

WIRED WORLD: UNITED STATES POLICY AND THE OPEN DOOR INTERNET

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To my lovely wife and our family

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TABLE OF CONTENTS

	<u>page</u>
ACKNOWLEDGMENTS	4
ABSTRACT	7
CHAPTER	
1 THE INTERNET AND THE OPEN DOOR	9
Research Approach	15
Finding the Open Door.....	21
Summary	33
2 GLOBALIZATION, GOVERNANCE, AND ROUGH CONSENSUS	34
Making Sense of Globalization and Global Governance.....	36
What Is Internet Governance?	40
Rough Consensus to Duty Free.....	42
The Global Internet Governance Regime	50
Summary	59
3 A CAMPAIGN PROMISE.....	60
Free Trade finds the Internet	60
Constructing the Policy	75
Summary	86
4 DUTY-FREE CONSENSUS.....	87
The Duty-free Internet.....	89
Duty-free as Control?.....	95
Summary	117
5 ENDGAME.....	120
APEC, Japan, and the <i>Duty-free</i> Internet.....	121
The Internet Charter	129
The WTO: Institutionalizing the <i>Duty-free</i> Internet.....	139
ICANN: Protecting Intellectual Property and Managing the DNS.....	144
US Internet Governance Policy post-Clinton Administration	154
Summary	157
6 CONCLUSION.....	160
Summary of Arguments	161

Directions for Future Research	167
LIST OF REFERENCES	174
BIOGRAPHICAL SKETCH	184

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In 1997, the United States government claimed ownership of the root zone file and the domain name system (DNS) on which the functioning of the Internet depends. This US decision purposed the Internet as a global commercial medium rather than as a global public communications medium. Either purpose of the Internet is compatible with efficient management of the system. To date, there is missing in the extant Internet governance literature an empirically grounded examination into the origins for US Internet governance policy. My study fills that lacuna by offering an in-depth empirical investigation into the origins and purpose of US Internet governance policy by posing the following empirical question: why did US policymakers primarily view the Internet as a commercial medium rather than as a medium for communications and information exchange in the post-Cold War era? Domestic imperatives, explained by the pursuit of commercial and political expansion abroad in order to ensure security at home directly shaped US preferences for a private, market-based, bottom-up regime rather than, a top-down Internet governance intergovernmental organization. This view of US Internet

governance policy is consistent with the Open Door interpretation of US diplomatic history.

In addition, borrowing from Ruggie (1983), I am able to show that there is continuity between the extant global Internet governance regime and embedded liberalism in that any change in which the Internet was to play a central role would be norm-governed, rather than norm-transforming as has been alleged in the broader globalization and Internet governance literatures. Policymakers in the US government drove consensus among leading economic powers for the extant global Internet governance regime that would govern the transformative potential of the Internet on behalf of long held US policymaker preferences to gain access overseas for American political ideals and American products, and to preserve embedded liberalism, the normative framework for the post-World War II global economic and political order that confers hegemonic like privileges to the United States. In short, US policymakers purposed the Internet as a platform for American expansion and, according to the Open Door, with that expansion comes, implicitly, American empire.

CHAPTER 1 THE INTERNET AND THE OPEN DOOR

In rural America, a soybean farmer can peer at his computer screen and with a few keystrokes and the click of a mouse connect to a distant computer at the New York Mercantile Exchange to check prevailing market prices for his soybean harvest. Our farmer can also connect with distant buyers in Asia, arrange price and transport and receive payment through computer networking technology. Today, utilizing the same technology, one can connect to any number of retailers on the Internet and search for a book or DVD at the best price without having to worry about paying import tariffs or duties should one purchase a book or DVD from an enterprise located in a foreign country. Similarly, the DVD or bookseller would not have to pay export tariffs or duties for selling wares over the Internet and across sovereign borders. Local sales taxes on transactions completed over the Internet are a separate and distinct category of government revenue collection that applies to intra-state, as opposed to inter-state, commerce and taxation.

In the case of the United States, the *Internet Tax Freedom Act* of 1997 prevents a state from collecting sales taxes on Internet based transactions that cross state borders unless an Internet based retailer has a bricks and mortar location within the tax jurisdiction of that state. The idea behind this policy was to prevent government from bringing to a standstill the expansion of Internet based technologies through taxation or any other regulation. This begs the question of what did US policymakers expect to gain from treating the Internet as a domain where excessive government policy intervention was viewed as inhibiting expansion? What change did the Internet present that US

policymakers sought to limit government policy intervention within that domain? One could describe that change and opportunity in terms of connectivity.

Connectivity includes instantaneous access to information, product substitution leading to price competition and decreased prices that contributes to consumer choice maximization, and facilitating social movements through online social networking. These changes brought about by the Internet affect political and economic structures, systems, and participants by altering time-honored practices, principles, norms, rules, and decision-making procedures that provide political and market certainty to political and market participants. The change that the Internet has brought to political and economic life, however, is far different from that intended by the computer networking engineers and scientists who developed the technology with funding from the US Government.¹ This study, broadly construed, is about the formulation and development of US Internet governance policy to address that change.

Originally conceived within the recesses of the US Department of Defense as a network of networks to ensure government communications in the event of nuclear attack and to organize time-sharing on supercomputers, the Internet, in the post-Cold War era, came to be viewed within the US Government as the panacea for commercial and political expansion in the post-Cold War era consistent with the Open Door. In addition, John Ruggie (1983) offers a useful framework for describing how US policymakers purposed the Internet in support of the extant global political and economic order that is characterized by embedded liberalism. US policymakers drove consensus among leading economic powers for a global Internet governance regime

¹ Abate (1999) offers a detailed history of the technical development of the Internet. Mueller (2002) and Pare (2003) offer shorter historical accounts.

whose purpose was to ensure that the Internet would bring norm-governed change instead of norm-transforming change. From this standpoint, US Internet governance policy conserved extant global political and economic orders in which US policymakers had invested the power and prestige of the United States to maintain.

On July 1, 1997, to great fanfare, President Bill Clinton announced US Government policy regarding the Internet. The President shared the podium in the East Room with Vice President Al Gore, Lou Gerstner, then Chairman and Chief Executive of IBM, and Macdara Maccoll, then Vice President of Member Services and Marketing at iVillage, an Internet startup company. Other information technology and media industry titans were present along with prominent members of the Cabinet, Congress, and the press. That evening, television news shows assessed the significance of US policy toward the Internet, arguing that the Clinton administration had thrown its weight in support of the commercial, rather than the social potential, of the Internet.² In the months and years that followed, US policymakers engaged a diplomatic strategy to institutionalize a global Internet governance regime consistent with the open market free-trade vision of President Clinton and Ira Magaziner, Domestic Policy Advisor to President Clinton from 1993-1999, a regime that continues to be defended and sustained by the Administrations of George W. Bush and Barak Obama.

How did the critical events, policies, and policymakers coalesce to shape the social purpose of the Internet as largely a commercial medium? More specifically, why did US policymakers view the Internet as a commercial medium rather than as a medium for communications and information exchange in the post-Cold War era? How

² Newshour, aired July 1, 1997. Transcript available at http://www.pbs.org/newshour/bb/cyberspace/july-dec97/Internet_7-1.html. Last accessed November 13, 2009.

did the United States succeed in generating consensus among disparate stakeholders concerning the normative structure of the present global Internet governance regime? What insights into the status of the state in a globalized, interdependent, and technologically interconnected world are applicable to international relations? Given that Internet governance remains a hotly contested issue in global politics and within the scholarly literature on this topic, how can understanding the purpose of US Internet governance policy illuminate the controversy thereby, perhaps, uncovering possible resolutions? Finally, what can the case of US Internet governance policy tell us about the role of leading economic powers in developing regimes that preserve normative continuity in the face of rapid technological change? Relying upon evidence collected from US Government archives and interviews with former US Government officials charged with developing and managing US Internet governance policy, I trace the development of that policy to identify the normative origins that shape the purpose for the extant global Internet governance regime. I focus on the actions of an interagency taskforce headed by Magaziner that was charged with developing US Internet governance policy and engaging counterparts in foreign governments to generate consensus for the norm US policymakers championed and institutionalized as the framework on which is suspended the extant global Internet governance regime. By focusing on the development of US Internet governance policy and how that policy succeeded in institutionalizing a normative framework for the global Internet governance regime, I speak to an important issue in international relations concerning how states respond to change (Holsti et al. 1980; Hudson 2005; Keohane 1980, 1984; Koslowski and Kratochwil 1994; Lebow 2000).

Research on the topic of Internet governance reflects a tension concerning characterizing the role of the state in addressing change to global political and economic orders that regimes are developed to address. That tension centers on whether the Internet would bring norm-transforming change, whether the change that the Internet is a part of would be norm-governed change, and what *is* the role of the state in addressing that change and what *ought* to be the role of the state in addressing that change. There are a number of positions that have been staked in the broader literature concerning what role the state *is* and or *ought* to play in governance of the Internet (Cogburn et al. 2005; Dunn-Cavelty 2008; Farrell 2003; Franda 1996; Fromkin 2000; Giacomello, 2005; Hansen 2009; Lessig 1999, 2004, 2006; Mathiason 2009; Mueller 2002, 2004; Mueller et al. 2007; Winseck and Pike 2007; Zittrain 2004). Some have engaged in a lively debate over whether or not the Internet is controllable by states and whether the current global Internet governance regime is a mechanism for control of the medium (Bach and Newman 2007; Cukier 2005; Deibert et al. 2008, 2010; Drezner 2004; Eriksson and Giacomello 2009; Goldsmith and Wu 2006; Mathiason 2007; Mueller 2010). Others have charged that US Internet governance policy is a threat to the medium (Mueller 2010). But, if our understanding of Internet governance is to mature, we must transcend narrow conceptions of Internet governance that are pregnant with normative assumptions concerning the relationship of the state to the market, the state to society, and the state to the individual (McCarthy 2011). The problem with previous studies of Internet governance has not been empirical, per se; rather, the problem has been how those studies have framed the issue of Internet governance by giving pride of place to normative visions of how the internet ought to be

governed instead focusing on the origins and development of the global internet governance regime as a means for managing change of which the Internet is a part. Viewing the global Internet governance regime this way is consistent with other studies of the emergence of international organizations that have shown how international organizations can act as agents of states to tackle changes or issues for which states lack the capacity, lack political resolve to address, or for which states simply need to coordinate policy (Barnett and Finnemore 2004; Grant and Keohane 2005; Hawkins, et al. 2006; Nielson and Tierney 2003).

Framing the investigation into Internet governance in this way frees one to be more problem driven in one's research by not putting theory selection ahead of evidence collection. In this way one does not presuppose ontology that can lead to imposing undue amounts of normative subjectivity on evidence collected. This does not mean that one denies that theories of politics have no normative origins or do not harbor normative or ontological presuppositions. All theories of politics do and so do political scientists. The important point is that, from this standpoint, theories of international relations – or any other theory of politics, for that matter, including those that purport to explain the role of the state in Internet governance – are best understood as available lenses that bring into focus different aspects of politics depending on the questions posed by the researcher and the problems for which the scholar of international relations seeks to answer (Wight 2006; Zehfuss 2002). What this means for research design is that one may postpone decisions concerning theory until *after* one has conducted evidence collection and analysis in an effort to allow the evidence to point in the normative direction one should follow. This is the research approach that I chose to

take regarding US Internet governance policy, to avoid the trap of imposing normative spin on evidence for the purpose of substantiating a vision of Internet governance that does not comport with what can be readily observed.

Research Approach

Investigating US policy concerning governance of the Internet began with identifying who within the US Government was responsible for developing Internet policy options for leading policymakers such as President Clinton. Shortly after the failed attempt at national healthcare by the Clinton Administration, in late December 1994 or early January 1995, President Clinton met Magaziner, his Domestic Policy Advisor, to determine the next project Magaziner would oversee (Nelson 2009). Magaziner left that meeting with a mandate from President Clinton to explore how US exports could be increased through lowering trade barriers, especially for small to medium sized enterprises. During the course of this assignment, Magaziner first organized then focused an interagency taskforce on the Internet as the technological solution for overcoming non-tariff trade barriers preventing US industry from accessing overseas markets. Magaziner was the key US policymaker at the working level of the executive branch that formulated a vision for the power and purpose of the global Internet governance regime.

Once the key US policymaker had been identified, the next step was to ascertain what sort of data would be available for analysis and how I could collect that data. I soon discovered that Magaziner's Domestic Policy Council papers were stored at the William Jefferson Clinton Presidential Library located in Little Rock, AR. At this point in the preliminary research phase, it became clear that the primary sources of evidence were documents and in-depth interviews or simply texts. Given that I would be working

with texts, the type of analytical methodology employed would be some form of textual analysis. There is no generally accepted method of textual analysis, although there are several traditions that include “hermeneutics (interpretive analysis), narrative and performance analysis, schema analysis, grounded theory, discourse analysis, and content analysis” (Bernard 2002, 451). Lacking any foreknowledge of potential text relationships, categories, or themes, my research strategy is based on the textual analysis method known as grounded theory. A grounded theory research strategy is appropriate when the researcher lacks any prior knowledge concerning the subject matter of a research subject (Bernard 2002; Flick 2006).

Grounded theory was developed by Glaser and Strauss (1967) and later refined by Strauss and Corbin (1990). Bernard describes grounded theory as a “set of techniques for (1) identifying categories and concepts that emerge from text, and (2) linking the concepts into substantive and formal theories” (2002, 462-463). Following these two guidelines in conducting research means that “Theories [are] not applied to the subject being studied but are ‘discovered’ and formulated in working with the field and the empirical data to be found in it. Studied subjects are selected on their relevance to the research topic” (Flick 2006, 98). Simply stated, when following a grounded theory based research strategy, the researcher postpones the choice concerning which theory best explains textual relationships until *after* the phase of textual analysis. This means that grounded theory research is an “iterative process by which” the researcher becomes ever more versed in the data, which enables the researcher to develop an in-depth understanding of the subject being investigated (Bernard 2002, 463). Significantly, the context in which data are embedded and from which the researcher

attempts to loosen the data for the purposes of analysis and interpretation is preserved by grounded theory research (Flick 2006).

Grounded theory research design avoids the error that Wight (2006) warns against in which one presupposes questions of ontology by focusing on questions of epistemology and methodology. “Differing object domains,” Wight argues, “will require differing methods and any attempt to specify methodological strictures in advance of ontological considerations can only be arbitrary” (2006, 261). Wight is advocating that the researcher be problem-driven when conducting investigations and view theories of international relations as different methodologies of interpretation available for use where appropriate given the topic being researched. Being freed from the parochial politics of championing one theory of international relations over another meant that I could look beyond the field of international relations for theories that complemented the norm-governed or norm-transforming framework for explaining regime change that I was borrowing from Ruggie (1983). Additionally, I could also hunt for the theory that best explained why US policymakers drove consensus among leading economic powers for a global Internet governance regime. In short, I was able to strictly follow the iterative process of grounded theory.

The process that grounded theory research follows in search of theory that can explain the relationships among categories of data is comprised of six steps, according to Bernard (2002, 463; emphasis original):

- (1) Produce transcripts of interviews and read through a small sample of text.
- (2) Identify potential **analytical categories** – that is, potential **themes** – that arise.
- (3) As categories emerge, pull all the data from those categories together and compare them.
- (4) Think about how categories are linked together.

- (5) Use the relations among categories to build theoretical models, constantly checking against the data – particularly against negative cases.
- (6) Present the results of analysis using exemplars, that is, quotes from interviews that illuminate the theory.

It would appear that, based on these six steps, grounded theory is more suitable to research that relies on in-depth interviews as the primary method of evidence collection. These steps are by no means to be taken as literal, but must be understood and followed as guidelines for the reason that no two subjects or research topics are the same, there is always some variance in context and availability of evidence. In the case of Internet governance, the relatively small number of possible interviews compared to the relatively large number of available documents necessitates that documents be given priority over interviews. Interviews were therefore used to clarify context in which documents were written and to confirm or nullify preliminary textual interpretations. Documents and interviews were relied upon to uncover the core principle(s) or theme(s) for US Internet governance policy, to create an approximate timeline, to identify key actors, and to determine other actor policy positions as perceived by US policymakers.

The type of available evidence also signified the kind of evidence collection methods employed and, in this case, primarily archival research. Evidence was also collected through the conduct of direct in-depth interviews of former US Government officials who had direct knowledge of and participation in US Internet governance policy development. At the Clinton Presidential Library, digital and hard copies of approximately six hundred US Government documents, including diplomatic cables, meeting notes, calendars, draft policy statements, and internal memoranda were collected based on the criterion of whether or not the document dealt with US Government Internet policy and diplomatic strategy for Internet governance. The first

analytical step was to categorize collected documents by type – whether the document was a diplomatic cable, memorandum, or draft policy statement – and by date in an effort to construct a rough timeline and to determine the evolution of thought among US policymakers concerning Internet governance.

Textual analysis of the documents was shaped by three primary objectives. First, an assessment needed to be completed of the relative value of documents in terms of the degree of explicit description a document offered on what was US Internet governance policy; the more explicit the description the more valuable the document. Second, there needed to develop a sense of what was US Internet policy, broadly construed. The third objective was to identify any recurring idea or set of principles that might constitute a unifying theme running through all the texts. This last point is important because it reflects a conscious decision to postpone the selection of a conceptual interpretive framework or theory through which the data collected would be interpreted. Instead, consistent with a grounded theory research design, it was my intention to allow a theme or themes to emerge from the texts to the extent possible.

Once the initial phase of textual analysis was completed, it became apparent that there was a strong economic current running through all of the documents centered on the idea of the Internet as a panacea for the expansion US exports. The phrase that kept appearing in documents from the Magaziner papers was “duty-free Internet.” At this stage, however, still lacking a sufficient understanding of the entire US Internet governance policy picture, I moved to the second phase of evidence collection and began contacting potential interviewees. The pool of potential interviewees was limited to former Clinton administration officials whose policy portfolios included working on the

interagency taskforce charged with developing US Internet governance policy and former George W. Bush administration officials who were charged with managing US Internet governance policy.

Based on lists of recipients of official US Government memoranda that detailed the issues confronting the U.S government Internet interagency taskforce, I initially identified twenty possible candidates for in-depth interviews. I narrowed possible interview candidates further to those consistently part of memorandum recipient lists, as there was some changeover among memorandum recipients, and surmised that these ten individuals represented the core group within the interagency taskforce, while also representing a sufficient cross section of participants. Of the ten possible interviews, three declined to be interviewed, and another initially agreed, but then did not respond to subsequent attempts at scheduling the actual interview. The remaining possible candidates all agreed to be interviewed. Additionally, I interviewed two former heads of information and communications technology industry lobbying associations to assess the extent to which industry influenced the final policy outcome and to get a sense of what the industry perspective was concerning US Internet governance policy.³ The interviews served to fill holes in context that archival research left gaping and confirmed the economic theme running through the texts.

A key finding was that US policymakers also saw in the Internet the potential for promoting democracy through circumventing barriers to freedom of information

³ Harris Miller served as president of the Information Technology Association of America (ITAA) from 1995 to 2005 while Ken Kay founded and served as President of Computer Systems Policy Project (CSPP) – now known as the Technology CEO Council. The ITAA is the ICT industry association and includes as members Google, Microsoft, IBM, and Cisco Systems. The Technology CEO Council (formerly the CSPP) is comprised of chief executive officers for leading ICT firms that include Yahoo!, Apple, Hewlett-Packard, and Sun Microsystems. Both the ITAA and the CSPP/Technology CEO Council are lobbying organizations.

exchange, what, in the United States is known as free speech. Policymakers within the US Government emphasized repeatedly in interviews that the economic exploitation of the Internet would be followed by the bottom-up application of the medium to politics and that such a development would promote the global spread of democracy. Finally, the theme began to sharpen and come into focus: *expansion*. The Internet was the technological solution to overcoming barriers, both trade and political that had contributed to impeding US commercial and political expansion. It cannot be overstated that US policymakers projected US commercial and political values on the Internet as a means for expanding those values overseas. I now had more questions after having identified the theme running through the texts. Expansion for what purpose? Expansion for whom? What was the expected gain from expansion? How did this theme of expansion help explain regime change and the Internet in terms of norm-governed or norm-transforming change? How did US policy concerning governance of the Internet originate from expansion? The point in a grounded theory research design had now been reached for identifying or developing a theory that explained the pursuit of expansion by US policymakers on behalf of the United States.

