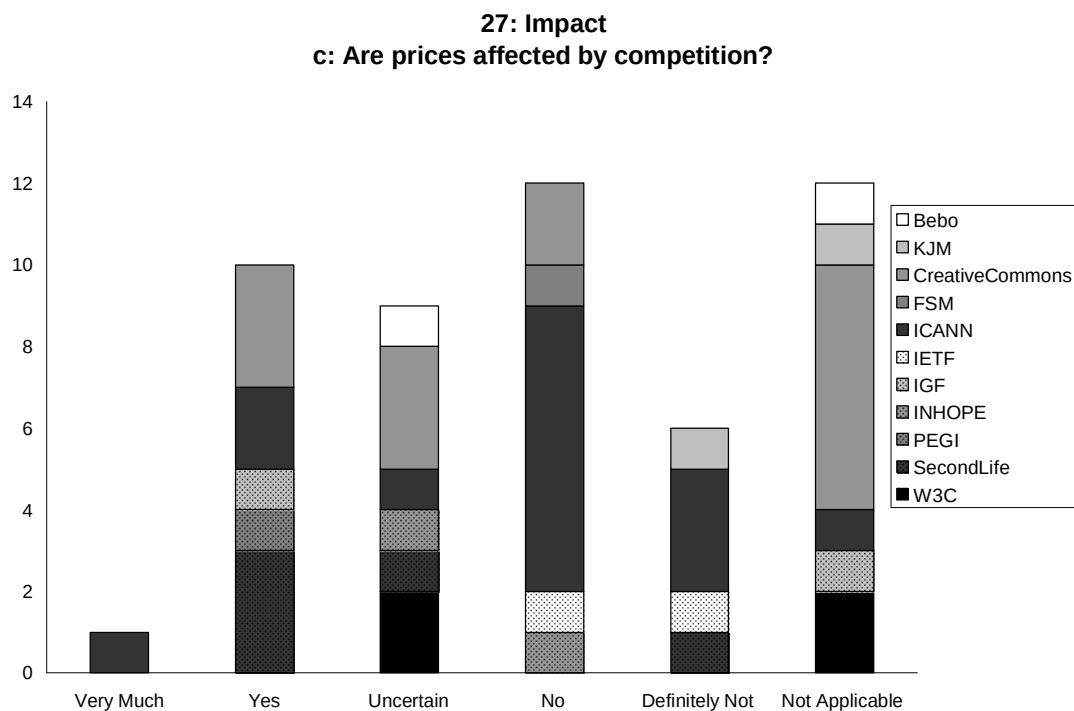
27. Impact?



Overall, the organisations are thought to perform a market function. However, there is some disagreement within the responses relating to specific organisations. For ICANN and Creative Commons, 21% of respondents for each were either unsure of a market function or thought that the organisation did not perform such a function. For the other organisations this percentage rose to 38%.



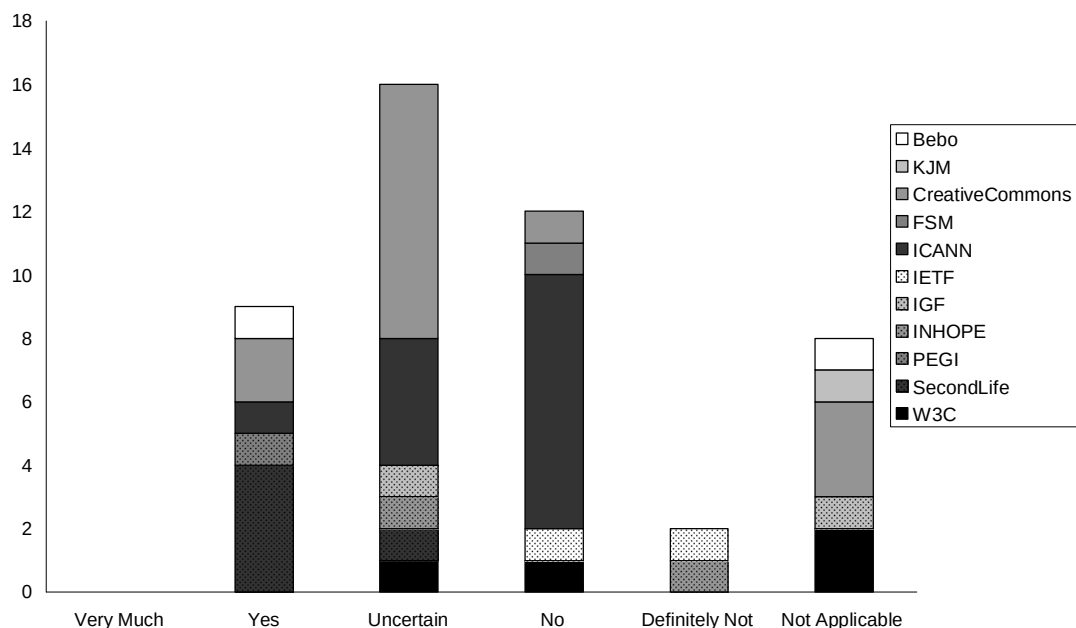
The respondents were decisive on their opinions about organisational competition, with 40% and 42% respectively believing or not in competition. In terms of specific organisations 64% thought Creative Commons had competitors, but 75% thought ICANN did not.