Finding the Open Door

The origins for the policy of the United States have been the subject of much debate, but are generally investigated from the perspective of who or what influences US foreign policy (Jacobs and Page 2005). Hunt (1987), for example, has argued that ideology is the primary influence on US foreign policy. Snyder (1997), alternatively, has argued that US policy is the product of logrolling coalitions reflecting the unique politics of US domestic institutions while Trubowitz (1992; 1998) has argued that US policy reflects a struggle among geographic regions within the United States for influence over

US foreign policy, what he refers to as sectionalism. The evidence I present herein offers some support to Trubowitz (1992; 1998), because regions of the United States where US high technology companies are concentrated did provide Magaziner, members of the interagency taskforce led by Magaziner, and Congressional representatives feedback in an effort to influence the contours of US Internet governance policy.

For my purpose, the textual evidence lends the most support to the notion that US policymakers viewed the Internet as a platform for commercial and political expansion abroad in order to achieve security understood as domestic stability and tranquility. Recently, the theme of expansion has informed the work of Bacevich (2002) and also Layne (2006) on US foreign policy. Both rely upon the interpretation of US diplomatic history, dubbed the Open Door, that uses the idea of expansion to explain why US policymakers have pursued certain policies over alternatives. The Open Door, as a revisionist approach, is one of three grand interpretations of US diplomatic history and is categorized (McKercher 2000).⁴ As with Bacevich and Layne, I acknowledge that the Open Door is not without controversy or shortcomings, especially in terms of explaining US policy during the Cold War. But in the post-Cold War era, US policymakers seem to have returned to the not-so-long-ago familiar language of new frontiers into which expansion is a welcomed necessity to remain competitive and secure. While McCarthy (2011) notes that US policymakers have constructed a narrative around the Internet on the notion of open networks that he then links with the Open Door, he employs a discourse analysis framework and focuses his exposition on

⁴ The other two major interpretations of US diplomatic history are the orthodox and post-revisionist schools. Also see Combs (1983) for excellent analyses and descriptions of these approaches to US diplomatic history and foreign policy.

US policymaker public statements from 2006 onward. The price of this research design is that he neglects the important work by Magaziner and his interagency taskforce that structured the global Internet governance regime that prescribes and proscribes state policy concerning the Internet. McCarthy, however, does provide an excellent treatment of how US policymakers discursively defend the extant global Internet governance regime and makes an important contribution to help explain how US policymakers view the Internet as the technological key for opening foreign political institutions to American political ideals.

On the cusp of a new century, US policymakers harbored hope that the great project of expanding American products and political ideals as the basis for national and global security would occur unimpeded by such obstacles as alternative ideologies, rising powers, enduring rivalries, and sovereignty through the spread of information technology if properly supported by a regime framework. For my purposes, more than explaining why US policy is shaped by the pursuit of expansion, the Open Door elucidates the social purpose for the global Internet governance regime, and casts light on the domestic origin of regime norms. Charles Beard (1874-1948) and William Appleman Williams (1921-1980) are the two scholars most closely associated with the Open Door and in what follows I offer a brief overview of their contributions.

In 1913, Beard published *An Economic Interpretation of the Constitution of the United States*. It was this book, more than any other that brought acclaim to its author. Indeed, for the next twenty years Beard cast a long shadow in the academic fields of political science and US history as the term “Beardian” came to be synonymous with Beard’s methodological approach to the study of politics and history. On separate

occasions Beard served as president of the *American Historical Association* and the *American Political Science Association*, the only academic to have that honor (Brogan 1965). Recent scholarship has re-evaluated the work of Beard arguing that, while Beard was careless at times with his usage of terms, his work has been mischaracterized in order to justify the employment of other methods of interpretation or for polemical ends in defense of ideology that Beard vehemently criticized (Barrow 2000; Borning 1962; Brogan 1965; Diggins 1981; Kennedy 1975; McCorkle 1984; Nore 1983). Beard was a person of intense passion and patriotism fully committed to the nineteenth century concept of moral and intellectual progress of the human species as a counterweight to the potential excesses of democracy. His writings reflect his intense feelings of patriotism concerning what he viewed as the potential for greatness latent in the people and institutions of the United States and must be read from the following perspective: as a defense and promotion of his ideal image of the US as that beacon of progress and democracy to which the rest of the world could turn for light to show the way to peaceful coexistence.

While a doctoral student in political science at Columbia from 1902-1904, Beard took a course, the *History of Political Economy*, offered by Edwin R. A. Seligman (1861-1939), a professor in the political science department and respected authority on interpreting history through the prism of economics (Barrow 2000; Nore 1983). Beard's views of U.S foreign policy are heavily influenced by the method of economic interpretation he learned from Seligman. "In his own numerous later writings Beard never really ventured beyond his teacher's conception" (Nore 1983, 31). The core premise of this method of economic interpretation is that,

The existence of man depends upon his ability to sustain himself; the economic life is therefore the fundamental condition of all life. Since human life, however, is the life of man in society, individual existence moves within a framework of the social structure and is modified by it. What the conditions of maintenance are to the individual, the similar relations of production and consumption are to the community. To economic causes, therefore, must be traced in the last instance those transformations in the structure of society which themselves condition the relations of social classes and the various manifestations of social life. (Seligman 1901, 613)

This is not to say that economics is the sole cause of political outcomes; rather, it is to say that economic considerations are the principal influences shaping political outcomes. Moreover, the method recognizes the social nature of economic and political interactions and outcomes, to wit, “Social arrangements are human arrangements, and human beings are free to form decisions and to make social choices” (Seligman 1902a, 92-93). Seligman notes that prevailing “conditions” – and by this he means prevailing social structures within society – will influence human choice as much as ideas. “The conditions, so far as they are social in character, are indeed created by men and may be altered by men, so that in the last resort there is nothing fatalistic about progress” (Seligman 1902a, 93). In a pithy exclamation to the points he has been making, Seligman states “Men are the product of history, but history is made by men” (1902a, 93). This view of history led Beard to deny that laws of politics or history were observable due to the sheer complexity of political, economic, and social currents combined with the limited capacity of the human mind to grasp those currents in their entirety (Beale 1954). Factional interests, however, could be readily identified and the origins of those competing interests traced to divergent economic considerations. In Beard’s opinion, US foreign policy was especially susceptible to factional influence.

According to Beard, the constant clash of factions within US domestic politics primarily shaped the social, political, and economic structure of the United States (1913;

1927; 1928; 1931; 1934a; 1934b; 1939). In US foreign policy, that interplay produced a serendipitous unity between factional interests that advocated expansion abroad through the acquisition of territory that could be owned and managed by American enterprises or that provided a base from which US products could be sold for profit in foreign markets. Beard describes the logic as follows,

American industry, under the regime of technology, is producing more commodities than the American people can use or consume, and the “surplus” must be exported. The accumulations of capital in private hands in the United States are larger than can be employed advantageously at home, that is, profitably, so that there is a “surplus” for exportation. American agriculture likewise is producing more than the American people can use or consume and the “surplus” must be sold in foreign markets. Outlets for these increasing “surpluses” of goods and capital must and can be found abroad, through channels of commerce; otherwise the development of American industry and agriculture, with corresponding opportunities for gains and profits, will be slowed down, and broken. It is, therefore, a question of commercial expansion or stagnation and decay; world power or economic decline. There is no other escape: the expansion of outlets for growing surpluses of commodities, produce, and capital must come; it is necessary, it is possible, it is desirable – all in the national interest. (Beard 1934a, 37-38)

The purpose of US foreign policy, according to Beard, was to pursue commercial expansion into overseas markets and territory that can absorb the excess supply of domestically produced US products in order to maintain economic performance at levels consistent with full employment and commercial profitability necessary to stave off domestic political unrest. In a word, the very security of the United States depended on sustained expansion or the factional strife would tear asunder the social fabric of the United States. For all of Beard’s perspicacity, he nonetheless overlooked an important aspect of pursuing commercial expansion: that attendant with commercial expansion comes imperialism through political expansion.

Beard died in 1948, his reputation as the greatest historian and political scientist

of his generation shattered by his vocal and strident opposition to US entry into World War II. But he had successfully influenced some of the rising generation of historians and political scientists among whom was William Appleman Williams. Williams was trained as a historian at the University of Wisconsin by Fred Harvey Harrington (1912-1995), Merle Curti (1897-1997), and Howard K. Beale (1899-1959), all of whom were adherents to the revisionist interpretation of US history advanced by Beard. A 1944 graduate of the United States Naval Academy, Williams saw action in the Pacific theater during World War II, leaving the Navy in 1947 to attend graduate school at the University of Wisconsin, where the Department of History was firmly rooted in the revisionist school Beard had founded. During his academic career, Williams was not as prolific as Beard, but the works he did publish nonetheless were influential, serving as required reading throughout the disciplines of history and political science, as well as for the New Left (Melanson 1978).⁵

In some of his early writings, Williams acknowledged his debt to Beard and argued that US policymakers saw in sustained economic expansion the solution to US and world problems. Williams supported this claim by arguing that there existed a widespread *Weltanschauung* or belief among US political elites across the political spectrum that shaped US foreign policy. This *Weltanschauung* was, “the proposition that an expanding economy provided the key to building a successfully functioning political and economic system” at home (1955, 393). Williams (1955) traced this *Weltanschauung* from the administration of Theodore Roosevelt through the Truman administration and concluded that expansion was the key to understanding US foreign

⁵ Krueger (1973), Levin (1974), Perkins (1984), Thompson (1973), and Weiner (1984) all offer analyses of the social and political thought of William Appleman Williams.

policy and diplomatic history. He concluded that latent within U.S commercial expansion was US imperialism. Four years later, Williams published his book, *The Tragedy of American Diplomacy*, which remains his seminal contribution to studies of US foreign policy and diplomatic history in which he further developed his conclusion.

In his book, Williams ([1959] 1972) used the widely accepted notion that global leadership had been thrust upon a reluctant United States as a foil to his counter argument that global leadership was a euphemism for US imperialism. Beginning with the *Weltanschauung* of US policymakers, Williams argued that US policymakers had actively pursued global leadership through commercial and political expansion. Rather than stopping at the McKinley Administration, as he had done in his earlier work, Williams traced the theme of expansion back to the founding of the United States. The revolutionary generation from Jefferson to Madison all subscribed to the same belief, “that expansion was the key to preventing factions – themselves primarily the result of economic conflicts – from disrupting the fabric of society” (Williams [1959] 1972, 22). He asserts that the issue is not whether this belief is empirically verifiable or “true,” instead the issue was that US policymakers from the foundation of the United States as an independent nation-state subscribed to unrelenting overseas expansion, which “provided the best, if not the only, way to sustain...freedom and prosperity” ([1959] 1972, 23). In the view of US policymakers, the very security of the United States rested on continued overseas expansion.

By the mid-twentieth century, US policymakers had come to link security of the United States with global peace (Williams [1959] 1972). This entailed developing consensus among leading economic powers, including Great Britain, Germany, France,

and Japan concerning the global adoption of the Open Door policy, what Ruggie (1983) labeled as embedded liberalism. “In this fashion,” Williams continues, “economic expansion became both a means and an end for American policymakers. Defined as a goal because of its vital importance to the continued success of the domestic economic system, it was also considered a means to build the empire of peace and prosperity which would secure the world for continued expansion in the years to come” ([1959] 1972, 129). The Open Door holds that US foreign policy is to pursue commercial and political expansion abroad in order to ensure security and domestic tranquility. Recent declarations by presidents George W. Bush and President Barak Obama illustrate the Open Door and underscore its relevancy as an enduring *Weltanschauung* for US policymakers and interpretative framework of US foreign policy. Both Bush and Obama speak as if Beard and Williams were guiding the hand of their speechwriters:

BUSH: We are led, by events and common sense, to one conclusion: The survival of liberty in our land increasingly depends on the success of liberty in other lands. The best hope for peace in our world is the expansion of freedom in all the world.⁶

OBAMA: For generations, we have done the hard work of protecting our own people, as well as millions around the globe. We have done so because we know that our own future is safer, our own future is brighter, if more of mankind can live with the bright light of freedom and dignity.⁷

The idea of freedom to which President Bush and President Obama refer inextricably denotes the contours of the relationships between the state and the market, the state and society, and the state and the individual. The crux of this notion of freedom is that the state is to foster political and economic institutions and conditions in which agency is

⁶ Shear, Michael. 2011. Echoes of Bush in Obama’s Libya Speech. Available at <http://thecaucus.blogs.nytimes.com/2011/03/29/echoes-of-bush-in-obamas-libya-speech/?hp>. Last accessed 29 March 2011.

⁷Ibid.

unencumbered by government interventions. The Bretton Woods institutions including the World Bank, International Monetary Fund, and the General Agreement on Trade and Tariffs (now the World Trade organization), all suspended in the normative web of embedded liberalism, were specifically designed by US policymakers and allies to support globally expanding that idea of freedom. In a sense, embedded liberalism is the globalized version of the Open Door yet, for the sake of simplicity, one may view each as operating at different levels of analysis: embedded liberalism at the system level of analysis and the Open Door at the state level of analysis. This categorization, however, should be viewed as weak in that embedded liberalism and the Open Door share the same purpose: to foster conditions conducive for American commercial and political expansion.

The implications of pursuing unabashed political and economic expansion as the primary objective of policy to US standing in global politics are several. The first is that US policymakers risk harm to the reputation of the United States by imposing US political and economic norms on others. For a nation-state that prizes individual freedom above all else, the stench of hypocrisy in pursuing expansion by imposing normative change on others, is a smell of warning to other nation-states akin to any skunk encountered in the wilderness of America. The second is more material in nature; pursuing expansion can lead to the application of force to pry open nation-states shut to American products and political ideals. How many governments have been and continue to be toppled by American agents or military personnel at the behest of economic interests or in support of grand visions of spreading democracy and freedom? Ten-years into the great project of the George W. Bush Administration to spread

democracy in the Middle East at the point of a bayonet speaks to the fallacy of pursuing economic and political expansion through force. But such considerations pale in the face of the cost in terms of lives lost and treasure spent on both sides of the conflict so that US policymakers could remake the Middle East in the image of the United States. Last, in pursuing expansion as a means for alleviating political and economic exigencies at home and while the United States has become unrivaled in power among nation-states in the post-Cold War era, one can claim that an informal empire has emerged with the United States as the imperial power.

Bacevich (2002) argues that the advent of an American empire is an outcome that Beard feared. Beard feared this outcome because, from his view, such an outcome betrayed the founding principles of the constitution and Beard was a fierce defender in his writings of those founding principles (Beale 1954; Leighton 1954). The question, Bacevich underscores is, "What sort of empire [US policymakers] intend theirs to be" (2002, 244). I answer, an empire where even the Internet has been brought into service of the imperial power. By arguing, in this study, that US policymakers viewed the Internet in the post-Cold War era as a platform for the expansion of American products and political ideals, one could stake the claim that the Internet became a tool of American empire. I do not mean to imply that the US explicitly controls the Internet; I do not go that far as some have in the broader internet governance literature (Cogburn et al. 2005; Lessig 1999, 2004; Mathiason 2009; Mueller 2002, 2010; Mueller et al. 2007). I do argue that US policymakers relied on the preponderant power of the United States to purpose the Internet as a platform for expansion and implemented, in consultation with other leading economic powers, a global Internet governance regime that was

designed to harness the disruptive potential of the Internet on behalf of embedded liberalism. Indeed, developing consensus among leading economic powers for how the Internet ought to be purposed is a legitimate function of state driven global governance. It is at this point that the applicability of Ruggie's (1983) framework for assessing normative change is salient. My purpose here is to introduce the outlines of Ruggie's framework postponing to Chapter 2 a more comprehensive treatment. I do this because I want to contrast Ruggie's framework with the idea of global governance and will have more space to do so in Chapter 2.

Ruggie (1983) introduced the concept of embedded liberalism to describe the normative structure of the post-World War II global political and economic order. Often overlooked in this seminal contribution to regime theory is a framework that Ruggie offered for assessing regime change. Resolving the tension concerning how to characterize role of the state in addressing change is a matter of assessing the extent to which new regimes founded by states in response to change reflect the "same sense of social purpose" already imbued within the normative framework of existing global political and economic orders (1983, 200). If new regimes reflect the same sense of social purpose embedded within an extant global political and economic order, then that new regime can be identified as being a case of norm-governed change. If, however, a new regime does not reflect the same sense of social purpose as the normative framework of an extant global political and economic order, then that new regime can be identified as being a case of norm-transforming change. Internet governance is a case of norm-governed change.

Summary

In the chapters that follow, I will demonstrate the expansionist origins of US Internet governance policy and show how US policymakers employed the preponderant power of the US to ensure that the process of regime formation was norm-governed. In effect, United States policymakers designed a global Internet governance regime that could be plugged into the extant global political and economic order so that the tune of expansion could continue to play. Chapter 2 offers an explanation of what Internet governance *is*, a more comprehensive explanation of Ruggie's framework for assessing normative change, followed by a description of the extant global Internet governance regime. Chapter 3 describes in detail the development of US Internet governance policy, reaching back to the presidential campaign of 1992 through the year 1996. Chapter 4 focuses on 1997, introducing the duty-free norm that was promoted by US policymakers as the basis for the normative framework backstopping the global Internet governance regime and reflecting embedded liberalism. Chapter 5 starts in 1998 and details the diplomatic strategy employed by the US to achieve consensus among Internet stakeholders for a public-private governance framework that reflected US policy preferences concerning the purpose to which the Internet would be put: expansion of American commerce and political ideals. Chapter 6 provides a summary of arguments and reviews future directions for research.

CHAPTER 2 GLOBALIZATION, GOVERNANCE, AND ROUGH CONSENSUS

Regimes have been employed by states to address a variety of issues that include the conduct of war, collective security, lender of last resort, economic development, global tariff and duty levels, global finance and trade practices, and telecommunications technical standards. Regimes have been formally defined, “as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations.” (Krasner 1983, 2). Here, I am primarily concerned with what precisely is Internet governance in a social condition characterized by anarchy and what is the current structure of the global Internet governance regime? But to address these questions, one must navigate through the concepts of globalization and global governance for the following three reasons. First, in the broader globalization literature the Internet has been alleged to be an important pillar of globalization and conduit for the norm-transformative changes that the processes of globalization and attendant spread of information technology ostensibly impose upon the global political economy and state and non-state actors (Benkler 2007; Castells 2005, Mathiason 2009; Mueller 2010; Rodrik 1997). This study asserts that governance of the Internet is a case of norm-governed change and, in this regard, sounds a note of caution concerning the extent to which globalization and information technology are as transformative as has been asserted in the broader literature.

Second, the concept of governance has been developed by scholars and employed by policymakers as a remedy for the alleged norm-transforming change brought on by globalization (Held and McGrew 2002; Rosenau 1995). The governance

concept is pregnant with normative assumptions concerning what ought to be the appropriate bounds for the relationships between the state and the market, the state and society, and the state and the individual. Others working on the politics of Internet governance assume that states are powerless in the face of the norm-transforming change of which the Internet is, allegedly, a part and have, accordingly, taken their cue from the governance literature in their proposals for what constitutes Internet governance and the legitimate role of states in constructing global regimes (Cogburn et al. 2005; Lessig 1999, 2004; Mathiason 2009; Mueller 2002, 2010; Mueller et al. 2007). These proposals favor a formal multi-lateral organization of state actors. In the case of governing the Internet, it is not a necessary condition of legitimacy that a formal organization be instituted; certainly, such a development is one solution to the question of how to govern the Internet. But, a regime is functionally sufficient and a legitimate exercise of authority granted the state by constituents. In other words, achieving absolute gains is not dependent on a formal intergovernmental organization. States can cooperate to achieve absolute gains within a regime and this study demonstrates just such an outcome.

Third, the concept of governance as applied by scholars of Internet governance fails to account for the fusion of power and purpose within regimes as described by Ruggie (1983). The role of the state, and especially the most powerful states, in the formation of international regimes is critical and is discounted far too much by the global governance and Internet governance literatures. I offer an alternative view of Internet governance that gives pride of place to state actors in the formation of the global Internet governance regime and explain how the *Weltanschauung* of US policymakers

directly shaped the normative framework of the extant global Internet governance regime and why they continue to defend that regime today against calls for a more formal multilateral Internet governance organization. In short, to understand the politics of Internet governance and the approaches that scholars to date have employed in studying that topic, one must traverse the conceptual landscape of globalization and global governance to fully appreciate the scholarly and political contexts within which the idea of Internet governance arose. Against the backdrop of globalization and global governance, I explain what is Internet governance, followed by a brief examination of how Internet governance has changed from a product of a Cold War experiment in distributed communications to the backbone of communications, commerce, and political revolution in the twenty-first century. I end by describing the extant Internet governance regime.

Making Sense of Globalization and Global Governance

The post-Cold War era is characterized by globalization and an important cog in globalization is the alleged transformative nature of the Internet. Globalization is best understood as the ongoing integration of national economies into the global economy through the widespread adoption of information technology, deepening of foreign direct investment by states, organizations, and multinational corporations, and exponential growth in global trade (Bhagwati 2004; Held and McGrew 2002). Globalization was the subject of intense debate that focused on the role and capacity of the state in confronting the effects of globalization (Bartelson 2000; Clark 1998; Evans 1997; Gill 1995; Held and McGrew 2007; Kim and Zurlo 2009; Krasner 1999, 2009; Rodrik 1997; Rudra 2002; Stiglitz 2002; Strange 1996, 1997, 1998; Wolf 2001) It has been argued that globalization alters time-honored social compacts between national governments

and populaces (Held and McGrew 2002; also see Polanyi 1944). In addition, globalization is also characterized by exponential increases in the size and velocity of transnational transactions and capital movements. In a global monetary and finance structure characterized by free-floating exchange rates, globalized capital can wreak havoc on exchange rates, making it difficult for states to pay back national debts, engage in export-led economic development, manage inflationary pressures, or import needed raw materials and commodities because of swings in the prices of such items. Consequently, the idea of global governance was developed as a means for ameliorating the effects of globalization by constructing international regimes designed to address those effects.

Ironically, globalization magnifies the challenge of governance in an anarchical social condition in which disparate state preferences clash over the parameters of cooperation, while states experience intense pressures to liberalize domestic economic and political institutions, they become more vulnerable to rapid movements of transnational capital (Smouts 2001; also see Held and McGrew 2002). It has been recognized that states respond to a globalized world in a number of ways. Rodrik (1997) has noted that the more open an economy is to global trade, the bigger role the government fills within the national economy by providing an ever larger social safety net for displaced workers. States have also altered existing regulatory frameworks, making them more robust in response to opening national economies to the global economy (Vogel 1998). Pressures to make domestic economic and political institutions more open ironically leads the state to take a larger role in society. In some instances under the pressurized conditions of a globalized world, states have turned to regimes

for support. Ruggie (1983) notes that international regimes can assist leading powers in managing global political and economic orders to minimize the social impact of economic dislocations in an interdependent global political economy (also see Keohane 1984; Keohane and Nye 2001). In short, there are three primary responses to globalization that arise from states: 1) the provision of social safety nets for displaced workers; 2) altering and making more robust domestic regulatory frameworks as bulwarks against the effects of globalization; and 3) developing international regimes to assist in channeling the processes of globalization on behalf of extant global political and economic orders. In this study I am primarily concerned with the third response. The scholarship on and politics of Internet governance, however, reflect the conceptual vagueness of global governance.

In the broader literature, governance, on a conceptual level, is ambiguous, having multiple usages, meanings, and social purposes, making the identification of a precise and relevant definition problematic (Dingwerth and Pattberg 2006). Nevertheless, in the inaugural issue of the peer-reviewed academic journal *Global Governance*, Rosenau offered a widely used definition: “global governance is conceived to include systems of rule at all levels of human activity – from the family to the international organization – in which the pursuit of goals through the exercise of controls has transnational repercussions” (1995, 13). Rosenau’s, however, is far too broad according to Finkelstein, who replies that “Global Governance appears to be virtually anything” (1995, 368). Gilpin (2001) is more explicit characterizing the idea of global governance as pure utopian wishfulness that neglects the relative distribution of power among states that structures the types and social purpose of international regimes according to the

interests of the leading powers. More concretely, Held and McGrew (2002) claim that the debate concerning what precisely global governance is constitutes whether or not a structural shift away from a state-centric analysis of international relations, is underway. In consequence of globalization, Held and McGrew are positive that such a structural shift is occurring and argue that governance authority must cede from states to international regimes in order for the processes of globalization to eventually be in accord with liberal-democratic principles.

In reviewing the differing views of the concept of global governance, one can conclude that the concept is essentially contested and that, depending on ontological positions staked, can mean state-coordination to escape the effects of anarchy, is a veneer for dominant interests that reflects the distribution of power, or is a mechanism for perpetuating subordination through coercion and consent to the worldview and ideology of the dominant states. For the purposes of this investigation into the origins and purpose of US Internet governance policy, global governance is understood as a state-mediated process wherein leading powers fuse power and purpose into the normative framework of international regimes for the purpose of expanding extant global political and economic orders from which leading powers and other states derive mutual benefit and gain. This conceptualization of global governance has the benefit of being consistent with the Open Door view of US policy by bringing focus to the synergy between the US pursuit of commercial and political expansion and the purpose of regimes to foster conditions in which that expansion may occur unimpeded. With a concept of global governance framed, the next step is to examine the concept of Internet governance.

What Is Internet Governance?

Mueller et al. (2007) provided a succinct definition of the Internet that I adopt herein. The Internet can be understood as “a standardized set of software instructions (known as protocols) for sending data over a network, and a global set of unique addresses so the data can be told where to go. The Internet protocols can operate on any physical technology” (Mueller et al. 2007, 244). I understand Internet governance to be a state-mediated process wherein leading powers fuse power and purpose into a global Internet governance regime for the purpose of leveraging the Internet in support of commercial and political expansion. This conception of Internet governance differs from other attempts at defining the term. The following attempt at defining Internet governance is noteworthy because it reflects different conceptions of what Internet governance *ought* to be, as opposed to what Internet governance *is*.

The World Summit on the Information Society (WSIS), the Working Group on Internet Governance (WGIG), and the Internet Governance Forum (IGF) were United Nations-sponsored conferences and programs that were initiated in 2001, ending in 2010, that focused on Internet governance. The three programs were intended to bring together stakeholders from civil society, transnational corporations, international organizations, and states to dialogue and propose an alternative to a state-mediated Internet governance regime (Mathiason 2009; Mueller 2010; Mueller et al. 2007). In effect, WSIS, WGIG, the IGF, and their participants never recognized the legitimacy of the extant global Internet governance regime, viewing the regime as the bastard child of US unilateralism. However, at the WSIS 2005 annual meeting, the dialogue succeeded in developing a working definition of Internet governance that reflects the notion that a global Internet governance regime was yet to be formed. Indeed, it was as if participants

in the WSIS process intentionally ignored the extant global Internet governance regime out of spite for the state-mediated process wherein US policymakers drove consensus for a global Internet governance regime consistent with US policy preferences and embedded liberalism. The WSIS working definition was as follows, “Internet governance is 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.”¹ Efforts within the UN-sponsored conferences and programs to overturn the extant global Internet governance regime failed to achieve the stated objective. But taking their cue from the WSIS definition of Internet governance, Mueller et al. (2007) proposed principles, norms, rules, and decision-making procedures for a global Internet governance regime that reflects the WSIS objective to propose an alternative to the extant global Internet governance regime. The alternative regime structure would be a formal multilateral organization in which all stakeholders have one vote to cast in favor of Internet governance policy options. This would effectively constrain US influence over the Internet, the primary objective of the UN sponsored countermovement to the US led process that developed the extant global Internet governance regime.

Yet, for all the effort and energy invested in proposing an alternative to US Internet governance policy preferences, to date, no material change to the role for leading powers in the extant global Internet governance regime has occurred. The concrete description of the contours for a global Internet governance regime offered by Mueller et al. (2007) remained stymied by the reluctance of leading powers. Indeed, US

¹ The WSIS working definition of Internet governance is available at <http://www.wgig.org/docs/WGIGREPORT.pdf>. See page 4. Last accessed 12 March 2011.

Ambassador David Gross, Coordinator for International Communications and Information Policy at the State Department during the George W. Bush Administration, mused in an interview on his most significant accomplishment while in government service. Ambassador Gross claimed that “My number-one accomplishment was keeping the Internet stable and secure in the face of suggestions for the creation of, or establishment of, a multilateral institution taking over control” (Caterinicchia 2006, no pg. no.). The question concerning why there remain alternative views concerning what constitutes Internet governance is an open question. The answer to that question may lie in the different ontological views exhibited between state policymakers and scholars engaged in examinations of the politics of global Internet governance.

Regardless of attempts among academics or the United Nations at persuading leading states to alter the extant global Internet governance regime, the status quo continues to function. While I argue in this investigation of US Internet governance policy that the preponderant power of the US was decisive in shaping the purpose of the extant global Internet governance regime in that the regime reflects US government policy preferences for pursuing commercial and political expansion abroad in order to achieve security. Yet, from its inception, governance of the Internet did not always comport with the expansionary purpose for which the technology would be put in the post-Cold War era.

Rough Consensus to Duty Free

The literature was primarily concerned with change to global political and economic orders that would constitute a new power configuration and normative structure for the entire system of global political economy (Holsti 1980; Keohane 1980, 1983, 1984; Krasner 1983; Ruggie 1983). The purpose of this section is to describe how

the research project that spawned internetworking technology was coordinated on a day-to-day basis prior to the end of the Cold War. I describe the procedure – rough consensus – that structured deliberations among geographically dispersed scientists and researchers engaged in the project funded by the Department of Defense (DoD) to develop a distributed communications system suitable for Cold War security exigencies. I then move to introduce the norm – duty-free – that structured Internet governance in the post-Cold War era leaving for later the detailed explanation for how this post-Cold War norm emerged.

The Internet began as a US DoD funded project to 1) design a communications network capable of surviving a nuclear attack and 2) order time-sharing on mainframe computers among academic and government-funded researchers.² In other words, strategic imperative and efficient resource allocation were the catalysts for development of Internetworking technology. In simple terms, the Internet or, more formally, internetworking technology, is hardware and software that facilitates data and voice communication and exchange across computer and telecommunications networks. The Internet is a conglomeration of computer networks stitched together by information switching software, routers, and root servers. The “stitch” is the software program known as transmission control protocol/Internet protocol or TCP/IP – it is this software that makes possible the transmission of voice and data across the many computer networks that comprise the Internet. This software was first published in 1974 and is currently in its sixth version. The software is an open-source program meaning that TCP/IP is not currently governed by any political entity, but is continuously developed

² For a history of inventing the Internet see Abbate (1999). Also see Mathiason (2009), Mueller (2002), or Pare (2003) for brief accounts of the technical development of the Internet.

and managed by concerned and volunteer software engineers, programmers, and other Internet community enthusiasts through a communal and transparent process.

The software and hardware that make a functioning Internet possible is comprised of several technical solutions that all work together to route messages and provide access to information stored on computer networks that constitute the Internet (Abbate 1999; Mueller 2002). Messages must be broken up into smaller transmittable packets by TCP/IP and then reassembled at the intended destination. Smaller packets require less computing power to transmit, which translates into more efficient allocation of scarce computing resources available on the Internet. Routing messages from network A across network B to the intended destination located within network C also requires TCP/IP to reference tables of numerical strings known as Internet protocol addresses and domain names stored on root servers. Tables of domain names and IP addresses or “root files” record how each domain, IP addresses, and domain names are related. When a website request is submitted to a server via a common web browser, TCP/IP directs the server to reference the root file for the IP address that corresponds to the domain name. Once this operation has been performed, the server links the user to the requested website. Similarly, when an electronic message or email is transmitted via internetworking technology, TCP/IP work together to break up the message into smaller packets and then identify the IP address of the intended recipient. At the start, there were thirteen root servers labeled A through M, today there are 192 root servers dispersed around the globe. Root server A remains the authoritative server to which all other servers point and from which are downloaded the daily updated root zone file. Together, TCP/IP, DNS, and the root zone file constitute the critical technical resources

(CTR) that make an “Internet” possible.

From the beginning of US government-funded research that produced internetworking technology, governance of what came to be known as the Internet was conducted through ad-hoc groups of technocrats who worked on developing network technology as graduate students and researchers funded by the US DoD Advanced Research Projects Agency (ARPA).³ Over time, these technocrats formed a loosely run epistemic community organization they dubbed the Internet Society (ISOC). The ISOC reflected the communal ethos of the technical community that the Internet should be free and open to all current and future users and managed in accordance with the ISOC rough consensus procedure. Rough consensus stipulates that once a proposal concerning technical standards for internetworking technology has reached a point of general agreement among community participants, the proposal will be adopted and implemented. Generating rough consensus was accomplished through sending out requests for comments (RFCs) to colleagues within the ISOC. For example, if one researcher solved a technical problem, he or she would send a RFC to the community and after a rough consensus had emerged concerning the proposed solution, the technical solution was incorporated within internetworking technology. The RFCs comprise protocol standards and policy statements on how to manage, maintain, and develop internetworking technology. To date over five thousand have been published and are available at <http://www.rfc-editor.org>. RFCs are also a treasure trove of

³ Academic departments and research institutes contracted with the DoD to work on the internetworking technology research project include, the University of Southern California, the RAND corporation, Stanford University, University of California Los Angeles, University of California Santa Barbara, University of Utah, University of Illinois, Case Western Reserve University, Carnegie Mellon University, Massachusetts Institute of Technology, Harvard University, and Bolt, Berenak, and Newman Consultants, LLC, a spin-off from MIT (Abbate 1999). In some cases, there would be an academic department and a separate research institute within the same university working on separate aspects of the internetworking project.

historical texts that record how the Internet was developed and reflect the communal and egalitarian ethos of the ISOC.

The ISOC consists of the Internet Engineering Task Force (IETF), the Internet Assigned Names Authority (IANA), and any other entity or individual willing to participate in conferences, in work groups, or more generally just interested in network computing, but more often drawn from computer networking research departments and institutes located at higher education institutions. The US government, through the Defense Department's Advanced Research Projects Agency (ARPA), contracted with universities, computing corporations (IBM, Bolt, Beranek, & Newman), and non-profit government-funded corporations (RAND in particular) to develop computer networked communications (Abbate, 1999). The US government, through ARPA, retained funding and oversight authority for Internet working technology. At this stage of technological development, internetworking technology was essentially an American funded and coordinated research project. The relationships between ARPA and contractors constituted the initial rough consensus procedure for coordinating the research project that developed and managed internetworking technology, known as ARPANET, during the Cold War. This procedure may have been a cooperative and amicable arrangement within the community of internetworking technology scientists and researchers, but the rough consensus procedure was not anchored in any bilateral or multilateral agreements among states and, in this sense, stopped well short of being an international regime. Not until Magaziner and the interagency group that he led in the mid-1990s began formulating policy and engaging in diplomatic efforts to obtain bilateral and multilateral agreements for governing a globalized Internet, did a global Internet

governance regime emerge with state actor-specified purpose and conferred authority to function within the scope of that purpose.

At the end of the Cold War, in a climate of shrinking defense budgets, ARPA transferred budgetary and oversight responsibility for the non-military component of ARPANET to the National Science Foundation (NSF), in what became known as NSFNET. Remaining true to the US government tradition to collaborate with private industry in managing critical public resources, the NSF opened a bidding process to private enterprise for managing CTR (Abbate, 1999). VeriSign, Inc., a company that employs nearly 3,800 workers headquartered in Dulles, VA, acquired a company known as Network Solutions that was the first US government contracted administrator of the .com and .net top-level domain names, from SAIC, Inc. on 7 March 2000 for \$21 billion in stock. SAIC had purchased Network Solutions in March 1995 from its founders for \$4.7 million. Network Solutions won a competitive bidding process run by the NSF in 1993 for a \$1.5 million contract to register secondary domain names under the primary domains of .com, .net, .org, .edu, and .gov (Government Accounting Office, 2001). In 1997, the .gov primary domain was transferred to the General Services Administration of the US Government and over time the .edu and .org domain names have been sold off or transferred to other for-profit registrar entities.

Under a contract with the US government through the Department of Commerce, VeriSign continues to administer on a fee basis the domain name system and root zone file A. For the year ending 31 December 2008, there were 177 million registered domain names across all TLDs such as .com, .net, .org, or .biz. VeriSign currently manages the .com and .net TLDs that represent 90.4 million domain names or 51 percent of the

market. VeriSign's domain name market share generated \$936 million of the \$962 million (or 97%) in total revenue for the company during fiscal year 2008.⁴

Subcontracting the management of CTR in 1992 to a private enterprise is consistent with how internetworking technology was managed from the start of the ARPA-funded internetworking technology project. The US government awarded research contracts through a competitive bidding process to research institutions that then developed and managed the technology while the US retained oversight authority and property rights over the technology by virtue of having funded the research and development of the technology. Indeed, the General Accounting Office of the US government opined that US law forbids the US government from transferring oversight authority to another entity when the US government has "paid the bills" to use a colloquialism (Mueller and Thompson 2004). This domestic constraint meant that any Internet governance regime must institutionalize US oversight authority in such a way that US law was not contravened, while avoiding the appearance of US domination of the Internet. Employing a public-private regime structure finesses the issue of alleged US Internet domination by incorporating a broad base of actors within the final governance arrangement adequately accounted for the US domestic constraint.

The decision by the NSF to privatize operational management of CTR reflects the broader trend toward wider application of private-public frameworks in a globalized and technologically connected world (Cutler, Haufler, and Porter 1999; Hall and Biersteker 2002; Levi-Faur and Jordana 2005; Nielson and Tierney 2003; Vogel 1998). In a public-

⁴ VeriSign, Inc. FY2008 10K filing news release available at <https://investor.verisign.com/releasedetail.cfm?ReleaseID=363928>. Also see VeriSign, Inc. Annual Report for fiscal year 2008 available at <https://investor.verisign.com/annuals.cfm>. Both links last accessed on 28 Dec 2009.

private technology management framework, the private party oversees the day-to-day operation of the technology, while nation-state(s) retain oversight authority of the private party and, in this case, the technology. Implementing a public-private framework is not without precedent. Within the realm of ICTs, a parallel case of public-private management is that of satellite communications, which was ultimately managed by a for profit corporation – initially Comsat now Intelsat – incorporated by nation-states as stockholders (Mueller and Thompson, 2004).

From the start of the US government research project that produced ARPANET in the late 1960s and through NSFNET in the late 1980s, the procedure for coordinating development of internetworking technology was rough consensus (Abbate 2000). Rough consensus worked because, during that period, a relatively small and like-minded community of computer scientists and other parties passionate about computer networking primarily drove the growth of what became the Internet as a medium for research collaboration and platform for computer networking experimentation (Abbate 1999; Mueller 2002). Issues relating to the growth of the Internet concerned technical questions and were resolved through an open, academic, collegial, and communal discussion until a rough consensus had been reached among members of that community. But as the largess of Cold War funding withered and gave way to a “peace dividend” during the George H. W. Bush Administration (1989-1993), funding and oversight for the Internet became a budget hot potato within the US Government. “A host of new actors assumed responsibility for various aspects of the system, including the National Science Foundation, the Bush and Clinton Administrations, various public and private bodies outside the United States, university administrators, Internet service

providers, computer vendors, and the system's many users. With the loss of a central guiding vision from ARPA, the system seemed at times to verge on anarchy, as control of the network became fragmented among diverse groups with competing interests and visions" (Abbate 1999, 181-182). Not until Ira Magaziner, the Domestic Policy Advisor to President Clinton, became involved, did the United States Government attempt to impose order on that anarchy. In conclusion, I describe the structure of the extant global Internet governance regime in preparation for devoting the remaining analysis to explaining its origins.

The Global Internet Governance Regime

Mathiason (2009) argues that Internet governance reflects an evolution in international organizations that is a hybrid between private market-based and public-sponsored legitimate authority and I am in agreement with this claim. The US Government generated consensus among leading powers for a public-private regime that divided day-to-day technical management of the root, TCP/IP, and the domain name system among separate entities, ensuring that no single entity could exert control over the Internet. The domain name system, the authoritative root server and root zone database file, and the TCP/IP protocol for exchanging information across computer networks constitute the critical technical resources (CTR) that make a functioning Internet possible. The six components of the global Internet governance regime that I identify here represent a hybrid form of global governance in which the US policymakers employed a combination of unobtrusive government oversight and private market actors to manage the Internet on a day-to-day basis.