The impact of competition is not clear cut among the responses. 24% of respondents

thought that competition did not affect the organisations prices, whereas 22% thought they did. There is clearly confusion relating to Creative Commons, as there is a roughly even split over those who think that prices are affected or are unsure, and those who think the question is not applicable.

27: Impact
d: Is any such market functioning effectively?



Overall, a simple majority of the respondents were unsure as to whether the market was functioning effectively. This is typified by Creative Commons where 57% of respondents were unsure. Regarding ICANN 61% thought the market was not effective.

28. Can you define the market, if any, in which this institution functions?

Respondents commenting on this question were mainly of those who talked about ICANN and Creative Commons. These markets were defined respectively as the market for the buying and selling of domain names and for the market for licensing. Other clearly defined markets included the market for people's attention (in the case of online communities such as Second Life or Bebo) and content rating (with PEGI). One respondent indicated that Creative Commons did not perform a market function but rather corrected a market failure.

29. If the institution does perform a market function how large is that market (in Euro per year)?

Quantitative estimates on the size of the market were almost exclusively provided from those respondents commenting about ICANN. These ranged from €500m per year to €2bn. Respondents commenting upon other institutions indicated they were unsure. A respondent talking about Second Life indicated uncertainty of the market size but felt nevertheless that the size of the market was growing. Another respondent indicated that for INHOPE the size of the market could "range from nil to millions".

30. What share of the market does the institution take?

Many respondents to this question commented upon ICANN. Estimates as to the market share of ICANN were generally around a majority (“99%”; “close to 100%”) if not the absolute entirety (“all” or “all of it”). Other SROs were seen as having a large share in their market (e.g. Second Life was estimated by one respondent as having 65% of the market share and 90% by another). Yet another respondent indicated that Second Life had a fairly important share but other competitors in different areas might have greater shares.

31. What share does the largest other institution take?

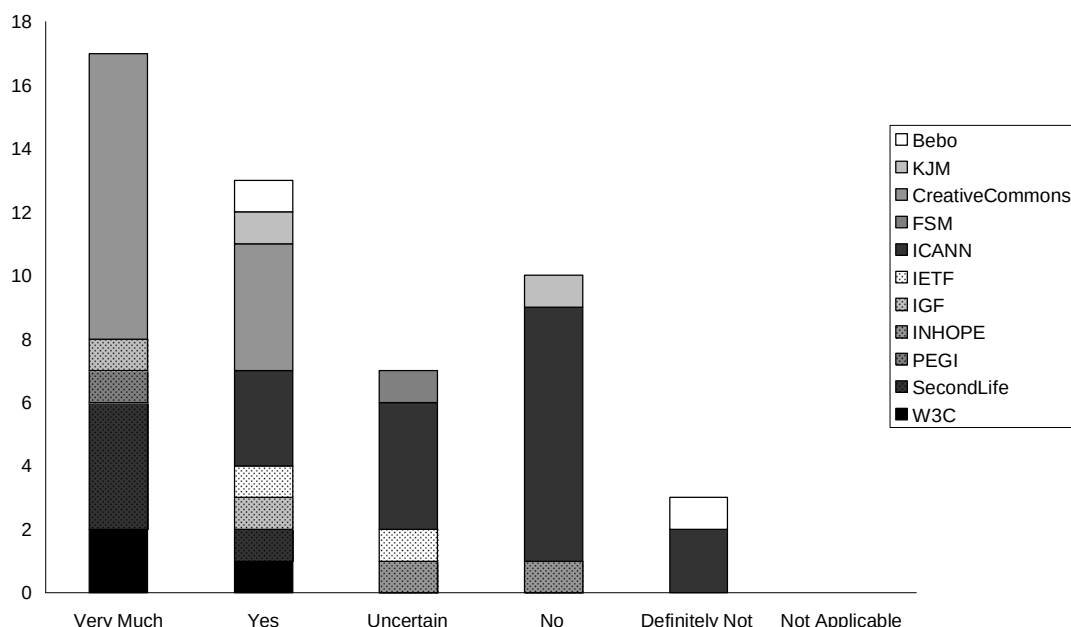
There were a limited number of answers to this question and the majority spoke about ICANN indicating that other institutions took a small share (“less than 1%”; “maybe 10%”; “under 10%”) of the market.

32. What might make the market function more effectively?

Comments about what is required to make the market in which certain SROs function more effectively centred around the stimulation of competition (with ICANN), unification of the markets (with regard to Creative Commons) and less participation by governments. Better information (a list of possible competitors) was seen as a way to make the market in which PEGI operates function more effectively. Addressing the issues of financial accountability and entry and exit were seen as important for making the market for virtual worlds such as Second Life function more effectively.