The first component of the global Internet governance regime is the duty-free norm. On the one hand, there is an inherent duality of meaning in the term duty and

when combined with the concept of freedom imposes certain rights and responsibilities on the state, society, and individuals where the Internet is concerned.⁵ On the other hand, the duty-free norm is comprised of the principle and rule for the global Internet governance regime. This last claim runs counter to Mueller et al. (2007) who argue that there is no set of clearly defined rules, principles, norms, and decision-making procedures around which expectations may converge for the Internet. Krasner (1983) defined the four constituent parts of a regime as follows: “Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions and proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice” (1983, 2). In what follows, I identify the constituent parts of the global Internet governance regime taking care to remain within the parameters set by Krasner. I accomplish this process of identification by breaking duty-free into its elemental parts for closer examination and then reassemble them into the duty-free norm. While moving through this process, the duality of the term duty is revealed.

The principle of the global Internet governance regime is freedom in that the Internet should not be restricted by government policies that inhibit Internet access and usage consistent with a virtual self-regulating market. From this negative conception of freedom is linked a positive conception of freedom that users of the Internet should be free to utilize the medium for commercial transactions and to engage in dialogue consistent with democratic practices (McCarthy 2011). This conception of freedom explicitly informs the relationship of the state to the Internet market and the state to the

⁵ I thank Nick Onuf for his insight on the duality of duty-free.

individual. The state is to have a limited role in the Internet market and the individual is to be enabled to exercise personal choice towards realizing maximum opportunity to acquire goods and services for sale or otherwise available through the medium and engage in uncensored dialogue and political organization.

The rule of the global Internet governance regime is duty. While the explicit meaning of duty is that states are prohibited from placing tariffs or duties on goods purchased over the Internet from foreign markets, implicitly the rule also describes the duties of states in relation to the Internet. States have a duty to avoid regulation that would inhibit the development of the Internet as a virtual marketplace. States have a duty to avoid policies that would inhibit the exchange of information via the medium. States have a duty to ensure that the Internet spreads globally so that individuals can plug in to the virtual marketplace and the information and communications exchange. In short, states have a duty to ensure that the Internet is employed as a platform for American commercial and political expansion. To assist states in these duties and to promote Internet freedom, the US policymakers successfully generated consensus among leading economic powers concerning the structure and purpose of the global Internet governance regime. The principle and rule of the global Internet governance regime are combined into the duty-free norm that delineates very clearly the relationship of the state to the market and the Internet, the state to society and the Internet, the state to the individual and the Internet. States have a duty to support the explicit purpose of the Internet: expansion of American commerce and political ideals. In forming the components of the global Internet governance regime, US policymakers had to strike a balance between fears of American dominance abroad and calls for expansion

overseas from within domestic politics. Policymakers in the US government achieved four inter-related milestones in developing the extant global internet governance regime: 1) US policymakers placed the root zone file and authoritative root server with an existing private market enterprises (VeriSign); 2) ensured an ongoing role for civil society associations (ISOC) in developing internetworking technology; 3) formed a new private market not-for-profit corporation to manage the domain name system and protect intellectual property rights; and 4) utilized an existing multilateral organization (the World Trade Organization) to lock in state support for the duty-free Internet. Combined, the entities that have been assigned aspects of CTR and authority to enforce the Internet as a duty-free trade zone comprise the palpable components of the global Internet governance regime.

The first component of the global Internet governance regime is an agreement among states within the framework of the World Trade Organization to treat the Internet as a duty-free trade zone. What this means is that goods or services purchased over the Internet are free from tariffs and duties normally assessed to goods or services purchased across sovereign boundaries. However, each nation-state is able to assess local sales tax to items purchased over the Internet according to local sales tax or value-added tax traditions and laws within the sovereign boundaries of the nation-state. Significant to this study, the principle of duty-free was employed as a rallying cry by US policymakers to generate support among other leading powers for an Internet that could be employed for American commercial and political expansion.

The second global Internet governance regime component is VeriSign's responsibility as a sub-contractor to the US Department of Commerce for ensuring the

operability for the authoritative root server known as “A” and accuracy of the root zone file. Any changes to the root zone database file must be approved by the Department of Commerce. Otherwise US government oversight is light, only rearing its head when a crisis that threatens the stability of the Internet erupts.

The third component, the International Corporation for Assigned Names and Numbers (ICANN) is charged with managing of the domain name system (DNS) on two levels. The first level is to ensure the continued technical operability of the DNS. On the second level, ICANN is to serve as a bulwark against intellectual property rights infringements caused by registrations of domain names that infringe upon trademarks or copyrights. ICANN manages the technical aspects of the DNS through a contract with the US Department of Commerce that expires in 2011. However, in terms of setting usage policies and guidelines for the DNS, ICANN operates under an Affirmation of Commitments with the US Department of Commerce in which the latter has final word on DNS policy changes. The Affirmation of Commitments has mandated the formation of advisory committees composed of representatives from states, private industry, and civil society and it is this aspect of ICANN that was an attempt by US policymakers to assuage concerns of US dominance of Internet governance (Mueller et al. 2007). The seats on these advisory committees are selected by a separate committee comprised of the ICANN chief executive officer, the US DoC representative, and the chairperson of ICANN. The US has permanent seats on the selection committee and on a government advisory committee. Through its oversight contracts with VeriSign and ICANN, the US Government has carved out a permanent role in the global Internet governance regime. Continued US Government oversight of ICANN and VeriSign constitutes the third

component of the extant global Internet governance regime. It is noteworthy that US policymakers have gone to great lengths to apply a light oversight approach to ICANN (Marburger 2010). There remain three final components of the global Internet governance regime.

The ISOC is the fourth component, charged with technical management of TCP/IP and overall technical innovation of internetworking technology. Preserving a role for the ISOC in the global Internet governance regime ensured that technical expertise would not be lost and would be an integral part of governance deliberations. The fifth component of the global Internet governance regime is sovereignty. This represents a controversial claim that I am staking, as the conventional view is that the global spread of information technology weakens, if not outright renders meaningless, the institution of sovereignty because the institution is territorially based (Mueller 2010). While sovereign borders of nation-states may be associated with such landmarks as rivers or mountain ranges, the very idea of borders is the product of complex processes of social construction, historical legacy, and realpolitik (Barkin and Cronin 1994; Bartelson 1995; Biersteker and Weber 1996; Doty 1996; Nuemann 1999; Thomson 1995; Wendt 1992). Goff (2000) argues that states in a globalized world are shifting from territorial bounded notions of sovereignty to conceptual notions of sovereignty and it is in this sense that sovereignty applies in cyberspace. Sovereign borders in cyberspace are as conceptual as is cyberspace, but this by no means implies that either concept is meaningless. Ruggie's definition of sovereignty as "the institutionalization of public authority within mutually exclusive jurisdictional domains" is suitable for this study (1983, 275). This

meaning of sovereignty is overlaid onto cyberspace through the top-level domain names known as country codes.

Within the domain name system, country codes take the form of .uk for the United Kingdom or .cn for China, for example. These country codes effectively carve out jurisdictional domains on the Internet that are sovereign, meaning that China or the United Kingdom, for example, enjoy complete autonomy on how they manage domain name registration, content, and user access within their respective country code domains. In other words, the principle of sovereignty was programmed into the technical architecture of the Internet. Moreover, if states were powerless where the Internet was concerned, why are some states able to restrict content, access, usage, and domain name registration (Deibert et al. 2008, 2010)? How was Egypt able to “turn off” the Internet within its sovereign borders during political protests occurring in early 2011? Clearly, the claim that sovereignty is weakened through the spread of information technology or that states are powerless to impede the Internet is overstated if not entirely without merit. Pare (2003) provides an excellent investigation of how the UK developed a regulated domain name registration market for .uk domain names that illustrates how sovereignty operates in cyberspace. More recently, access to the global Internet has been heavily monitored, restricted, and even shut off by governments in Egypt, China, and Iran to impede the utilization of the internet as a platform for political dialogue and grass roots organization, leading to protests of oppressive government policies. The idea that the Internet trumps the state is exaggerated, lacking any empirical support. Nevertheless, the role of state actors, and, especially, the ongoing

role of the United States in the politics of Internet governance remains a contested terrain of study and political struggle.

But if my findings are accurate, they sound a word of caution concerning the idea of the declining state in the face of spreading internetworking technology or notion that states ought not to play a prominent role in the politics of Internet governance. The fact of the matter is that states do and will continue to play a prominent role in the politics of Internet governance precisely because states remain the centripetal force in global political economy and the primary designers and implementers of regimes. Meaning that power and purpose become fused into legitimate authority manifested through regimes (Ruggie 1983). US policymakers adapted the post-Cold War purpose for internetworking technology to fit within the normative framework of the global political economy that Ruggie identifies as embedded liberalism. At the level of rules and decision-making procedures, country codes were reserved for states as sovereign domains in cyberspace. States had sole authority within their country code domains to make policy concerning user access, pricing, content, regulation of Internet service providers, privacy, surveillance, and the issuance of sub-domain names (Pare 2003). At the level of principles and rules, states were obligated, at the least, not to impede, through regulation of country code domains, the purpose of the Internet as a platform for American commercial and political expansion consistent with the intentional and planned expansion inherent in embedded liberalism that Polanyi ([1944] 2001) identified and argued was a manifestation of social movements within the leading states in the global political economy. Put in terms of the Open Door, US policy is the blooming of consensus among factions for American commercial and political expansion abroad and

consistent with embedded liberalism. Now combining Ruggie with the Open Door, US policymakers intentionally planned and developed a global Internet governance regime that would facilitate the expansion of commerce and political ideals consistent with the embedded liberalism. And it is this consistency that Ruggie argues denotes regime change as norm-governed instead of norm-transforming. When policymakers, facing the prospect of revolutionary change, formulate policy and develop new regimes to confront that change, if they are successful in preserving extant normative frameworks by harnessing through new regimes the innovation that revolutionary change brings, regime change is to be characterized as norm-governed. The case of US Internet governance policy illuminates how the leading states in the global political economy confronted the revolutionary change the internet represented with a new regime that was consistent with embedded liberalism and, accordingly, the process of regime change where global governance of the internet is concerned is an example of norm-governed change. This is not to discount US national interest and power in developing the extant global Internet governance regime. Indeed Ruggie notes that the preponderant power of the US proved critical in institutionalizing embedded liberalism as the normative framework for the global political economy, and, I make the same claim where the extant global Internet governance regime is concerned. But this does point us toward the Open Door that helps us understand the continuity between US policy, embedded liberalism, and the fusion of power and purpose that produced the extant global Internet governance regime.

Two studies in particular have argued that the extant global Internet governance regime reflects the national interest or power of the leading states (Antonova 2008;

Drezner 2004). My study gestures toward these last two works, but pushes further our understanding of how power becomes fused with purpose in the global Internet governance regime by focusing on the normative basis of that regime and demonstrating its continuity with embedded liberalism and the *Weltanschauung* of US policymakers that shape US policy.

Summary

Contrary to the notion that there has not been a norm around which the global Internet governance regime has been formed, I will next show that US policymakers devised an Internet governance norm, duty-free Internet, and successfully institutionalized that norm as the basis for a global Internet governance regime. Put more concretely, the duty-free Internet implicitly describes the relationship of the state to the market, the state to society, and the state to the individual in cyberspace. The Open Door helps to elucidate the purpose the duty-free norm imputes to the Internet as the technological key for opening overseas markets and political institutions to American products and political ideals.

CHAPTER 3 A CAMPAIGN PROMISE

In what follows, I trace the evolution of US Internet governance policy from the 1992 US presidential election through July 1, 1997, during which the primary concern of US policymakers was to ensure the long-term prosperity of the US economy just emerging from the 1991-92 recession by renewing export competitiveness. This last date is significant, for this was the date the United States government staged an event at the White House that was quintessential political theater to formally announce its policy concerning global governance of internetworking technology, as it was then called.

Free Trade finds the Internet

The 1992 presidential campaign saw the surprise defeat of an incumbent fresh off a rousing military victory by a little known governor from a minor southern state. President Bill Clinton burst onto the national political scene promising to bring change, in part by renewing the competitiveness of US exports overseas. In the December 9, 1991, edition of *Business Week*, Clinton, then candidate for the presidential ticket of the Democratic Party, was described as “an unabashed free-trader” (Gleckman 1991, 60). During his acceptance speech for the Democratic Party presidential nomination on July 16, 1992, Clinton forcefully argued that “American companies must act like American companies again exporting products, not jobs” (Bernstein 1992, 48). Indeed, Clinton is precisely the type of political leader that Beard (1934a,b) and Williams ([1959] 1972) would spotlight for constructing US policy preferences on an economic foundation while leveraging technology to achieve those policy preferences.

The 1992 Democratic Party convention presented a campaign platform that placed emphasis on “restoring America’s economic greatness” as a key component of national security strategy in the post-Cold War era and this commitment carried over into Bill Clinton’s presidency.¹ By September 1993, President Clinton announced that his administration, as part of its National Export Strategy (NES), had set a goal to double the value of US exports to \$1 trillion dollars by the year 2000. According to the *National Export Enhancement Act* of 1992, the Government Accounting Office (GAO) annually, reviews the NES to assess the degree to which all US government agencies are effectively coordinating activities in promoting and implementing the NES. The first annual review was issued in 1993.

The commitment to double US exports must be viewed against a backdrop of the trend to liberalize regulatory regimes in the broader US-global political economies then gathering steam. That liberalization trend aimed to remove barriers to the flow of goods, services, labor, and capital in the hope that removing barriers would improve the competitiveness of the US economy. Chief among the regulatory frameworks to be liberalized were telecommunication regulatory regimes, meaning that government was moving away from a regulatory model that could be characterized as control. This trend began in the United States in 1974 with the filing of an anti-trust case against AT&T by the US government. In 1984, AT&T agreed to settle the anti-trust case by divesting itself of seven regional telephone service providers. This effectively opened long distance

¹ Democratic Party. Author unattributed. “1992 Democratic Party Presidential Campaign Platform.” Available at <http://www.presidency.ucsb.edu/ws/index.php?pid=29610>. Last accessed 14 October 2009.

service in the United States to competition, but retained heavily regulated telephone service providers at the regional and local levels.

Over the next twelve years, the US government chipped away at the regulatory model it had employed since the 1934 Telecommunications Act until the last remaining obstruction to competition was local telephone service carriers (Crandall 2005). The complete liberalization of the US telecommunications market was attempted by the Clinton administration with the 1996 Telecommunications Act. Crandall (2005) and Economides (1998) argue that the Clinton Administration underestimated the extent to which local universal service providers would move to slow down and impede liberalization that would directly threaten their monopoly business models. By 2005, total implementation of the 1996 Telecommunications Act provisions still remained mired in legal challenges and seemingly perpetual review by the Federal Communications Commission (Crandall 2005). Nevertheless, given the vision of a liberalized telecommunications market, the Clinton administration, and especially Vice President Al Gore, championed the spread of information technology and touted the economic benefit of such a development.

By 1994, the Clinton administration linked electronic commerce, and thus the Internet, with the National Export Strategy. Secretary of Commerce Ronald Brown initially served as the administration's point person for encouraging the growth of electronic commerce. Toward that end, Secretary Brown issued a letter of invitation to trade ministers of United Nations (UN) members to attend a US-hosted UN symposium, held in Columbus, Ohio, on October 17-21, 1994. The invitation expressed the US vision of the Internet:

Building global information highways for trade will accomplish two universal goals: Small and medium-sized enterprises will be able to compete both in broader domestic markets and in the growing global marketplace. These enterprises are the “lifeblood” of all our economies, employing millions of citizens and providing a significant share of our economic growth.

Trade costs can be lowered, creating new economic opportunities. Using telecommunications and improved systems, we can save billions in costs, expand and open trade and build toward world-wide prosperity. (Brown 1994, 1)

Note that, in the Brown invitation, information technology – i.e., the Internet – is directly linked with increasing global trade, removing trade barriers for small and medium sized enterprises (SMEs), and preserving and providing jobs to citizens: all objectives of US policy since the late nineteenth century according to Beard (1934a,b) and Williams ([1959] 1972). Additionally, at the start, the US sought to work within existing international institutions to reach consensus concerning management of CIR and transnational regulation of electronic commerce.

The UN Trade '94 Symposium was intended to raise awareness among national and local governments concerning the potential of electronic commerce to increase access to information, circumvent trade barriers, and establish new trade links, although no multilateral or bilateral agreements concerning electronic commerce were negotiated at the symposium. The symposium rode the wave of enthusiasm sweeping across the Developed World for the social, political, and economic possibilities offered by Internet technology. According to a leading global accounting firm of the period, Arthur Andersen, trade via Internet technology was projected to be approximately \$150 to \$600 billion by the year 2000 (Mann and Kierkegaard 2006). Mann and Kierkegaard (2006) estimated that electronic commerce added roughly 0.25 basis points of growth to annual GDP for industrialized nations. In the case of the United States, that translates to

\$400 billion added to US GDP per year over the long run (Mann and Kierkegaard 2006, 25). Given the commercial potential of internetworking technology and President Clinton's stated strategic goal to double the value of US exports by the year 2000, leveraging the Internet for commercial expansion was a logical trade tactic for the US government to pursue. More importantly, positioning the United States to take advantage of (what at the time were considered to be) significant structural changes in the global economy was a primary concern within the Clinton administration. While the potential economic benefit of electronic commerce was apparent to US policymakers by late 1994, how to foster electronic commerce and where, within the domestic and global economies, electronic commerce regulation and technical management would ultimately be situated remained open questions. Memoranda and draft policy papers began to circulate within the Clinton administration concerning what role, if any, government would have in the emerging electronic commerce-based economy.

Explaining the confluence of factors that shaped US policymaker perceptions concerning the future direction for and areas of growth within the post-Cold War global economy, Ira Magaziner, former Domestic Policy Advisor to President Bill Clinton from 1993 to 1999, described President Clinton as being "concerned about the long-term economic development of the US" as the country was emerging from the 1991-92 recession.² Indeed, Jonathan Greenblatt, the lead staffer for Mr. Magaziner on the Domestic Policy Counsel, links the export competitiveness project to electronic commerce and the presidential election of 1996. "Looking ahead to a second term," Greenblatt stated, "how could we make the most impact on trade and commercial policy

² Magaziner, Ira. 2010. Phone interview with author, 5 April 2010. Notes on file with author.

in support of US business.”³ Greenblatt continues, “One of the issues that came up was that the Internet was beginning to evolve from its academic origins into a more commercial medium. Our point of view, considered in light of 1) the Netscape browser 1.0; and 2) the debut of Amazon, these were two seminal events that shifted views that this could be something to look at.”⁴ The US Internet policy was firmly entrenched in domestic politics and economic considerations, not in designs to control the Internet.

Against this backdrop, Magaziner was assigned by President Clinton in early 1995 to chair a cabinet-level joint National Economic Council/National Security Council (NEC/NSC) interagency taskforce project “to look at export competitiveness, especially for SMEs.”⁵ The taskforce was to develop “a series of strategic recommendations to boost US exports over the next 5-10 years.”⁶ Magaziner plunged into the new project with gusto, barnstorming across the United States, Asia, and Europe meeting with domestic US Chambers of Commerce, Business Roundtables, overseas American Chambers of Commerce, and other industry and trade groups to assess the problem and obtain ideas for solutions. According to official US Government communiqués reporting on the many meetings with American business Magaziner attended, the primary non-tariff trade barriers (NTBs) faced by small- and medium-sized enterprises

³ Greenblatt, Jonathan. 2010. Phone interview with author, 7 May 2010. Notes on file with author.

⁴ Greenblatt, Jonathan. 2010. Phone interview with author, 7 May 2010. Notes on file with author.

⁵ Magaziner, Ira. 2010. Phone interview with author, 5 April 2010. Notes on file with author.

⁶ Greenblatt, Jonathan. 1996. “Memorandum: Working group on electronic commerce.” Domestic Policy Council - Ira Magaziner, Electronic Commerce Collection, Magaziner papers, Box 3, Folder 9. Little Rock, AR: William Jefferson Clinton Presidential Library.