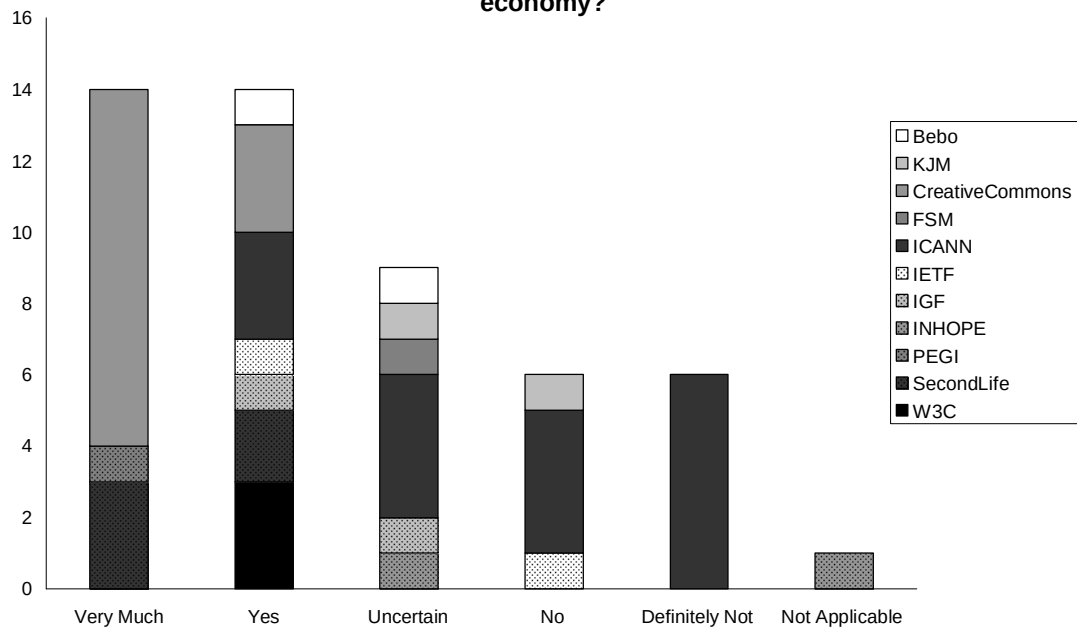
33. Sustainability?

33: Sustainability
a: Does the institution innovate?



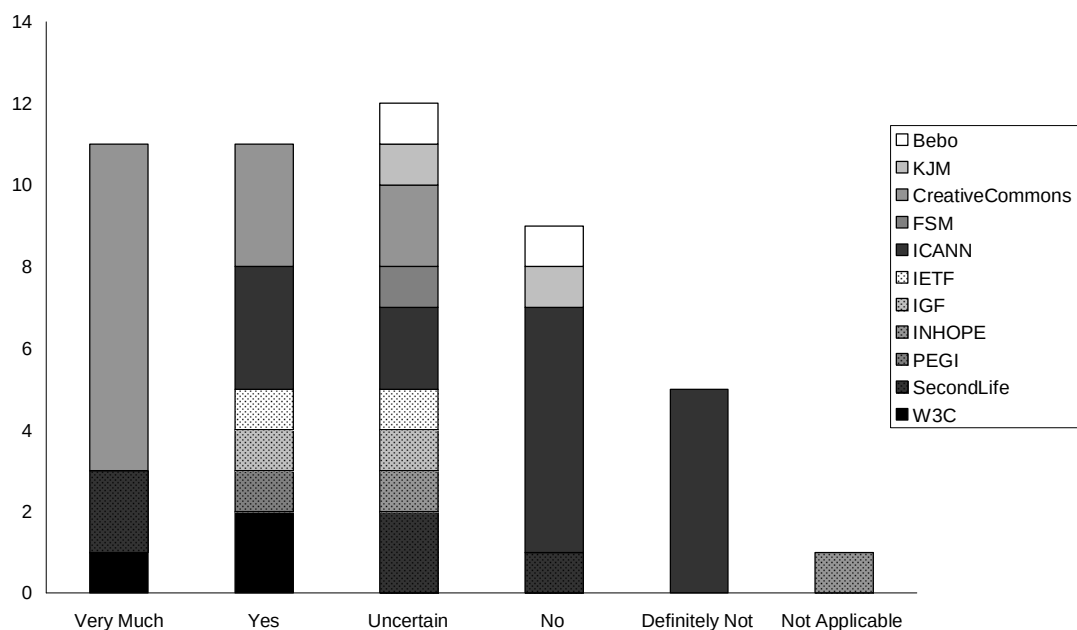
60% of all and 100% of Creative Commons, the IGF, PEGI, Second Life and the W3C respondents believe that the organisations are innovative. Only 17% of ICANN respondents believe that it is innovative, with 24% unsure and 59% of an opposing view.

33: Sustainability
b: Does the institution enhance the competitiveness of the e-economy?