(SMEs) were lack of ready finance, the cost of insurance, and such regulations as domestic content laws.⁷

While Magaziner was traversing the globe to ascertain trade barriers confronting US SMEs, others in the Clinton White House were beginning to consider the potential economic, social, and policy impacts of Internet technology in draft policy papers. One such draft policy paper, dated 14 January 1995, was circulated within the US government by Thomas Kalil, a Deputy Assistant on the NEC for Technology and Economic Policy.⁸ It concerned the role of the G-7 nations in promoting electronic commerce. The draft policy paper begins with explaining the electronic commerce policy objectives agreed to by members of the G-7. It ends with questions concerning what specific electronic commerce policies the US government should pursue in the spirit of the G-7 policy objectives. Should the US government support efforts at the global level of analysis to develop harmonized “rules for conducting electronic trade transactions”?⁹ And, “How should the US government support,” the efforts to promote electronic commerce within international organizations to, “assure they advance with appropriate applicability for global trade growth”?¹⁰ In addressing these questions, the draft argues that the US should pursue two goals: “a) strive to avoid unnecessary uses of regulations to construct non-tariff trade barriers, and b) deliver a framework of policies and rules

⁷ US government communiqués are on file with author and were recovered from the Magaziner papers collection at the William Jefferson Clinton Presidential Library in Little Rock, Arkansas, during on-site research in May and June of 2009.

⁸ United States Government. The White House. Office of Science and Technology Policy. 1995. Cooperation in Electronic Commerce: A Proposal for Legal Facilitation of Trade Efficiency by the G-7 Nations. Retrieved from Domestic Policy Council – Ira Magaziner papers, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

⁹ Ibid.

¹⁰ Ibid.

which are consistent with US corporate and government investments in trade and in the infrastructure required for electronic commerce?”¹¹ To calibrate US policy preferences with those of US high technology companies, the Clinton Administration’s NEC hosted an informal conference at the White House Conference Center on 3 May 1995. Conference attendees included Clinton Administration officials and representatives from the high-tech and computer industries.

The NEC conference was an attempt to bring the private sector on board with the US government policy preferences and to serve as a catalyst for the policy development process within the Clinton Administration. According to a memorandum submitted by to Kalil at the NEC dated 12 May 1995, all attendees unanimously adopted the policy preferences described in the 14 January 1995 draft policy paper.¹² At this point, Magaziner began to take notice of the Internet as a commercial medium. The Clinton administration now had, in its view, the full support of the US high technology industry to move forward with implementing its overarching vision of the Internet as a commercial medium. But how to go about achieving this objective remained an open question within the US government and who or what entity would spearhead the policy development process had yet to be determined. Nelson mentioned that up to this point the Clinton administration viewed electronic commerce as a trivial issue and electronic commerce had not factored as a significant economic development on which to invest political capital.¹³ Electronic commerce was on the radar, but was not actively researched or

¹¹ Ibid.

¹² Ritter, Jeffrey. 1995. “International electronic commerce -- legal and regulatory issues -- meeting report.” Domestic Policy Council - Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

¹³ Nelson, Michael. 2009. Phone interview with author, 21 September 2009. Notes on file with author.

promoted within the Clinton administration except by Vice President Al Gore and staff at the NEC (Thomas Kalil) and the White House Office of Science and Technology Policy (Dr. Michael Nelson) whose portfolios included electronic commerce.

By mid-1995, President Clinton was ready to be more aggressive about keeping his campaign promise to increase US exports. To that end, he assigned his Domestic Policy Advisor Ira Magaziner to chair an interagency taskforce to investigate US export competitiveness. Fresh off the Clinton healthcare initiative debacle, Magaziner was looking for success and export competitiveness provided an issue that US business, workers, government departments and agencies, and Congress could support. According to Magaziner, as he began to ponder the project, he experienced an epiphany concerning the potential for electronic commerce as the solution to the issue of US export competitiveness. At this crucial moment Magaziner states that he “decided to broaden the mandate [of the NSC/NEC export competitiveness project] because I could see what was happening with IT [information technology] and the human genome project. The data was pointing toward productivity gains. I decided to focus the project on the Internet because the Internet potentially could create an economic revolution over 5 to 10 years.”¹⁴ Focusing on electronic commerce as the main thrust of the trade barriers project enabled Magaziner to avoid potential turf war between the US Trade Representative and the Department of Commerce.¹⁵ Additionally, by obtaining the approval of President Clinton, Magaziner had executive authority and prestige backing the project, which cut through bureaucratic infighting. Last, marrying electronic

¹⁴ Magaziner, Ira. 2010. Phone interview with author, 5 April 2010. Notes on file with author.

¹⁵ Nelson, Michael. 2009. Phone interview with author, 21 September 2009. Notes on file with author.

commerce with the politically popular issue of improving US export competitiveness created conditions for bipartisan support in Congress. In early summer of 1995, Magaziner met with Kalil at the NEC and Nelson at the White House Office of Science and Technology Policy (OSTP) to be brought up to date about US efforts to develop policy concerning electronic commerce.¹⁶ Then, as part of the initial research phase of the project, he spent the latter half of 1995 engaging the American export community in dialogue concerning what common barriers they faced when exporting products. For example, in November 1995, Magaziner was part of the US delegation headed by US Commerce Secretary Ron Brown to the inaugural Transatlantic Business Dialogue (TABD) held in Seville, Spain. Brown described Magaziner's role in talking points prepared for the November 1995 TABD:

At the request of President Clinton, Ira [Magaziner] is directing an NEC/NSC initiative analyzing non-tariff barriers to trade. The objective of this White House initiative is to develop a series of policy options for the President to consider early next year, actions which he himself might take in order to support US commercial interests around the world. As chair of the interagency team charged with the NEC/NSC initiative, Ira is resourcing the business community to conduct his research, surveying executives . . . in an attempt to determine what the private sector deems to be most significant obstacles to American exports. At this point, he has already held a series of such meetings across the country, sitting down with business people from major corporations as well as members of the small-to-medium sized business community. (Brown 1995, no pg. no.)

Clearly, at this stage of the project, Clinton Administration officials were not highlighting the electronic commerce aspect of the export competitiveness project in public pronouncements. Upon his return from Seville, Magaziner continued his visits with American business executives. But, according to Nelson and Don Abelson, working-level members of the taskforce, non-tariff trade barriers were not the primary

¹⁶ Nelson, Michael. 2009. Phone interview with author, 21 September 2009. Notes on file with author.

driver for the project. Instead, the objective was promoting the national and global information infrastructures as commercial mediums for the purpose of commercial and democratic expansion.¹⁷ Nelson is more explicit, “This [interagency taskforce on trade] project was driven pure and simple by interests of American companies who wanted to create [a global] electronic commerce market and did not want to be bogged down by inconsistent regulation.”¹⁸ Nelson further suggested that US high technology companies in particular supported the US government electronic commerce project because it would spur domestic and overseas sales of the high technology equipment necessary for Internet and global expansion of electronic commerce.¹⁹ Indeed, it was not so much the potential of electronic commerce driving the process as much as it was concern within the US government to create and preserve jobs for American high technology workers who produced the routers, servers, web-browsing software, personal computers, fiber optic cables, in short, all the hardware and software without which the Internet would not function. Nelson dryly observes that in his experience in government and on the taskforce in particular, the trade barriers project was, “All about jobs, all about local. Nothing motivates the political process like high-paying jobs for [American] workers.”²⁰

However, Abelson, a key US Trade Representative and member of the taskforce, downplayed the significance of jobs as a major consideration shaping US Internet

¹⁷ Abelson, Donald. 2009. Phone interview with author, 23 September 2009. Notes on file with author.

¹⁸ Nelson, Michael. 2009. Phone interview with author, 21 September 2009. Notes on file with author.

¹⁹ Nelson, Michael. 2009. Phone interview with author, 21 September 2009. Notes on file with author.

²⁰ Nelson, Michael. 2009. Phone interview with author, 21 September 2009. Notes on file with author.

policy.²¹ Instead, Abelson argued that unimpeded growth of the Internet was the more important driver shaping US Internet policy preferences. In his view, the concern within the Clinton administration was that the broader US and global economies were on the brink of a historical economic shift comparable to the shift from primarily agrarian to industrial production.²² Magaziner affirms Abelson's recollection in an interview he gave in 1997,

[W]e [the US government] believe that the digital age is going to be profoundly different than the industrial age in ways that we don't yet understand fully. With the coming of the industrial age from the agrarian age, you had changes in commercial and political philosophy, legal frameworks, economic paradigms. And something similar is happening today. My sense is – and this is just a personal feeling – that, philosophically, part of what this will involve is a different role for government. (Harris 1997, no pg. no.)

In Abelson's view, the most important concern within the Clinton administration was that the US government protect the market position of US high technology companies to ensure that those companies benefited from the emerging digital economy.²³ The assumption being on the part of US policymakers that US companies enjoy a competitive advantage when markets are relatively free of government intervention in the form of obtrusive regulations or foreign government sponsorship of national champions.²⁴

While Abelson was accurate about members of the taskforce being influenced by the enthusiasm regarding the possibilities for change presented by information technology, he discounts too much the economic imperative of the Clinton

²¹ Abelson, Donald. 2009. Phone interview with author, 23 September 2009. Notes on file with author.

²² Abelson, Donald. 2009. Phone interview with author, 23 September 2009. Notes on file with Author.

²³ Abelson, Donald. 2009. Phone interview with author, 23 September 2009. Notes on file with Author.

²⁴ Russell, Richard. 2010. Phone interview with author, 16 April 2010. Notes on file with Author.

administration as it inherited leadership of a country emerging from the 1990-91 recession. As the Internet grew, so did the profit possibilities of US high technology companies and the employment opportunities of ordinary American workers-voters within those high technology companies. Clinton campaigned, in part, to restore America's economic greatness based on becoming a more competitive export economy that provided high paying job opportunities for ordinary Americans. To the extent that U.S.-based high technology companies benefit from selling the hardware and software, products and services that make commerce over the Internet possible, workers in those companies benefit as well by remaining employed and in gaining employment opportunities as promised by presidential candidate Clinton. Furthermore, it appeared to Magaziner that a significant economic shift was occurring and it was his task to ensure the US was positioned to gain from that shift. In Magaziner's view, "The overall emphasis [of the NEC/NSC global electronic commerce project] was on economic growth and how to keep that economic growth going long-term. US [IT] companies, at that time, were dominant and we wanted to ensure economic growth."²⁵ It would appear that naked economic interest grounded in the imperatives of domestic job creation, support of the expansion of US information technology companies overseas, and the position the US economy had to take to avail itself of the anticipated economic shift to the digital economy shaped US Internet governance policy preferences. However, the open door interpretation argues that the bedrock assumption of US policymakers is that democratic ideals will follow economic liberalization. Elliot Maxwell, another working-level member of the interagency taskforce, offered a more nuanced explanation for the

²⁵ Magaziner, Ira. 2010. Phone interview with author, 5 April 2010. Notes on file with Author.

primary imperatives shaping US Internet governance policy that supports the open door view of US policy.

Maxwell, the former Special Advisor to the Secretary of Commerce for the Digital Economy (1998-2001), former Deputy Chief, Office of Plans and Policies within the Federal Communications Commission (1996-1998), and working-level member of the Magaziner-led interagency taskforce on trade, stated that the objective of the US Internet policy was to prevent regulation of the Internet by other governments and international organizations. Maxwell succinctly describes US Internet policy concerns and objectives, “The best shield for an open and free Internet was the presence of the US and US authority to protect Internet communications, exchange of information, electronic commerce, and [technological] innovation, in general. [An Internet regulated like a utility] would impede the spread of free speech norms and electronic commerce.”²⁶ The US government was primarily concerned with ensuring that no other actor – state or international organization – could thwart US intentions to employ the Internet as the technical means for opening overseas doors to commerce and for spreading democratic ideals. Articulating US government preferences concerning Internet governance in a broadly acceptable form became the focus of the Magaziner-led NEC/NSC taskforce.

The recollections of former taskforce participants underscore the cross currents of politics and economics in shaping the purpose of the electronic commerce taskforce. During the initial stages of the NSC/NEC taskforce, defining precisely what the group ought to be examining and group objectives was the primary focus. An early draft

²⁶ Maxwell, Elliot. 2010. Phone interviews with author 18 January 2010 and 3 February 2010. Notes on file with author.

document produced during these planning stages entitled *Think Piece Regarding Electronic Commerce* not only provides a historical narrative for the taskforce, but also explicitly links US economic policy, security policy, and the Internet.²⁷ It begins by describing the role of Ira Magaziner, then Senior Advisor to President Clinton for Policy Development, as chair of a “joint National Economic Council/National Security Council task force” charged with developing strategy for increasing US exports. The document moves on to describe the potential of electronic commerce and the lack of government rules and regulations governing the transnational exchange of information, goods, and services via internetworking technology. The concern expressed in the document was that electronic commerce needed to “continue to evolve . . . and take hold” so that “benefit will accrue to all its users across the world.” Having set the stage, the document then directly states that, “The objective of the NEC/NSC initiative is to identify what role government can play, if any, to foster the development of the Internet as a secure and reliable commercial medium.” More specifically, the NEC/NSC taskforce would seek to identify areas in electronic commerce where “public policy” was needed and when the government should “get out of the way and allow market forces to take affect.” Last, the NEC/NSC taskforce would determine when, where, with whom, and what electronic commerce issues would require “consultations and dialogue” with foreign governments in order to check alternative “policy approaches which retard the [commercial] development of the medium.”

²⁷ United States Government. The White House, Office of Science and Technology Policy, *Think Piece Regarding Electronic Commerce*. Domestic Policy Council, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital and hard copies on file with Author.

Constructing the Policy

By early spring 1996, Magaziner had completed his barnstorming tour of American chambers of commerce and business roundtables and gathered enough information to convene the first meeting of what originally had been on export competitiveness, but had evolved into the electronic commerce NEC/NSC interagency taskforce. Cabinet-level members of the Clinton Administration, while officially members of the interagency taskforce, assigned lower-level officials to represent them and the interests of their departments and agencies in the project. The working level officials conducted research, composed policy options, and presented policy choices to the department heads they represented who then made the final decision. Shaping the perspectives of taskforce members, especially Magaziner, was the notion that the spread of internetworking technology across the globe would spur significant economic structural changes. Consequently, the focus and energy of the NEC/NSC taskforce was invested in the Internet as a commercial medium and how best to leverage the technology in support of long-term US economic growth.

Toward that end, Magaziner circulated a White House memorandum dated 30 April 1996 that detailed the policy direction and objectives the NEC/NSC taskforce had identified in initial taskforce meeting. The first sentence confirms the purpose of the taskforce as developing “a strategy to accelerate the development of the Internet as a commercial medium.”²⁸ The memorandum continues by memorializing the outcomes of prior NEC/NSC taskforce meetings at which senior working level members of the

²⁸ Magaziner, Ira. 1996. White House memorandum: Internet Working Group. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Magaziner Papers, Box 3, Folder 9, William Jefferson Clinton Presidential Library.

NEC/NSC taskforce were designated as breakout group heads tasked with researching and developing policy recommendations for specific electronic commerce issues. These issues included developing a general framework statement, strategies for “ensuring maximum freedom for market access,” harmonizing commercial codes, electronic payment processing, protecting intellectual property rights, encryption, technical standards, network security, and network user privacy issues.²⁹ Breakout groups were charged with drafting two to ten page papers by 15 May 1996 that would then be pooled with other breakout group papers for review and revision at the 17 May 1996 NEC/NSC taskforce meeting. Over the months of June and July 1996, the NEC/NSC taskforce continued the process of review and revision.

On 7 August 1996, a draft paper that incorporated elements drawn from the breakout group’s issue-specific papers was submitted to Magaziner for his review. Over the next five days, Magaziner shared the draft framework paper with other senior members of the NEC/NSC taskforce including Thomas Kalil of the NEC, Bruce Lehman of the Patent and Trademark Office, Michael Nelson of the Office of Science and Technology Policy at the White House, and Sandy Berger, then President Clinton’s National Security Advisor. On 12 August, the NEC/NSC taskforce convened to complete the review and revision process and come to a consensus on the substance of the final version for the draft framework paper. The meeting produced a working draft that, over the next six weeks, was continuously revised. By late August 1996, the NEC/NSC taskforce circulated a final draft framework within the Clinton administration giving all departments and agencies opportunity to comment and to confirm support for the

²⁹ Magaziner, Ira. 1996. White House memorandum: Internet Working Group. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 3, Folder 9, William Jefferson Clinton Presidential Library.

emerging US policy toward Internet governance.

During the internal comment period, there was rapidly escalating awareness within the private sector and among other local, state, and foreign governments concerning the Magaziner-led US government electronic commerce initiative. On 21 August 1996, Magaziner met with the Digital Futures Coalition (DFC), a political action committee formed by 42 associations representing US libraries, educational institutions at all levels, and electronic data and recording associations. The meeting provided the DFC with an opportunity to express concerns and provide information to Magaziner regarding the issue of intellectual property and electronic commerce. The primary issues for intellectual property owners concerning the spread of information technology were first, the loss of value through unauthorized use or dissemination of copyrighted or trademarked information via Internet technology; second, to update current intellectual property laws to accommodate technological changes in information and media distribution brought on by the Internet; and third, harmonization of intellectual property laws among nation-states. Subsequent revisions of the draft framework would continue to take into account concerns of intellectual property owners.

During September 1996, the revision period within the US government continued as departments and agencies, one by one, returned comments and confirmed support to Magaziner's office. According to records of Magaziner's schedule, the NEC/NSC taskforce did not convene in September 1996 as the review and revision process continued. Instead Magaziner met with interested parties from the private sector arranged by Ron Plessner, a prominent Washington- based attorney specializing in information technology and privacy, who represented *Fortune* 500 media and

information technology companies.³⁰ The meetings were designed to generate private sector support for and provide the private sector with an opportunity to have input in US Internet governance policy. Magaziner also traveled to Europe to engage the EU in preliminary discussions concerning emerging US Internet policy preferences, attempt to persuade the EU to move closer to US policy preferences, and to gauge EU Internet governance policy preferences. Privacy of network user information stored in databases was the primary policy concern for the EU.³¹

By October 1996, the NEC/NSC taskforce was nearly ready to circulate its draft policy paper on electronic commerce strategy and policy beyond government to concerned private-sector stakeholders including Silicon Valley companies, semiconductor and information technology industry associations, and Internet technocrats (Greenblatt 1996). The immediate objective of the NEC/NSC taskforce for widening the circulation of a draft framework was to develop a consensus between the Clinton administration and key private sector actors regarding the proposed policy. The long review and revision process reflects first, Magaziner's policy approach, "I'm a pragmatist," he claimed, when working on developing policy, "You do a policy that works, and then build a political coalition to support it."³² Second, the review and revision process reflects the iron link forged between US Internet governance policy and the US information technology industry. On 7 October, the NEC/NSC taskforce met for

³⁰ Fortune, part of the Time and Life group, is a news magazine periodical, like Forbes, both of which report on the financial disclosures of corporations and individuals.

³¹ Farrell (2003) more closely examines the negotiations that the US and EU undertook to arrive at a consensus concerning privacy and the Internet. In the end, US Internet companies had to store private information of EU Internet users in separate and more secure databases on servers designated for that purpose.

³² Magaziner, Ira. 2010. Phone interview with author, 5 April 2010. Notes on file with author.

one final review and revision session before circulating among US government agencies and departments a final draft framework paper. The meeting concluded with targeting the end of 1996 for arriving at a completed framework concerning US Internet governance policy, although US Internet policy preferences were essentially formed by late 1996. In addition, a domestic political coalition was beginning to take shape with bipartisan support growing in the US Congress, including then-Speaker of the House Newt Gingrich, and US high technology industry leaders and trade associations.

In December 1996, Magaziner moved to consolidate the domestic political coalition in support of US Internet policy preferences by confidentially providing advance copies of the final draft framework to a select group of US corporations that included new economy and old economy companies. The corporations reviewed the document and returned comments to the office of Magaziner to be considered for inclusion in the document. For example, Thomas Gann then Manager of Federal Affairs at Sun Microsystems, stated that, “Sun Micro Systems wholeheartedly supports the pro-competitive principles identified in the report.”³³ Gann then proceeded to express concern that the US government promote a consistent global regulatory environment for electronic commerce that included globally accepted rules for the treatment of intellectual property. Comments of Sun Micro Systems on the framework also encouraged the US government to negotiate a multilateral agreement regarding use of encryption technologies on the Internet, address the oversight in the document concerning market access for information technology companies, rather than narrowly

³³ Gann, Thomas. 1997. Sun Microsystems comments on “A Framework for Electronic Commerce.” Letter, Thomas Gann to Ira Magaziner, 31 January 1997. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Magaziner Papers, William Jefferson Clinton Presidential Library. Digital image on file with author.

addressing market access issues for telecommunications companies, and pursue widespread adoption of interoperable technical standards. David Weiskopf, then Director of Government Affairs at Levi Strauss & Company, echoed the concerns of Sun Micro Systems in a four-page single-spaced letter to Magaziner dated 3 February 1997. The Weiskopf letter explicitly detailed the concerns of Levi Strauss as they related to electronic commerce and US Internet policy.³⁴ Beginning by expressing support for the broad policy outlines in the framework that emphasized limited government intervention in electronic commerce, the body of the letter deals with concerns related to protecting intellectual property, consumer privacy, security for online transactions, and interoperability of technical standards for Internet technology on a global basis. The two letters exemplify the deference toward industry by US policymakers while formulating the principles on which US Internet policy were ultimately based. The letters also reflect the views of the information technology industry concerning US Internet governance policy.