Creative Commons, PEGI, Second Life and the W3C are thought to increase the competitiveness of the e-economy, but the opinions for ICANN are more indecisive. 59% think ICANN does not enhance the e-economy, but 23% and 18% respectively are unsure of believe that it does. For the IETF there is an even split of opinion on the organisations impact on the e-economy.

33: Sustainability
c: Does the institution enhance economic performance as a whole?

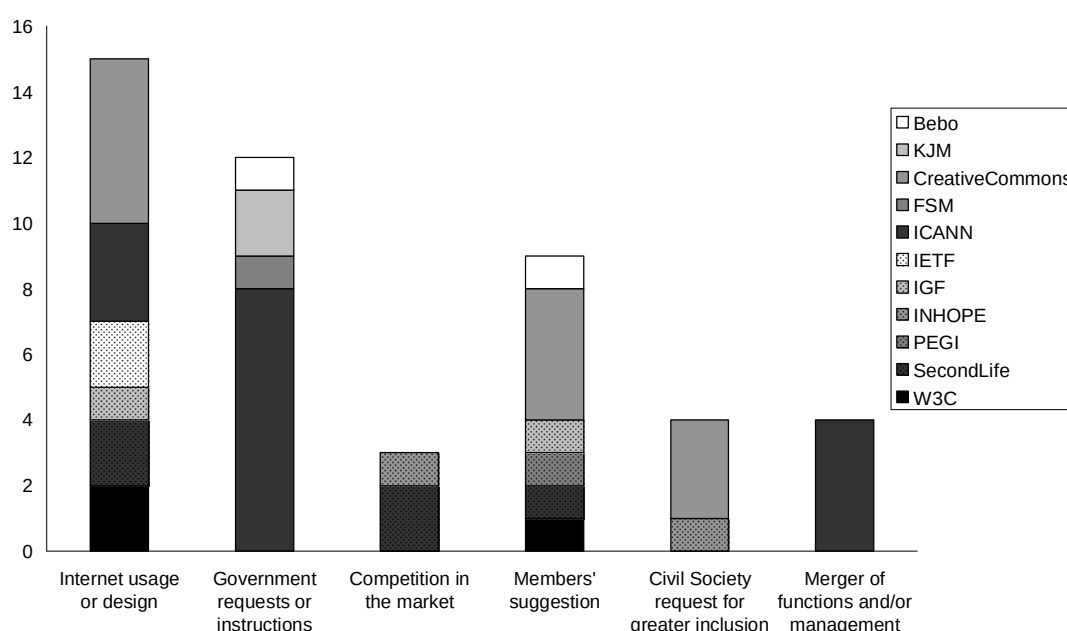


Overall, there is no clear opinion on whether the organisations enhance economic performance as a whole, but there are distinct views at the organisation-specific level. 84% of responses relating to Creative Commons thought that it does enhance the economy, whereas 68% thought ICANN did not. Of the other responses 40% were unsure about the impact of the organisations on the wider economy.

34. Primary driver for change in the organisations mission or function?

Creative Commons is thought to be responsive to members, civil society and interface suggestions, whereas ICANN is thought to be more effected by Government requests or instructions. Overall the reasons for organisation change were broad in scope, but there was a slight majority favouring the interface and Government requests for the poorly represented organisations.

34: Please state the primary driver for change in the organisation's mission or function:



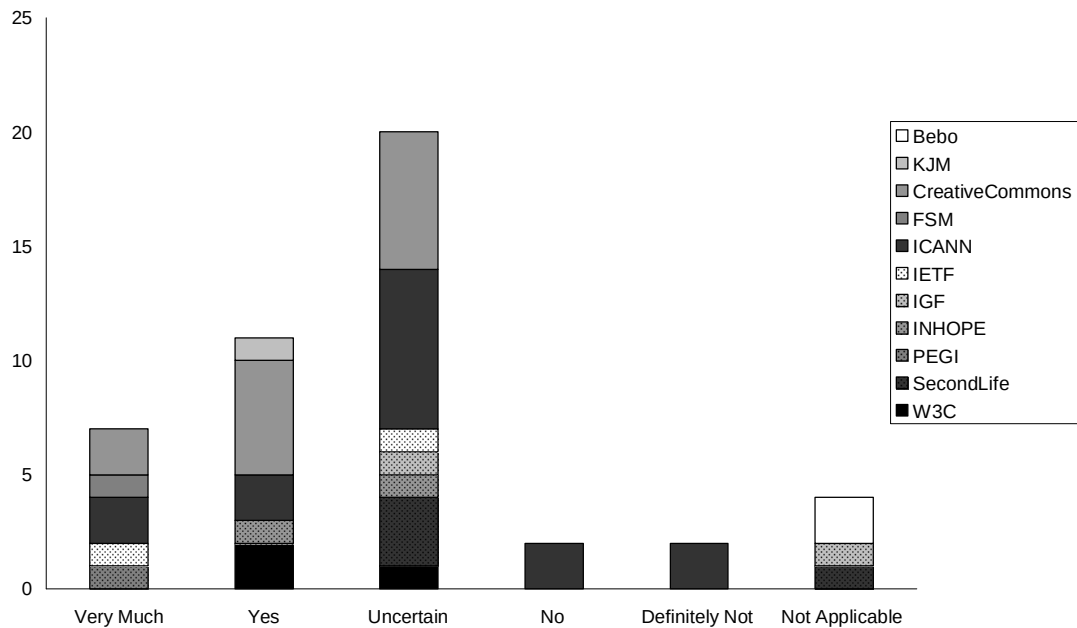
35. Are you aware of studies that can illustrate any of these answers?