Harris Miller, who served as President and Chief Executive Officer of the Information Technology Association of America (ITAA) from 1994 to 2005, and as head of the World Information Technology and Services Alliance (WITSA), which can be characterized as an “association of associations” representing 38 high technology trade groups around the world, affirms that electronic commerce was a “high priority for the association.”³⁵ Miller recalled that the ITAA met with Magaziner on several occasions

³⁴ Weiskopf, David. 1997. Letter, David Weiskopf to Ira Magaziner, 3 February 1997, Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

³⁵ Miller, Harris. 2009. Phone interview with author, 13 November 2009. Notes on file with author.

while the NEC/NSC interagency taskforce was working to develop US Internet governance policy to provide information and to express the views of the ITAA constituency. Indeed, Miller recalled that, “[The NEC/NSC interagency taskforce was] very aggressive in trying to maximize input from the private sector.”³⁶ Speaking of President Clinton and Vice President Al Gore, Miller claimed that both saw in the Internet the means to “reform the economy coming out of the 1991 recession” by promoting “the Internet as an economic engine of job creation and growth.”³⁷ Clearly, the US government and US high technology industry were eager partners in developing US Internet governance policy centered on electronic commerce. What was lacking in the partnership was global membership, including other nation-states, international organizations, and private Internet enthusiasts that would burnish US Internet policy preferences as having been developed through a transparent and legitimate political process.

The challenge to achieving transparency and legitimacy for the US government was to avoid the appearance of unilaterally imposing on the global stage, the public-private partnership norms that had structured management of TIR from the start of the DARPA project within the US Recognizing the power of the Internet for amplifying the transparency and legitimacy of government deliberations by rendering more efficient the capture and incorporation into policy of feedback from citizens, Magaziner ensured that a draft of the framework was posted on the White House website in early 1997 and invited the general public around the globe to comment on the policy preferences described therein.

³⁶ Miller, Harris. 2009. Phone interview with author, 13 November 2009. Notes on file with author.

³⁷ Miller, Harris. 2009. Phone interview with author, 13 November 2009. Notes on file with author.

Posting the draft framework online offered four advantages to the US:

- It provided political cover for pursuing consensus between industry and key economic partners.
- It framed the dialogue that was to ensue between the EU, US, and Japan in terms of limited government Internet involvement.
- It was good politics, for the Clinton administration could claim that the process by which Internet constructed policy was transparent.
- Inviting comments gave opportunity for concerned stakeholders, lacking access to policymakers like Magaziner, to participate in the policymaking process.

In an interview he gave in 1997, Magaziner described how posting a draft framework online was transparent and contributed to a better final draft, saying,

My view was that if we are talking about a new Internet age, if we are talking about openness in that age, we have to talk about an Internet strategy this way and develop the strategy this way. And actually, it worked out very well. We went through 18 drafts. So it did operate as a virtual document that got constantly amended. Of course, when we put it up on the Net in draft form for comment, a couple of the comments we got were, "The best thing you can do is die," and so forth – the kind of things you might expect; but the vast majority of the comments we got were extremely constructive and there were a lot of people you just wouldn't reach in the Washington context – small businesses people, Internet users from around the world who sent in their ideas, some of which were extremely good ideas – the kind [where] you said, "Gee, we should have thought of that."

We incorporated 50, 60 or 70 of those kinds of changes in the redrafting process. So it turned out to be a very good process. And now everything we are doing is being put up that way (Harris 1997, no pg. no.).

Taking Magaziner at face value, the admission that 50 to 70 suggestions from ordinary, but concerned global citizens were incorporated into an official policy statement of the US is striking. But excavating below the face value of Magaziner's comments by scrutinizing the finished text of the US Framework, uncovers the astute political maneuvers employed by the NEC/NSC taskforce. On the one hand, US policymakers could claim that the policy development process had been transparent, open, and had incorporated ideas from concerned Internet stakeholders in the global

civil community – in a word, legitimate. On the other hand, US policymakers could leverage the Internet on behalf of broader national security aims socially constructed as promoting free trade among nation-states and democracy as the quintessential political institution and practice. In the end, the US succeeded in constructing the Internet as the cornerstone of the anticipated digital economy. The moment had arrived for introducing the Internet as commercial medium and technological key for unlocking doors previously shut to US products and ideals.

The last two weeks of June 1997 were intense and hectic for Magaziner and his staff as they worked to finalize details for the July 1, 1997, White House electronic event. A list of invitees had to be drafted and vetted by the Secret Service, seating arrangements had to be completed, remarks by the president had to be reviewed and edited. Rooms at the White House were scheduled, including the Indian Treaty Room where a daylong electronic commerce fair would commence directly following remarks by President Clinton. Visa International, Microsoft, America Online, Oracle, Sun Microsystems, and Hewlett Packard, among other information technology companies, had displays and examples of technologies necessary for conducting electronic commerce. In short, the White House electronic commerce event was more than the cursory presidential press conference announcing the broad outlines of U.S policy. It was a political statement to other nation-states concerning the Internet policy priorities of the US government. The star of the event was the policy framework itself, which the Magaziner-led NEC/NSC interagency taskforce had drafted over the previous year.

The completed paper, entitled *A Framework for Global Electronic Commerce*, was announced by President Clinton on July 1, 1997, at the much-publicized White

House electronic commerce event articulated US Internet policy preferences in five short principles pregnant with commercial expansionist overtones:

- The private sector should lead.
- Governments should avoid undue restrictions on electronic commerce.
- Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent, and simple legal environment for commerce.
- Governments should recognize the unique qualities of the Internet (meaning that extant national regulatory regimes were obsolete where the Internet was concerned).
- Electronic commerce over the Internet should be facilitated on a global basis.³⁸

The five principles reflect the political and economic drivers of US policy: creating jobs for workers-voters and ensuring profits for American business through commercial expansion abroad by leveraging internetworking technology. In his remarks, President Clinton described the core principal promoted by the US government on the subject of Internet as being, “Where government involvement is necessary, its aim should be to support a predictable, consistent, legal environment for trade and commerce to flourish on fair and understandable terms” (Clinton 1997a, no pg. no.). Toward that end, he directed Treasury Secretary Robert Rubin to negotiate treaties concerning the tax exempt status of electronic commerce, US Trade Ambassador Charlene Barshefsky to negotiate within the WTO concerning the tariff and import duty status of electronic commerce, and Commerce Secretary William Daley to negotiate agreements concerning copyright and consumer protections with other countries and within appropriate international intergovernmental organizations. In concluding his remarks at the White House electronic commerce event, President Clinton affirmed the objectives

³⁸ Clinton, William J. “A framework for electronic commerce,” 1 July 1997. The White House: Washington, D.C. Available at <http://clinton4.nara.gov/wh/new/commerce/read/html>. Last accessed 8 September 2008.

of US Internet governance policy, claiming that the Internet presented the key economic and political development for the future:

Today we act to ensure that international trade on the Internet remains free of new discriminatory taxes, free of tariffs, free from burdens and regulations, and safe from piracy.

In the twenty-first century, we can build much of our prosperity on innovations in cyberspace, in ways that most of us cannot even imagine. This vision contemplates an America in which every American – consumers, small business people, corporate CEOs – will be able to extend our trade to the farthest reaches of the planet. If we do the right things now, in the right way, we can lead our economy into an area where our innovation, our flexibility, and our creativity yield tremendous benefits for all of our people; in which we can keep opportunity alive, bring our people closer to each other, and bring America closer to the world. (Clinton 1997a, no pg. no.)

In the post-Cold War era, the US never seriously considered the Internet in any terms other than as a means for commercial expansion. The Internet was to be the technological skeleton key for opening overseas doors shut to US exports and ideals. In order to achieve the objective of an Internet primarily as a commercial medium, the US had to move to check alternative governance arrangements that would impose restrictions on transactions carried out over the Internet. Greenblatt described the concern of the US Interagency Taskforce beyond announcing US Internet policy preferences on July 1, 1997. He said, “There were big questions, such as where was the legal nexus when a transaction was consummated over the Internet. [I]t definitely was unregulated and it was unclear what regulatory model(s) would prevail and it was unknown [which one ought to prevail]” (Greenblatt 2010). The final step to form a coalition of the willing was to obtain the support of other nation-states to prevent state actors from imposing existing national regulatory structures on the Internet that would

serve, the US feared, as trade barriers to electronic commerce and impede the global growth of the Internet.

Old-fashioned diplomacy was used by US policymakers to build a coalition that would support the US vision of the Internet for the twenty-first century.

Summary

The preference of US policymakers to promote commercial expansion and democratic ideals and their predilection for technological solutions coalesced to directly shape US Internet governance policy. From the perspective of US policymakers in the post-Cold-War era, the Internet would be the technological key for unlocking doors shut to US products and democratic ideals. That economic considerations primarily drove the Internet policy development process is absolutely consistent with Beard's conclusion that economic considerations primarily shape US foreign policies (Beard 1934a,b). Specifically, the US government sought to ensure the long-term economic growth of the United States economy by moving to construct the Internet as the primary driver of economic growth and, especially, international trade for the twenty-first century. Linking the Internet with improving US export competitiveness was the linchpin of US Internet governance policy. The linchpin constrained US Internet governance policy along a path that could only end, for the US government, with global acceptance of the Internet as a commercial medium. This meant that the United States would have to confront disparate telecommunications regulatory traditions of key economic partners and the expectations of Internet users, while working to generate momentum in global politics for the Internet as a commercial medium. I next examine the implementation and diplomatic efforts to ensure that US policy preferences encapsulated in the idea of a duty-free Internet became the norm for the Internet governance regime.

CHAPTER 4 DUTY-FREE CONSENSUS

In the months that followed the July 1, 1997, White House electronic commerce event, efforts within the Clinton Administration to promote the Internet as a commercial medium among economic partners increased in urgency and intensity. Key to rallying support to the US vision of the Internet as a commercial medium was developing a theme around which global support could coalesce. In what follows, I examine the norm on which US electronic commerce diplomacy is based, show how the US government worked to ensure normative consensus, point out where normative dissonance between the EU and US exists, and set the stage for a closer examination of that normative dissonance in Chapter 5 that culminates with the release of the Bangemann Charter by the EU that proposed an alternative, more formal, regime structure for Internet governance. In the view of US policymakers, the EU proposal directly threatened the global spread of the Internet and, thus, the capacity of the US government to leverage the medium on behalf of political and economic expansion.

The challenge for US policymakers was how to generate momentum for US Internet policy preferences among concerned Internet stakeholders and especially among member states of the European Union (EU) and Asia Pacific Economic Council (APEC), because, according to Magaziner, “That’s where the Internet users were at that time.”¹ Magaziner continued, “I went to nations that had significant Internet penetration and attempted to get them on board.” In the month that followed the White House electronic commerce event, Magaziner traveled to Europe and Asia to promote the principles of President Clinton’s electronic commerce initiative. The EU and APEC

¹ Magaziner, Ira. Phone interview with author, 5 April 2010. Notes on file with author.

were focused on by US policymakers because members of those intergovernmental organizations (IGOs) were the major first-movers into commercialized cyberspace and being first-movers afforded the advantage of constructing the regime or “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge” (Krasner 1983, 2). The US embarked on a coordinated diplomatic campaign with initial focus on the EU, in dialogue concerning the norms and principles on which the rules and procedures of an Internet governance regime would be constructed.

The US government focused its initial electronic commerce diplomacy on the EU for three reasons. First, by reaching agreement with the EU concerning the principles and norms on which to construct a global Internet governance regime, the US could claim to other nation-states that a global consensus was developing and that other nation-states would be better served by supporting US Internet policy preferences, as did the EU.

Second, policymakers in the US government feared the more heavy-handed regulatory approach employed by the EU would ultimately prevail as the normative structure for an Internet governance regime and viewed this outcome as a hindrance to the growth of the Internet. Agreement with the EU concerning governance of the Internet, consequently, was the lynchpin for the US global electronic commerce diplomatic strategy. Moreover, the UN and the International Telecommunications Union (ITU) were, in the view of US policymakers, jockeying for position to inherit oversight authority from the US, while US policymakers were concerned that transferring

oversight to any of those organizations would ultimately prove an impediment to an open and free Internet.

Third, owing to the weight the EU carried in international fora, obtaining EU agreement to US Internet governance policy preferences would vitiate the possibility of transferring oversight to an international intergovernmental organization as the US government would ensure EU support for an Internet governance regime consistent with US policymaker predilections for the Internet as a commercial medium. In preparing to engage the EU diplomatically, US policymakers developed a central theme around which popular support for US Internet policy preferences could coalesce.

The Duty-free Internet

Magaziner, leading the US diplomatic effort, wanted to create conditions in which nation-states and IGOs had little choice but to accept US policy preferences for a commercialized Internet by locking in US Internet governance policy preferences through bilateral and multilateral agreements. Diplomatic efforts of the US government to this affect were orchestrated through Magaziner's office in the West Wing of the White House between, principally, the US Commerce Department, the State Department, the Treasury Department, and the US Trade Representative. The overarching policy objective, according to Magaziner, was "to set up a predictable environment where the Internet could work as an [economic] engine for growth."² What Magaziner meant by this was that, in order for markets to function efficiently, there must be transparent market rules and norms that provide enough certainty in the marketplace such that transaction risk is reduced for market participants. The primary transaction risk to the exchange of goods and services via the Internet is the different transaction

² Magaziner, Ira. 2010. Phone interview with author, 5 April 2010. Notes on file with author.

laws and regulations that exist between sovereign entities. If barriers to trade of some kind were erected on the Internet, it was feared by US policymakers that the economic potential of the Internet would be suffocated before being fully realized and exploited by US information technology enterprises.

Christopher Cox, a member of the US House of Representatives from California, wrote to Magaziner on January 6, 1997, in response to Magaziner's invitation to review and provide comment on the final draft of *A Framework for Global Electronic Commerce*. At that time, Rep. Cox was serving as the chairman of the Republican Policy Committee and as chairman of the Commerce Committee's Subcommittee on Telecommunications and Finance, which had oversight authority for Clinton Administration Internet policy.³ In that letter, Rep. Cox expressed his enthusiastic support for the general guidelines detailed in the framework, but he explicitly urged Magaziner to adopt "a specific 'signature' policy that can become representative of the more general framework."⁴ Cox was concerned that winning the political battle on behalf of US Internet policy preferences was also dependent upon generating broad-based support in the general public and media. Cox wrote that "stressing one clear, achievable goal, and using it as the thematic basis of the Administration's entire policy, will make it easier to communicate."⁵ Cox continues, "The leading candidate is [Magaziner's]

³ Letter, Christopher Cox to Ira Magaziner, 6 January 1997. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 10 Folder 8. William Jefferson Clinton Presidential Library, Little Rock, AK.

⁴ Letter, Christopher Cox to Ira Magaziner, 6 January 1997. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 10 Folder 8. William Jefferson Clinton Presidential Library, Little Rock, AK.

⁵ Letter, Christopher Cox to Ira Magaziner, 6 January 1997. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 10 Folder 8. William Jefferson Clinton Presidential Library, Little Rock, AK.

proposal that the Administration declare the Internet a global free-trade zone – something which has already caught the media’s attention.”⁶ In effect, Rep. Cox was advocating for creating a norm around which the general public, media, and key economic partners could rally to the US position. Moreover, the Magaziner-led taskforce already had the norm in hand for US Internet policy – the Internet should be considered a *duty-free zone* by nation-states.

The *duty-free* norm reflects the open-door aspirations of US policymakers concerning the Internet as a commercial medium. Those aspirations were, first, that transmissions over the medium were free of any form of taxation that would create a disincentive to use the Internet as a commercial medium in the global marketplace by producers and consumers and second, that government should approach regulation of the Internet with restraint so as not to impede the growth and spread of a commercialized Internet in the global political economy as a platform for global trade. These aspirations had a pragmatic element: if government, by virtue of sovereignty over telecommunications transmissions within recognized international borders, were able to impose restrictive content or access regulations combined with local sales taxes *and* import or export duties on transmissions, goods, and services exchanged via the medium, then uncertainty and complexity would reign. The growth of the Internet would be impeded, costs for using the medium would be prohibitive, and the potential of the Internet as the technological key for opening doors to US goods, services, and ideals

⁶ Cox, Christopher. 1997. Letter, Christopher Cox to Ira Magaziner, 6 January 1997. Domestic Policy Council, Electronic Commerce Collection, Box 10, Folder 8, William Jefferson Clinton Presidential Library.

would be thwarted. There are, for that reason, “three policy dimensions” to the *duty-free* Internet norm.⁷

According to Jonathan Greenblatt, who served as the key staffer to Magaziner on the interagency taskforce, the “three policy dimensions” to the *duty-free* Internet are:

- Commercial [dimension]: supporting US businesses – the software, hardware, content, and service companies. We felt that US business would win because they would build the hardware and infrastructure to enable the global Internet; we thought that American business would create the software that would enable the interconnectedness across networks, and American business would create the content and services available on the network. We thought that this would drive job creation and support American companies, especially small and medium enterprises where most job creation occur.
- Economic dimension: opening of foreign markets was an important item on [President Clinton’s] agenda, so we could continue to accelerate the nascent opening and market liberalization of foreign markets by encouraging and facilitating the adoption of the Internet as a commercial medium. In such work, the American national interest would be served and subsequent open economic models would benefit other peoples as well by creating new economic opportunities.
- American security interest: we also recognized that information flows enabled by a spreading Internet would break down barriers and circulate ideas more effectively than top-down jawboning. The Internet would open the countries to conversation, a more effective way to promote free speech and conversation.⁸

In the first dimension of the duty-free norm and in light of the *Open Door*, Greenblatt contended that US policymakers viewed an Internet devoid of excessive government regulation as a competitive marketplace in which, they were confident, the competitive advantage of US companies over foreign rivals would enable capture of the largest market share among competitors. As demand for hardware, software, and content necessary for connecting and utilizing internetworking technology increased, US high technology companies would move to increase the supply of hardware, software, and content to the marketplace and this would necessitate the hiring of more workers. The

⁷ Greenblatt, Jonathan, 2010. Phone interview with author, 7 May 2010. Notes on file with author.

⁸ Greenblatt, Jonathan, 2010. Phone interview with author, 7 May 2010. Notes on file with author.

faith of US policymakers in the competitiveness of US businesses was such that the role for government in the marketplace was to create conditions conducive to market expansion, being confident that US businesses would succeed in gaining the largest market share. In short, commercial expansion abroad, no matter the technology –ship, rail, or the Internet – was, first, to support American business and employment, just as the Open Door contends that the origins of US policy are to be found in the politics of the domestic US economy where policymakers fear domestic political unrest, including being voted out of office by angry and unemployed voters.

The second dimension must be understood, not only in light of the *Open Door*, but also in terms of historical context. With opposition to the expansion of liberal market principles and practices having evaporated along with the Soviet Union in the early 1990s, the ground was cleared for expanding the reach of the market on terms set by the US government. Magaziner calculated that the rate of global market expansion, then smoldering, could be ignited into a blaze with the addition of cyberfuel. The Clinton Administration saw in the Internet the technological means for accomplishing one aspect of the national interest: knocking down doors now shut to US goods and services in overseas markets. The Internet was the skeleton key indeed!

A bedrock assumption underpinning US national interests is that opening foreign markets is beneficial, not only to the US domestic economy, but also to foreign participants and global security (Beard 1934a,b). From the perspective of the Open Door on one hand, the US government supports domestic employment through commercial expansion staving off domestic political unrest while also supporting the profitability of US industry. On the other hand, pursuing this policy is latently imperialistic

(Williams 1972). Hegemonic stability theory holds that the global political economy *requires* a hegemon capable and willing to enforce the rules and procedures necessary to reduce uncertainty between buyer and seller (Kindleberger 1973. Also see Gilpin 1975; Krasner 1976; McKeown 1983; Webb & Krasner 1989).⁹ The domestic and global security of the United States is assumed by US policymakers to rest on achieving economic and political expansion and if this can be accomplished by preferentially employing technology, then all the better.