Respondents indicated a number of studies available for a broad range of the SROs covered by the survey. A number of key academic papers or testimony was cited as were Annual Reports of the institutions and events where the effectiveness of the institutions was discussed (e.g. events for the EU Safer Internet programme).

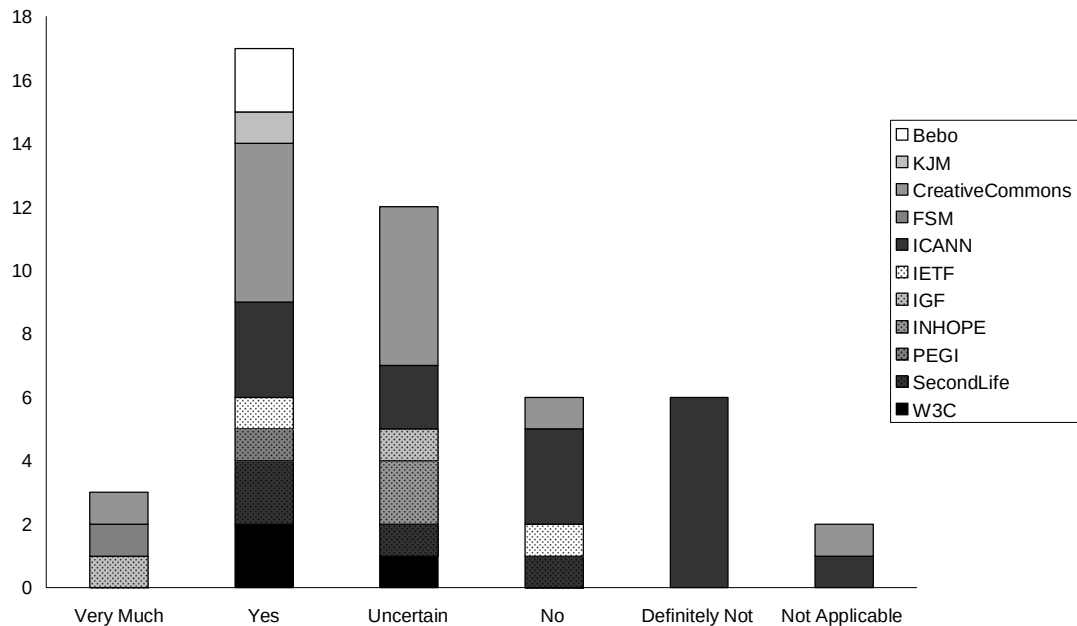
36. Transparency of the organisation?

Overall, a simple majority of respondents were unsure of the degree of transparency of the organisations to their Board members. This is illustrated most pertinently for ICANN.

**36: How transparent is the organisation to:
a: Board members?**

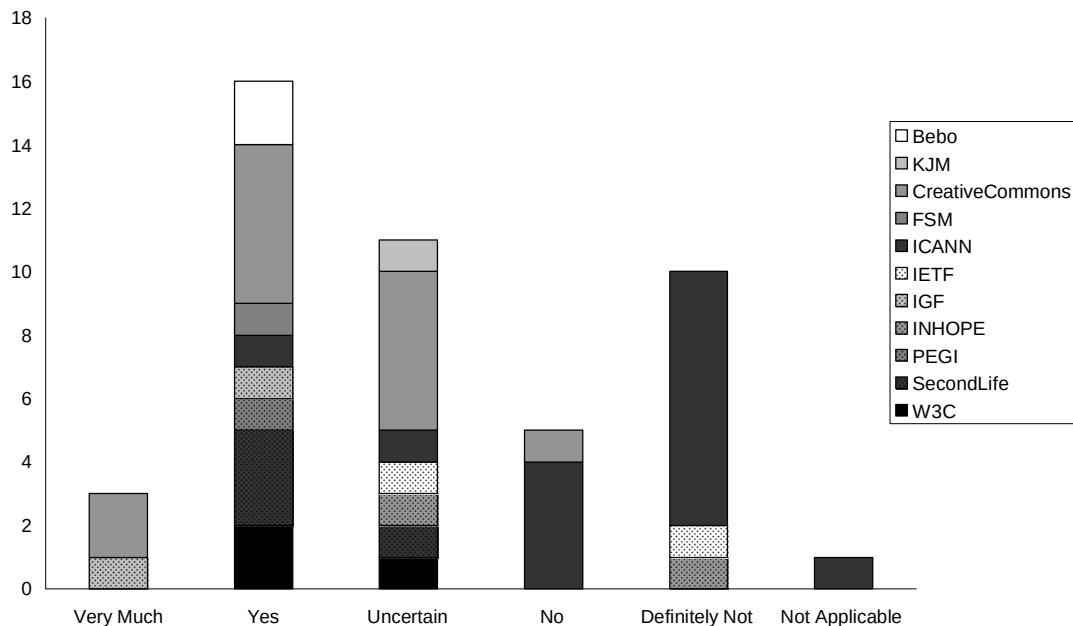


**36: How transparent is the organisation to:
b: Ordinary members?**



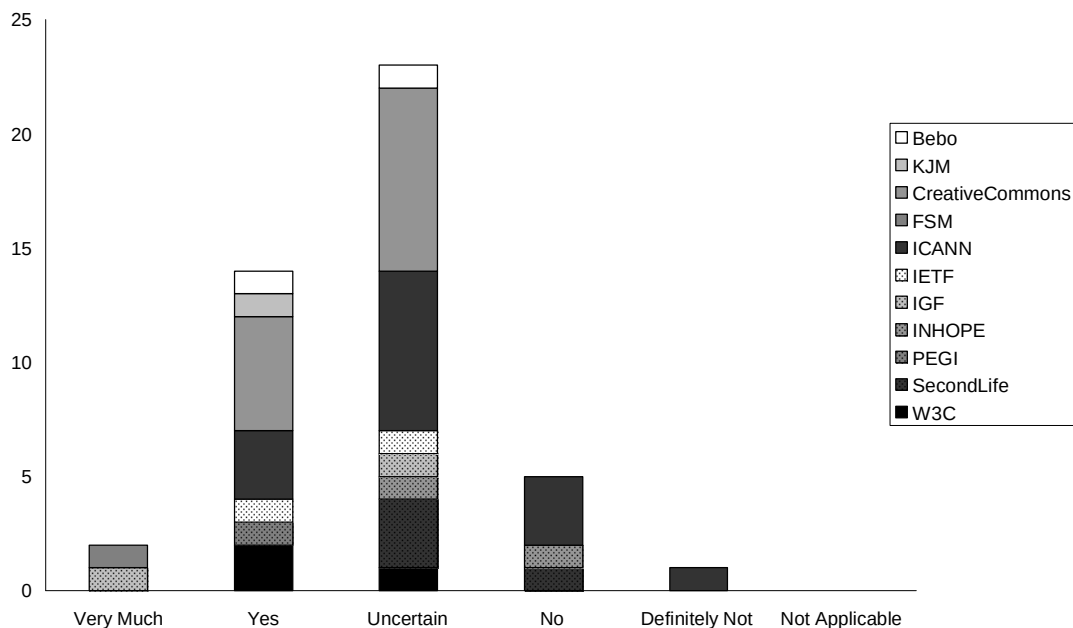
Respondents were more informed regarding the organisational transparency with regards to ordinary members than Board members, and overall they were thought to be open. This is despite 60% of ICANN respondents thinking that it was not transparent.

**36: How transparent is the organisation to:
c: Internet users?**



Similar beliefs were held about the transparency of the organisations to internet users as to ordinary members. Again, opposing the general opinion 80% of ICANN respondents thought this organisation was not transparent to internet users.

**36: How transparent is the organisation to:
d: Governments?**

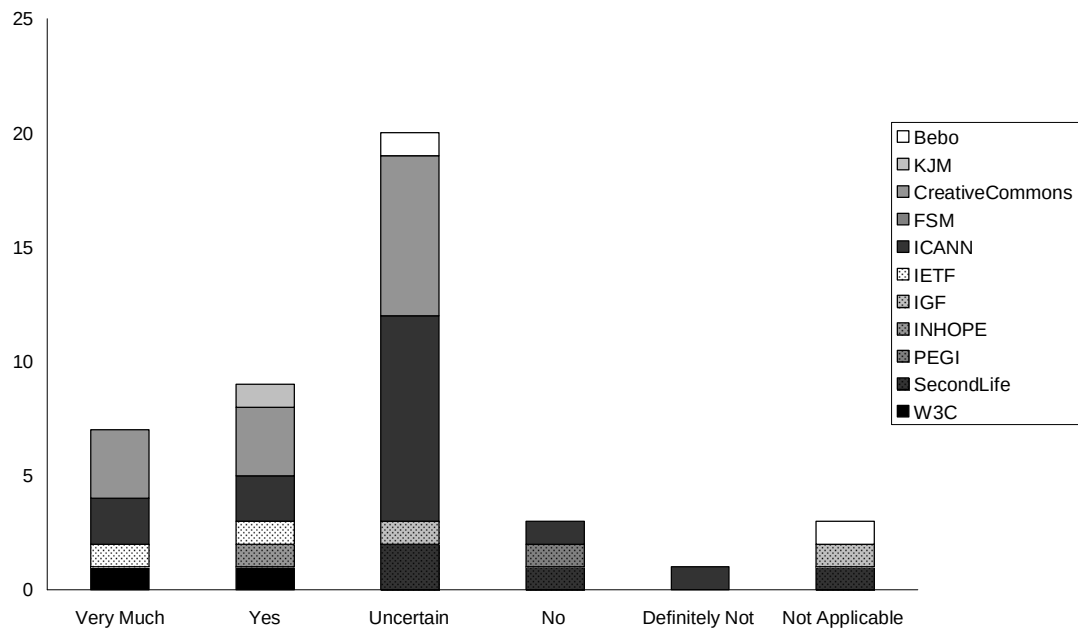


Most respondents were unsure of the degree of transparency of the organisations to government, especially for ICANN. However, the informed respondents believed the

organisations were more transparent than not.