That the security of the United States would be linked to the expansion of the Internet as a commercial medium is a stunning revelation on the part of former US policymakers. The third dimension of the duty-free norm is that the spread of the Internet would serve to open foreign countries to ideas and conversation and that such a development would contribute to the security of the US. But what are those ideas of which Greenblatt speaks? To answer this question one must understand that US policymakers are committed to a grand Kantian vision of a global political economy populated by republics consisting of democratic and free market institutions. Promoting open information flows, conversation enabled by information technology, or freedom of speech is code for promoting democracy and free market capitalism among US policymakers, who, with Kant, assume that the risk for catastrophic war that would revolutionize extant global political economy institutions in favor of alternative structural configurations of the global political economy is significantly reduced (Russett and O'Neal 2001). The US government has a vested interest in maintaining the present structural configuration of political and economic institutions and regimes within the Global Political Economy because doing so is to its relative and absolute advantage

⁹ For a critical assessment of hegemonic stability theory, see Snidal (1985).

(Bacevich 2002; Cox 2000; Ikenberry 2000; Layne 2006; and Nau 2000). The *duty-free* norm would institutionalize US national and security interests in the global Internet governance regime structure yet to be formed. In addition, the *duty-free* Internet norm offered a pithy theme and rallying point for US policymakers, industry, the US public, and other sovereign actors.

As the US began preliminary engagement with economic partners leading up to the official announcement of US Internet policy preferences on July 1, 1997, it was becoming apparent to Magaziner and his colleagues that other nation-states had different Internet policy visions that risked supplanting US Internet policy preferences once the moment arrived for constructing a global regime charged with managing CIR. While some dialogue occurred between the US, EU, UK, Japan, Germany, France, Canada, Australia, and South Korea, no definitive bilateral or multilateral agreements had been completed leading up to the White House Electronic Commerce Event on July 1, 1997. Following the event, there was a growing sense of urgency with still no assurance that US policy preferences would win over alternatives.

Duty-free as Control?

The US had no preference for direct formal government regulatory control of critical Internet resources as has been alleged by others (Benkler 2006; Lessig 1999, 2001, 2006; Mathiason 2008; Mueller 2002; Mueller et al. 2007a,b; Thompson 2007; Zittrain 2004). Rather, the United States government was simply the first to articulate a set of principles and norms for an Internet governance regime. Lessig (1999, 2001, 2006) in particular has alleged that to incorporate the Internet within extant liberal global political economy institutions is to control the technology. Lessig's argument can be put another way that whatever political ideology serves as the basis for global political

economy institutions, that ideology controls the purpose to which a technology is put. Lessig criticizes the Internet as a commercial medium because it thwarts the possibility for the advent of global democracy built on communitarian ideology – his proposed alternative basis for governance of the Internet. Yet, employing one ideology for another as the basis for governance of a technology still means that the purpose for which technology is put is still controlled – to use Lessig’s parlance – by an ideology. According to Lessig, it makes no difference what ideology policymakers are actually employing as the normative basis for a regime, “control” is “control” whether liberalism, communitarianism, some brand of (neo)Marxism, or Mueller’s (2010) “denationalized liberalism” is being employed. Framing state action on the Internet in terms of control offers a pithy catch phrase well suited for the sort of polemics that many fall into describing the politics of Internet governance. One could just as easily call government action on the Internet for what it is: regulation. Regulation is an essential government function that provides protection, standardization, and market and political certainty necessary for individuals and groups can *confidently* engage in economic exchange and political conversation. Not regulating the Internet would have allowed uncertainty to reign and would have shattered confidence in using the Internet among consumers and citizens. The role of government is necessary as a protector of confidence in the face of potentially disruptive change. The potential economic and political turmoil that a revolutionary technology like the Internet presents – depending on the purpose for which the technology is put – is precisely what the US government and, especially, Magaziner worked so hard to avoid. Mueller (2002, 2010) has characterized US Internet governance policy as conservative and as a threat to his normative vision of what a

global Internet governance regime ought to be. And so it is conservative, just as the Open Door explains how US policymakers develop policy to ensure the stability and productivity of the domestic political economy through leveraging technology to open overseas markets for US political and economic expansion. US Internet governance policy is, by no means a threat to an open Internet, and this characterization is, frankly, polemical lacking empirical support.

Undeniably, Magaziner and other US policymakers worked to develop an Internet governance regime structure centered on the duty-free Internet norm that privileged certain political practices over others. But this is in no way an attempt to control content on the Internet. Rather, US Internet policy was intended to create conditions on the Internet where content was maximized in all varieties. The US government wanted a flourishing and vibrant Internet where commerce and communication coexisted so that capitalism and democracy could be promoted over the medium. Utilizing top-down oversight at the global level or adhering to US domestic constituencies that held to the view that the US invented the Internet and therefore ought to have sole oversight for the medium, were, in the view of US policymakers threats to the global spread of the Internet. Additionally, the Internet Society (ISOC), Internet Assigned Numbers Authority (IANA), Internet Engineering Task Force (IETF), and other ad-hoc grass roots Internet technical standards groups were ill equipped to provide and enforce predictable rules necessary for economic exchange in a marketplace within the global political economy – traditionally the role of government. Pragmatically, overlaying existing and globally recognized and followed commercial norms, practices, and rules on the new emerging cyber market was simple and avoided infringing on the sovereignty of other nation-

states. Indeed, sovereignty was built into the technical architecture of the Internet! Each nation-state is assigned a unique two-character country code such as .uk (United Kingdom) or .jp (Japan). Effectively, each nation-state owns sovereign space on the Internet in which to regulate access, commerce, and content in accordance with nation-state cultural and regulatory traditions. A global Internet governance regime structure would have to balance between the need for reduced market uncertainty, (carving out a role for government oversight of telecommunications without choking off the economic and political expansion for which US policymakers intended the internet to be used), and disparate regulatory and oversight traditions for content of various sovereign Internet stakeholders. The primary global Internet governance policy preference for the US government was to ensure that other sovereign actors regulated access, content, and transactions without inhibiting the spread, open architecture, or culture of the Internet so that US policymakers could leverage the technology on behalf of US commercial and political expansion.

The diplomatic approach US policymakers employed to achieve this preference, according to Magaziner, was grounded in showing, “other countries how adopting the Internet was in their economic interest.”¹⁰ Aligning the various agencies within the US government that have diplomatic responsibility for electronic commerce with that diplomatic approach was accomplished through Presidential directive. On July 1, 1997, President Clinton issued a directive to all US government departments and agencies:

Today I have approved and released a report – “A Framework For Global Electronic Commerce” – outlining the principles that will guide my Administration’s actions as we move forward into the new electronic age of commerce. This report articulates my Administration’s vision for the emerging digital marketplace by declaring a set of principles, presenting a

¹⁰ Magaziner, Ira. 2010. Phone interview with author, 5 April 2010. Notes on file with author.

series of policies, and establishing an agenda for international discussions and agreements to facilitate the growth of electronic commerce. I expect all executive departments and agencies to review carefully the principles in this framework and implement appropriate policies. (Clinton 1997b, no pg. no.)

Further on in the directive, President Clinton details specific aspects of Internet governance that US government agencies and departments are to address with counterparts in other nation-states in order to ensure that the Internet is leveraged on behalf of electronic commerce.

For example, the US Treasury Department was responsible for Internet tax policy, while the US Trade Representative was responsible for negotiating within the WTO. All departments and agencies were to coordinate and get approval for negotiating positions through Magaziner's Domestic Policy Advisor office. Magaziner was responsible for directly engaging other sovereign actors in dialogue toward reaching agreement on the overarching US policy preference for the Internet as a commercial medium with restrained government content, access, and transaction regulation. From 2 to 7 July 1997, Magaziner led a delegation to Germany, France, the UK, and the EU headquarters in Brussels to initiate dialogue designed to align European Internet policy preferences with those of the United States. The US delegation was primarily concerned with placating European concerns over perceived US dominance of the Internet and to assess common grounds for reaching agreement with the EU concerning how to govern the Internet. But it was clear that the Europeans had a different approach for Internet governance and, consequently, were not ready to support the US electronic commerce initiative.

The hub within the EU Commission for EU Internet policy was Directorate General XIII (DG XIII) responsible for telecommunications, which included the Internet,

headed from 1995 to 1999 by Dr. Martin Bangemann, a lawyer.¹¹ Prior to serving as commissioner of DG XIII, he served as commissioner and later as vice president of the European Commission for the internal market and industrial affairs from 1989 to 1994. Before joining the European Commission, Bangemann had a long and distinguished political career in West Germany, including two terms in the *Bundestag* with an interlude in the European Parliament, then culminated in serving as the Federal Minister of Economic Affairs for the government of West Germany from 1984 to 1988.

In late 1993 and early 1994, Bangemann prepared a report that had been requested by the European Council at its December 1993 meeting in Brussels. The report reviewed developments in internetworking technology for the European Council in preparation for its Corfu meeting in June 1994. In the report, dated 26 May 1994 and titled *Report to the European Council: Europe and the Global Information Society*, Bangemann noted that “American dominance” of markets for internetworking hardware, software, and content required that the EU begin in earnest to at least gain competitive parity.¹² As early as 1994, the EU Commission was well aware that member states had not yet grasped the significance of the Internet in terms of commercial expansion and of the competitive advantage enjoyed by the US information technology industry vis-à-vis Europe. Owing to its competitive advantage, the US government was pressing forward with embedding the Internet within extent global political economy institutions and regimes and leveraging the technology on behalf of US economic, security, and

¹¹ Highlights of Dr. Bangemann’s career are available at the following website last accessed on 10 July 2010: http://ec.europa.eu/archives/1995_99/commissioners/en/bange.htm.

¹² The 26 May 1994 Bangemann report, titled Report to the European Council: Europe and the Global Information Society, is accessible at <http://ec.europa.eu/archives/ISPO/infosoc/backg/bangeman.html>. Last access 22 July 2010.

domestic political preferences. On 19 July 1994, the EU Commission adopted an “Action Plan” titled *Europe’s Way to the Information Society* that centered on liberalizing telecommunications within the EU market by 1 January 1998.¹³

Two years later, the EU Commission submitted a communication to the EU Council that was a status report on initiatives taken at implementing the Action Plan. In the communication, dated 24 July 1996 and entitled *The Information Society: From Corfu to Dublin: The New Emerging Priorities*, the EU Commission lists milestones achieved, including the submission of a “legislative framework” that would lead “to full liberalisation in telecommunications.”¹⁴ Significantly, the 24 July 1996 EU Commission communication to the EU Council notes that “The information society is rapidly and radically changing the business environment and putting additional competitive pressure on European industry. Europe must not miss the chance to increase its competitiveness and therefore improve the employment situation.” Here was common ground on which an agreement could be built between the US and EU concerning governance of the Internet: job creation. Policymakers for both entities linked job creation to the expansion of electronic commerce over the Internet and in the selling of hardware, software, and content necessary for there to be an actual Internet. If there was a theme or norm to EU Internet governance policy it was the idea of an *information society*.

According to the 24 July 1996 EU Commission status report, the *information society* norm consisted of four Internet governance priorities. First was to liberalize the

¹³ Europe’s Way to the Information Society (1994) is accessible at: [http://ec.europa.eu/archives/ISPO/docs/htmlgenerated/i_COM\(94\)347final.html](http://ec.europa.eu/archives/ISPO/docs/htmlgenerated/i_COM(94)347final.html). Last accessed 22 July 2010.

¹⁴ European Union, EU Commission, Directorate General XIII. *The Information Society: From Corfu to Dublin: The New Emerging Priorities*. 1996. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 14, Folder 1, William Jefferson Clinton Presidential Library. Document also available at http://www.epractice.eu/files/media/media_444.pdf. Last accessed 22 July 2010.

telecommunications market within the EU in accordance with harmonizing telecommunications regulation among member states so that expansion of the Internet as a commercial medium in the internal market could occur unimpeded. The second priority was to leverage the Internet as a motor for economic growth, and especially for job creation. The third priority was to ensure that EU Internet governance policy was centered on the people, meaning that policy also protected user and consumer interests, including privacy and cultural heritage. The fourth priority was to engage in diplomacy, especially within the WTO, to address potential social, political, and economic dislocations in consequence of globalization with the objective being to clearly define rules for a global information society while incorporating the developing world as members of that society. The EU norm *information society* is broader and more social in focus than the duty-free Internet norm on which US Internet governance policy was based, but the EU governments and the US government saw in the Internet the potential to leverage the technology to spur economic growth and job creation. Although this common ground existed between the US and the EU, there remained significant differences on how to govern the Internet, reflecting different regulatory traditions or approaches. Magaziner's visit to France, Germany, Britain, and EU headquarters in Brussels served to accentuate those differences and spur the EU to action in an effort to propose an alternative set of principles and norms on which a global Internet governance regime could be constructed and give urgency to US policymakers to quickly lock in EU support for US Internet governance preferences.

Accordingly, on 9 July 1997, twenty-nine ministers of European governments meeting in conference in Bonn, Germany, on the topic of global information networks

issued a declaration that outlined core principles that were to be promoted by the EU as the basis for an Internet governance regime.¹⁵ The Bonn Declaration on Global Information Networks, as it came to be known, acknowledged that private industry should “essentially” lead in spreading information technology, but that the role of government was to protect “social cohesion” from potential disruptions emanating from cyberspace. The Bonn Declaration also linked job creation and economic growth to electronic commerce via the Internet as a commercial medium, but, again, carved out a robust role for government regulation to protect network users and electronic commerce consumers from loss of privacy, to exploit the educational potential of the Internet, and to ensure that a legal framework was implemented to govern the Internet. The Bonn Declaration reflected the differences in regulatory traditions between the U.S and the EU.

From a normative standpoint, the US proposal for a duty-free Internet reflected a more bottom-up approach where government created a simple framework of predictable rules and procedures to govern transactions and allowed the interactions of market participants to determine privacy, consumer protection, or product quality standards for user, consumer, and businesses. In contrast, the EU favored a top-down approach where governments actively protected and worked to develop market equilibrium between the interests of users, consumers, and businesses while setting standards for privacy, consumer protection, product quality, and technology. Venturelli (2002) offers an excellent study on the differences between US and EU approaches to Internet governance. According to Venturelli, the US approach to Internet governance favors a self-regulatory model that places emphasis on contract law while promoting the

¹⁵ The Bonn declaration is accessible at <http://jya.com/bonn-dec.htm>. Last accessed 22 July 2010.

potential for global trade over the medium. Compared to the US approach, the EU approach to Internet governance was weighted toward public law, protecting cultural identity and heritage, while the role of government would be more interventionist in the market, willing to more directly regulate to protect intellectual property rights, cultural heritage, consumer privacy, and specify technical standards. Venturelli, however, misses two important and distinct aspects of US and EU Internet governance policy preferences. For the US government, the global spread of information technology was explicitly linked to US national security interests that are predicated on political and economic expansion. In the case of EU Internet governance policy preferences, the overarching fear was of US commercial domination in terms of trade in goods and services over the medium, as well as in producing the hardware, software, and content that makes a functioning Internet possible, accessible, and interesting. The EU sought to contain what EU policymakers perceived was US domination, within the structure of global agreements and intergovernmental organizations and this strategy is reflected in letters sent to Magaziner from EU Commission officials he met with while on his July 1997 trip to Europe.

In a note dated 16 July 1997, Stefano Micossi, then serving as General Manager of Directorate General III that had policy oversight for industry, expressed his appreciation to Magaziner for meeting with him. Micossi then stated that he personally agrees “with the vision that government action should be minimal and technology neutral.”¹⁶ He next switches to his role as an EU Commission official when he writes that, “The Commission fully agrees that industry-led voluntary standards should be

¹⁶ Fax communication, Stefano Micossi to Ira Magaziner, 16 July 1997. Domestic Policy Council – Ira Magaziner, Electronic Commerce collection, Box 23, Folder 10, William Jefferson Clinton Presidential Library.

agreed upon at a global level to maximize the potential for electronic commerce.”

Micossi proposes that an EU hosted conference on “Global Standards” in October of 1997 would provide an opportunity to meet and, “establish a common agenda for global electronic standards.” He closes by confirming that the EU Commission will provide a “full set of our policy papers on standardization” to Magaziner. On the surface, the note communicates a level of cooperativeness and willingness on the part of EU policymakers to work with US policymakers to develop a common Internet governance policy. What is meant by the term “standards,” however, was open to interpretation and the subject of continued dialogue between the EU and the US over the next five months. During that period, Magaziner remained focused on engaging policymakers of EU member states and at EU headquarters concerning the topic of global electronic commerce, while President Clinton became the chief promoter for electronic commerce when on trips abroad. Magaziner continued exchanging diplomatic communications with EU Commission officials and EU member state policymakers through September 1997 in preparation for returning to Europe from 1 to 7 October 1997 to participate in the Global Standards Conference Micossi had invited Magaziner to attend.

Then on 8 September 1997, at the Telecomm Inter@ctive ‘97 conference in Geneva, Bangemann delivered a speech entitled *A New World Order for Global Communication: The Need for an International Charter* that publicly revealed EU Internet policy preferences.¹⁷ The conference was jointly organized by the United Nations Conference on Trade and Development (UNCTAD) and the International

¹⁷ The 8 September 1997 Bangemann speech at the Telecomm Inter@ctive ‘97 Conference is accessible at: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/97/170&format=HTML&aged=1&language=EN&guiLanguage=en>. Last accessed 22 July 2010.

Telecommunications Union (ITU), “to concentrate on the potentially huge opportunities, and challenges, that the expansion of electronic commerce will provide for developing countries and countries with economies in transition to the market” according to a UN press release dated 10 September 1997 concerning the event.¹⁸ This event was closely watched by US policymakers and viewed as a counter move to US efforts at promoting a duty-free Internet.

In his speech to conference attendees, Bangemann employs the *information society* norm as the common thread by which he weaves his rhetorical points into a coherent argument. He expresses prevailing attitudes of the period concerning the Internet, that the technology would stimulate “convergence, i.e., the blurring of frontiers between telecoms, audiovisual, computers, and publishing,” and render irrelevant “geographical borders and distance.” Bangemann also expressed the hope that the spread of information technology and global electronic commerce would contribute to job creation. He highlighted the efforts of the EU to institutionalize the *information society* norm within EU structures. And then proposes that an international charter governing global electronic commerce be negotiated among sovereign and intergovernmental organization actors. Bangemann describes the purpose of the charter as covering “issues such as global standards to ensure global interoperability, mutual recognition of authorisations and licences, digital signatures, encryption, different aspects of content regulation, including protection against illegal and harmful content, customs, [and] data privacy and protection.” In short, Bangemann proposes a top-down governance structure that would balance the global expansion of the Internet, including

¹⁸ Press release detailing the purpose and scope of Telecomm Inter@ctive '97 can be accessed at <http://www.unctad.org/Templates/webflyer.asp?docid=3291&intItemID=2280&lang=1>. Last accessed 12 July 2010.

global electronic commerce, with social issues by imposing predetermined sets of rules by which all Internet actors would have to abide. Bangemann's proposal for an international Internet charter was a harbinger of things to come that would potentially imperil accord between the EU and US policymakers concerning global electronic commerce.

Furthermore, the speech by Bangemann signaled to US policymakers that there were rather large chasms separating U.S and EU Internet preferences owing to disparate governance approaches. The pending presidential trip to South America became crucial for signaling back to the EU the resolve of the US government to institutionalize the *duty-free* Internet norm. US policymakers began to promote the *duty-free* Internet in diplomatic circles as the US electronic commerce initiative and explicitly linked growth in global trade to the expansion of Internet technology. The president's trip to South America would be an opportunity to test the efficacy of US Internet governance strategy and the resonance of US Internet governance preferences with leaders of other nation-states beyond the EU.

Diplomatic messages between Magaziner and EU officials culminated in late September with two communiqués, both dated 25 September 1997. The first was sent from the US Embassy in Luxemburg to the White House, the Secretary of State, and all EU diplomatic posts of the US government.¹⁹ This communiqué details discussions between the US Ambassador to Luxemburg and the Government of Luxemburg (GOL) regarding Magaziner briefing the GOL on US Internet governance preferences because

¹⁹ Diplomatic communiqué, US Embassy Luxemburg to Ira Magaziner. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 25, Folder 28, William Jefferson Clinton Presidential Library.

his participation in the Global Standards Conference had concluded and Luxembourg rotated into the Presidency of the EU.