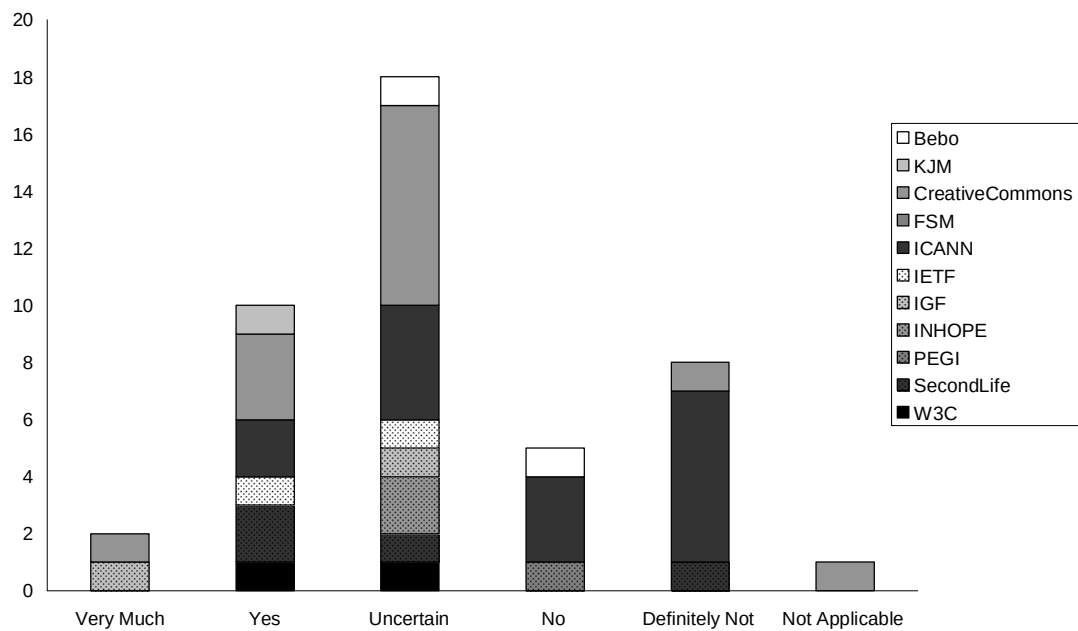
37. Accountability of the organisation?

**37: How accountable is it to:
a: Board members?**



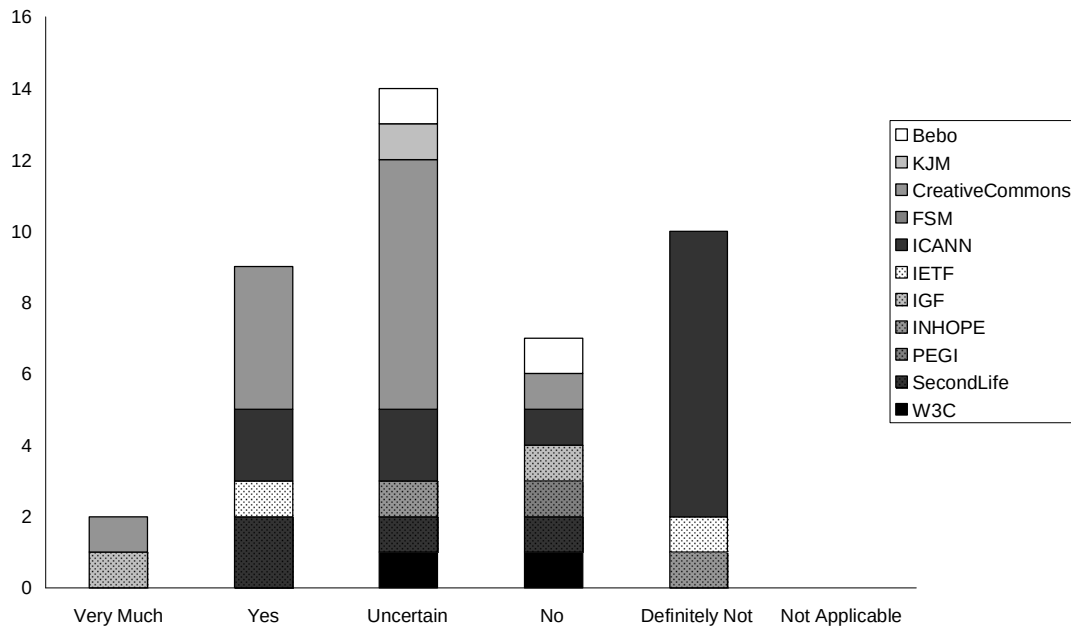
Most of the respondents were unsure about the accountability of the organisations with regards to Board members. This was the held belief for all of the specific organisations.

**37: How accountable is it to:
b: Ordinary members?**



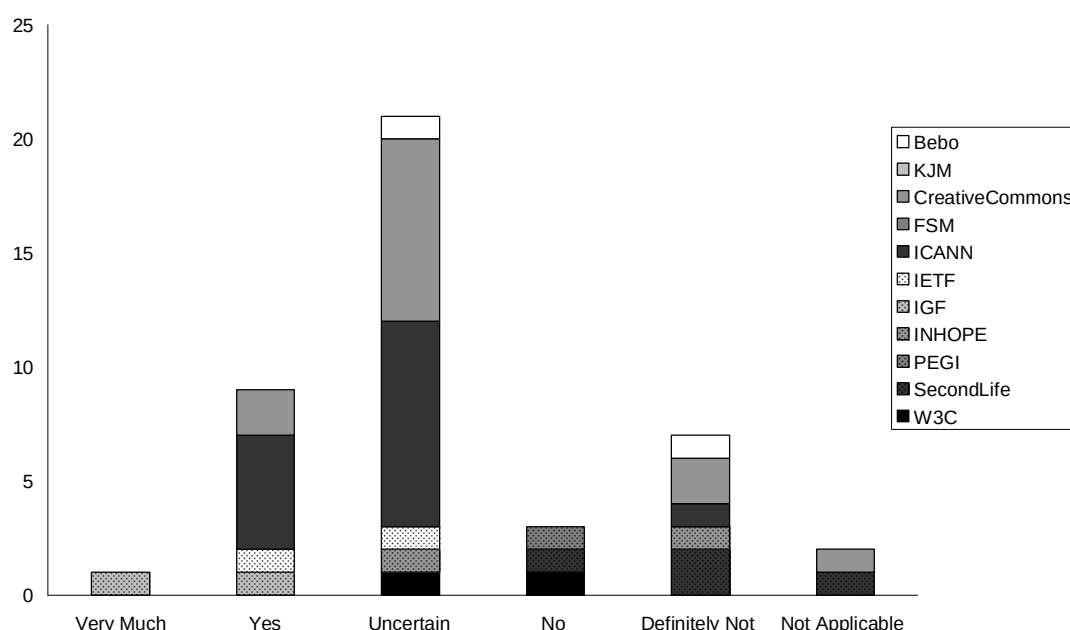
The respondents were unsure of the accountability of the organisations to their ordinary members, but ICANN respondents thought that this organisation was not accountable, by a majority of 60%.

**37: How accountable is it to:
c: Internet users?**



The general opinion on ICANN, as held by 69% of respondents, is that it is not accountable to internet users. For Creative Commons most respondents were unsure. Overall, a simple majority of respondents were unsure about the organisations' accountabilities to internet users.

37: How accountable is it to: d: Governments?



Overall, most respondents were unsure as to the accountabilities of the organisations they commented on to the government. This is the generally held belief for most of the specific organisations.

38. Accessibility of Management Information?

On the whole management information was regarded as not very accessible for ICANN and board members have had difficulty in obtaining such information. For other organisations, minutes of phone calls mailing lists and announcements via blogs and press releases were regarded as the main forms of management information. The delivery of such information was cited by one respondent as being difficult due to a poor website. Other SROs such as INHOPE were noted as having restricted management information.

39. External reviews of the organisation?

There was less variation in the number of external reviews of the SROs which respondents commented upon. The perception of these was that varying levels of formality existed ranging from periodic reports to the US Government every quarter, to annual reports, industry trade reviews civil society reviews; comments in the press and on Internet discussions (e.g. blogs). ICANN was noted by one respondent as being subject to evaluations by the US Congress; US senate, US Government Accountability Office as well as research / university evaluations.

40. Possibility of redesign?

Given this was the final question in the survey, there were a relatively high number of responses to this question (26), with many commenting on what the most appropriate way would be to reform a particular SRO. Increasing transparency for ICANN was cited as one possible way as was returning to the original task (adjustment of the mission) or giving it

one simple task (e.g. merely monitoring of the DNS database). Ideas for reform of Creative Commons included unification of the whole system to permit an integrated approach for Europe and the USA and the participation of international charters. Membership fees for the London Action Plan were seen as a way of generating funds to cover running a small secretariat. Radical changes to the structure of INHOPE (e.g. making it commercial or non-profit) were seen by one respondent as a way to increase the transparency of this institution. PEGI was seen as not requiring a large overhaul. Appropriate regulation was cited by one respondent as required for IWF as well as improving public awareness of what content is permitted or not, given the evolving legal framework.