The second 25 September 1997 communiqué is a response to a letter dated 23 July 1997 sent to Magaziner from Hans Beseler, then serving as Director-General of the EU Directorate General I, responsible for EU commercial policy.²⁰ Beseler expresses his belief that “areas of common ground” had been identified that would form the basis for narrowing remaining differences. Beseler suggests that the issue of global electronic commerce be added to an ongoing project between the EU and the US, known as the EU-US Joint Study Group, to study areas where policy alignment needed to occur between the EU and the US. Magaziner, in response, takes the opportunity to inform Beseler that dialogue between the US government and the governments of “Canada, France, Japan, Korea, Germany, Malaysia, Singapore [sic], and the United Kingdom” are ongoing and that Magaziner is “confident that we have established a firm basis from which to proceed with a global discussion of electronic commerce issues”²¹

Then, Magaziner states the following, which can be interpreted as a shot across the bow of the *information society* norm, “In each of these discussions, I have been pleased to learn that there is an emerging consensus on the five principles included in the report issued by President Clinton on July 1” (Magaziner 1997, 2). He then lists the five principles from *A Framework for Electronic Commerce* announced by President Clinton on 1 July 1997. Magaziner closes by referring Beseler to the 1 July 1997

²⁰ Diplomatic Communiqué, US Secretary of State to US Embassy Brussels, Magaziner response to Hans Beseler. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 25, Folder 28, William Jefferson Clinton Presidential Library.

²¹ Ibid.

Presidential Directive, which made specific assignments to US government departments and agencies to negotiate and achieve global agreement concerning specific electronic commerce issues and suggests that further discussions between the EU Commission and the US government be conducted between “relevant officials.”²² The notion that there is an “emerging consensus” was designed to ratchet up the pressure on the EU to accept and support the *duty-free* norm as the basis for global governance of the Internet.²³ While Magaziner continued to engage EU officials in dialogue, preparations were underway within the Clinton Administration to leverage the scheduled October 1997 trip to South America by President Clinton to persuade those governments he conferred with during the trip to support the duty-free Internet.

The Clinton administration mobilized preparations for the President’s South America trip, scheduled for 12 to 17 October 1997, to ensure that trade, technology, and electronic commerce were featured in remarks President Clinton would give in the three countries he would visit, Brazil, Argentina, and Venezuela. On 22 July 1997, Patrick Desouza at the National Security Council (NSC) sent a memorandum to Magaziner concerning an upcoming meeting scheduled for 25 July 1997 with a Brazilian delegation in Washington making arrangements for President Clinton’s South America trip.²⁴ In the memorandum, Desouza suggests that recent agreements between Brazil and the US to partner using information technology for education purposes could serve, “as a basis for

²² Diplomatic Communiqué, US Secretary of State to US Embassy Brussels, Magaziner response to Hans Beseler, Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 25 Folder 28, William Jefferson Clinton Presidential Library.

²³ Ibid.

²⁴ Memorandum, Patrick Desouza to Ira Magaziner, Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 32 Folder 13, William Jefferson Clinton Presidential Library.

making progress on deliverables for other technology issues such as electronic commerce.” An objective of President Clinton’s South America trip was to obtain agreement with Brazil and Argentina on electronic commerce joint statements that would affirm their support for a duty-free Internet. A subsequent memorandum, dated 23 September 1997, sent from the National Economic Council demonstrates how fully the NSC recommendation of 22 July 1997 was incorporated into US plans for President Clinton’s South America trip and how closely foreign and domestic economic policy of the US is bound with its security policy.

The 23 September 1997 memorandum explicitly links trade, education, and technology for US policymakers.²⁵ According to the memorandum, the President’s visit to Brazil was an opportunity for US policymakers to initiate momentum for the duty-free Internet. Indeed, in the memorandum, the US Ambassador to Brazil is instructed to communicate to Brazilian officials that they have an opportunity to “be the first country to commit to the US electronic commerce initiative.”²⁶ The subject of the memorandum was “Materials for US Embassy, Brazil,” and included a draft cable to the US Ambassador to Brazil detailing the issues President Clinton wanted to address with President Cardoso, then President of Brazil, talking points for President Clinton regarding electronic commerce and information technology, and instructions to approach the Brazilian government on these issues in preparation for his trip to South America. The memorandum also includes a draft joint statement on trade for the

²⁵ Memorandum, Lael Brainard to Ira Magaziner, Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 38 Folder 6, William Jefferson Clinton Presidential Library.

²⁶ Memorandum, Lael Brainard to Ira Magaziner, Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 38 Folder 6, William Jefferson Clinton Presidential Library.

Brazilian government to review so that a final version would be ready for public release during President Clinton's visit.

The draft joint statement on trade (DJST-Brazil) prominently links trade with information technology. In the second sentence of the DJST-Brazil, the US proposes the following language, "[President Clinton and President Cardoso] agreed on the importance of bringing the benefits of trade and technology to all members of our societies."²⁷ Further down in the DJST-Brazil, language is proposed that states, "Both Presidents embraced the principle that the private sector must lead in the development of the Internet, and pledged to refrain from imposing tariffs on electronic transmissions that constitute commerce over the Internet and to work for global acceptance of these principles."²⁸ Furthermore, the memorandum includes a request that the US Ambassador to Brazil arrange for meetings between members of the Magaziner interagency taskforce and Brazilian government officials to solidify agreement on the issue of trade and technology leading up to President Clinton's arrival.

During this trip, President Clinton, in remarks to business leaders in Saõ Paulo, Brazil, promoted global electronic commerce and emphasized the importance of limited government involvement. In a speech given on 15 October 1997, Clinton invoked the language of expansion within the context of describing the advantages of adopting information technology, stating, "Even as computers and the Internet are expanding the

²⁷ Memorandum, Lael Brainard to Ira Magaziner, Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 38 Folder 6, William Jefferson Clinton Presidential Library.

²⁸ Memorandum, Lael Brainard to Ira Magaziner, Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 38 Folder 6, William Jefferson Clinton Presidential Library.

world of learning, they also bring new opportunities for electronic commerce.”²⁹ Clinton then argued that global electronic commerce can, “improve productivity, facilitate global communications, help small companies sell to a worldwide market, create a revolution in the way we all market and sell. But in order for this digital economy to flourish, it must not be weighed down by the heavy hand of government regulation and fees.”³⁰

President Clinton then shares with the Brazilian business leaders that, “President Cardoso and I discussed the importance of creating a market-led environment in which this new medium can succeed.”³¹ The US government was aggressively pushing forward with diplomacy to initiate momentum in support of US Internet policy preferences.

As the president moved on to Argentina as his last stop during his South America trip, he echoed the same Internet policy preferences. On 17 October 1997, Clinton addressed a gathering of Argentine business leaders in which he declared that,

[T]he Internet is . . . expanding the horizons of commerce. Already, Argentines can purchase everything from books to computer equipment with the simple stroke of a keyboard. Trade on the Internet is growing so fast that in just a few years it will generate hundreds of billions of dollars in goods and services.

If we establish an environment in which electronic commerce can thrive, free from unnecessary governmental regulations or other burdens, then every computer will be a window of opportunity for every business in the world. A global network of sales and distribution will be within reach of even the smallest or most isolated company. You can start a business today and trade around the world tomorrow. That’s what the Internet will mean. But in order for the digital economy to flourish, it must be market led. President

²⁹ Text of speech given on 15 October 1997 by President Clinton to business leaders in Sao Paulo Brazil is accessible at <http://clinton4.nara.gov/WH/New/SAmerica/19971015-8184.html>. Last accessed 13 July 2010.

³⁰ Ibid.

³¹ Ibid.

Menem and I discussed the importance of making sure that this dynamic medium is not weighed down by the heavy hand of government.³²

President Clinton was advocating on behalf of the duty-free Internet when he called for government restraint imposing duties, tariffs, or taxes that would distort economic incentives for Internet users of all types. While no joint statements on electronic commerce were agreed to between the US, Brazil, or Argentina during the South America trip, it was a success nonetheless in that remarks by President Clinton in Brazil and Argentina signaled to the EU that the US was resolute concerning the US electronic commerce initiative, including the duty-free Internet. US policymakers were employing presidential prestige combined with coordinated diplomacy among US agencies and departments in support of their vision of a commercial medium.

In late October 1997, Magaziner reviewed proposed talking points for a bilateral subcabinet meeting scheduled for late November 1997 that had global electronic commerce as an agenda item.³³ The talking points mentioned that the US and EU had agreed on a timeline for arriving at agreement on language in a joint statement on global electronic commerce (JSGEC-EU) by December 1997, that discussions concerning the language of a joint statement had been occurring continually since July 1997, that the US had provided a draft JSGEC-EU on 30 September 1997 for review by the EU Commission and member states, and that bilateral discussions concerning the 30 September JSGEC-EU had occurred on 3 October 1997 during Magaziner's trip to Europe from 1 to 7 October 1997. The third talking point stated that, from the

³² Text of speech given on 17 October 1997 by President Clinton to business leaders in Buenos Aires, Argentina, is accessible at <http://clinton4.nara.gov/WH/New/SAmerica/19971017-13172.html>. Last accessed 19 July 2010.

³³ US-EU Subcabinet meeting points to make, Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

perspective of the US government, “We are fundamentally in agreement on a wide range of issues: thus, it should not be problematic to achieve agreements on tariffs, taxes, electronic authentication, and WIPO [World Intellectual Property Organization] ratification.”³⁴ However, the fourth talking point concerning regime structure showed that there remained disagreement concerning which norm – *duty-free* Internet or *Internet society* – would ultimately form the basis for global governance of the Internet. The fourth US talking point was as follows, “We also agree on the essential role that is played by the private sector and in keeping government rules to a minimum. Cannot comment on the idea of a legal ‘charter’ for Internet (as proposed by Commissioner Bangemann). Support a loose confederation of guidelines that our private sectors would use to foster the growth of e/commerce.”³⁵ The choice by US policymakers not to comment directly on the more legalistic approach to Internet governance proposed by Bangemann – a lawyer by training apparently with a predilection for policy based on legal tradition – and the strong language in the fourth talking point made it clear that the US government would oppose any policy that would thwart the US from employing the Internet as the technical means for commercial and political expansion.

By November 1997, momentum in support of the *duty-free* Internet was moving in the direction US policymakers envisioned. During that month, negotiations between the EU Commission and the US government over a joint statement on global electronic commerce intensified. On 13 November 1997, Colin Helmer, then serving as a Section Chief at the US Mission to the European Union (USMEU) faxed Magaziner a report

³⁴ US-EU Subcabinet meeting points to make, Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

³⁵ *Ibid.*

describing a meeting he had with Paul Vandoren, then serving in Directorate General I in the EU Commission.³⁶ Vandoren provided a copy of a preliminary EU draft for an US-EU joint statement on global electronic commerce that was being circulated and commented on by member states. Vandoren's purpose was to alert US policymakers to "observations and reservations" of member states, especially concerning the notion that the private sector should lead in regulation and that tax and tariff policies should be technology and transmission neutral. Helmer reported that Vandoren described the EU Commission as being committed, "to make adoption of a *meaningful* [his emphasis] joint statement possible."³⁷ The report from Helmer concluded by passing on a request from the EU Commission that a joint drafting session could occur on 17 November 1997 "if there was enough common ground."³⁸ Policymakers in both the US and EU worked furiously throughout the month of November 1997 to complete a final draft joint statement on global electronic commerce that could be publicly announced during the biannual summit between the US and EU presidents scheduled for 5 December 1997. Policymakers from both the EU and the US were successful and a joint statement that detailed agreement between the EU and the US concerning global electronic commerce was, in fact, publicly released on 5 December 1997. The final draft EU-US joint statement on global electronic commerce was more a statement of compromise than a victory for the US in achieving EU support for a duty-free Internet.

³⁶ Fax Communication, Colin Helmer to Ira Magaziner, Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

³⁷ Ibid.

³⁸ Ibid.

The EU-US agreed in the 5 December 1997 joint statement on electronic commerce (EU-US JSEC) that, “when goods are ordered electronically and delivered physically, there will be no additional import duties applied in relation to the use of electronic means. In all other cases relating to electronic commerce, the absence of duties on imports should remain.”³⁹ The US government achieved agreement with the EU concerning the treatment of goods and services bought and sold over the Internet as duty-free. Furthermore, the EU and the US agreed that “the expansion of global electronic commerce will be essentially market led and driven by private initiative.”⁴⁰ At this point of the EU-US JSEC, the insertion of the word “essentially” in the text marks a less definitive tone than what US policymakers would have preferred and it is an indication of the normative dissonance between the EU Commission and the US government. Clearly, the role of government remained a thorny issue between the EU Commission and the US government and this is further reflected in subsequent language that inserted the word “legal” when describing the oversight role of government, “That the role of government is to provide a clear, consistent and predictable legal framework, to promote a pro-competitive environment in which electronic commerce can flourish and to ensure adequate protection of public interest objectives.” That the meaning of the term legal remained ambiguous afforded policymakers from the US and the EU to continue promoting their alternative visions of Internet governance even after the EU-US JSEC. From the perspective of US

³⁹ The EU-US joint statement on electronic commerce is accessible at the following web address: <http://www.eurunion.org/partner/summit/Summit9712/electrst.htm>. Last accessed 13 July 2010.

⁴⁰ Ibid.

policymakers, the EU-US JSEC effectively quashed the threat of the *information society* norm.

Officials from the EU would continue promoting a global non-binding charter for Internet governance while the US Government proceeded undaunted toward achieving global institutionalization of the *duty-free* Internet. Policymakers in the US next focused diplomatic efforts in Asia and the WTO, concluding 1998 with the formal organization of a private market-based entity charged with managing the day-to-day operability of internetworking technology.

Summary

Policymakers in the US government were far more advanced in thinking about and articulating the Internet as a tool for economic growth through commercial expansion and less concerned about privacy and protection than were their counterparts in the EU. The US was therefore able to preempt the EU in offering a set of principles and norms on which an Internet governance regime could be constructed and to which domestic and global support could rally. Once the US government had officially announced the duty-free Internet, US policymakers began to aggressively court the support of other nation-states, especially in the EU. Policymakers in the EU had little choice but to extract what concessions it could from the US concerning governance of the Internet.

In the weeks that followed the 5 December 1997 EU-US Summit, US policymakers breathed a collective sigh of relief that agreement had been reached with the EU concerning the duty-free Internet. From the perspective of the US government, policymakers in the EU were in accord with US policymakers on constructing a global Internet governance regime on the *duty-free* norm. Attention could now be directed

toward engaging other nation-states in discussions concerning similar joint statements. A cable sent by the US government to US diplomatic posts on 18 December 1997 provided instructions to US officials on how to discuss the EU-US JSEC with counterparts in governments within their assigned countries. US ambassadors and foreign officers were instructed to persuade officials in foreign governments that “Electronic commerce will mean lower costs and wider access for businesses, more choice for consumers, and most importantly, new jobs.”⁴¹ The cable notes that the EU-US JSEC “contains compromise language that does not always mirror the US positions,” and that US policymakers, “believe it reflects the emergence of a global consensus around many of the principles and positions advocated by the USG. We hope that having [the] example of the US-EU joint statement will further encourage other governments . . . to support our views in multilateral and bilateral fora.” The diplomatic strategy pursued by the US government to construct a global Internet governance regime firmly rooted in the *duty-free* Internet norm was comprised of two phases, but hinged on obtaining EU support for the duty-free Internet.

Once EU support had been obtained for the duty-free norm, regardless of differences that remained between the EU and US normative stances concerning Internet governance, the US government then used that EU support to claim that there was an emerging global consensus and as leverage with other state actors to extract support for the *duty-free* Internet norm. Conversely, the US used the same tactic – claiming that there was an emerging consensus – to spur the EU into agreeing to a joint

⁴¹ Diplomatic communiqué, US-EU Joint Statement on Global Electronic Commerce. 18 December 1997. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

statement on electronic commerce. Having constructed a “consensus” among state actors, the US government occupied a very strong position within international multilateral fora as US policymakers began to shift into Phase Two of US Internet governance diplomatic strategy, which involved generating regional consensus among Pacific Rim nation-states for the duty-free Internet. Phase Three would be to achieve institutionalization of the duty-free norm within extant international intergovernmental organizations such as the WTO, excluding the ITU and the UN, and constructing a global Internet governance regime structure on the *duty-free* Internet norm that institutionalized US national security interests of economic and political expansion in a new international organization.

CHAPTER 5 ENDGAME

With European Union support for the *duty-free* norm seemingly obtained by US policymakers, Magaziner and members of the National Economic Counsel / National Security Counsel (NEC/ NSC) interagency taskforce on electronic commerce were free to focus their attention on obtaining support of Japan for the *duty-free* Internet. The US government employed the same strategy that had worked with the EU, that is, create the appearance of an emerging regional consensus and then use that emerging consensus as leverage with Japan to attain a joint statement on electronic commerce. Accordingly, other Pacific Rim countries were targeted simultaneously with Japan. Additionally, planning within the US government regarding an Internet governance regime structure that did not inhibit the *duty-free* Internet began in earnest. Once US policymakers had secured the support of the EU, Japan, and other regional state actors for the *duty-free* Internet, ensuring the global adoption of the *duty-free* Internet within the World Trade Organization would follow. Incorporating the *duty-free* Internet within the extant global trade structure would clear the way for the competitive advantage of US information and communications technology enterprises to win the race accruing the most benefit from the global expansion of Internet technology.

But, as we will discover, US policymakers had to stave off a revolt by the EU while finding a compromise Internet governance regime structure that privileged sovereignty over content in order to assuage the EU's fears of US cultural dominance and ensure the rights of intellectual property holders. We begin by examining US government efforts to obtain support for the *duty-free* Internet in Asia, move into the EU revolt, then institutionalization of the *duty-free* Internet within the WTO, and finish by

arguing that the primary purpose of the Internet Corporation for Assigned Names and Numbers (ICANN) is to protect intellectual property rights in support of the *duty-free* Internet.

APEC, Japan, and the *Duty-free* Internet

In July of 1997, as the US diplomatic push for the *duty-free* Internet got underway, US policymakers began preparations for leveraging the APEC to rally support for the US electronic commerce initiative among economic partners in Asia.¹ Focus was placed on a November 1997 APEC leadership meeting in Vancouver. On 18 September 1997, Magaziner received an email from Daniel Geisler, an Asian Affairs specialist working at the State Department on the staff of US APEC Ambassador John Wolf. In that email, Geisler provided a draft memorandum for Magaziner to circulate among officials at the Treasury Department, Commerce Department, the National Economic Council, and the Office of the US Trade Representative. The memorandum offered a preliminary sketch of US strategy for rallying support within APEC for the *duty-free* Internet at the November leadership conference. In the draft memorandum, Geisler stated that

Three principles govern [the US] approach to electronic commerce in APEC [in 1997].

First, our approach should be top down, coming from Leaders. Trying to bring useful work up through the working group process would take too long. Second, the work should be assigned to the APEC fora with the greatest ability to produce results. While we want leaders to set forward

¹ Geisler, Dan. 18 September 1997. "APEC – Electronic Commerce Strategy." Email to Ira Magaziner from Dan Geisler, Department of State. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 37, William Jefferson Clinton Presidential Library. Digital image on file with author.

leaning parameters, we want to avoid being so prescriptive as to trigger a backlash, and deadlock, with LDCs.²

Having described US strategy within APEC in support of the *duty-free* Internet, Geisler moves to identify the US strategic objectives within APEC for electronic commerce. The primary objective was to obtain “Leadership endorsement of our principles. We need Leaders to tie electronic commerce to a larger vision of the future, a perception that electronic commerce will be a critical new means of commerce underlying the Region’s growth in the 21st century.”³ The secondary objective was to achieve agreement among the leadership group within APEC for a time frame within which APEC members would fully implement policies in support of the *duty-free* Internet. The tertiary objective was to identify three issues affecting electronic commerce on which Leaders could agree to focus efforts. Geisler opined that the *duty-free* Internet “has generated the most favorable response among APEC members because it is concrete, it can be made understandable, and it is perceived as low cost.”⁴ For these reasons, US policymakers should emphasize the *duty-free* Internet within APEC over alternatives.

In the draft memorandum, Geisler recommended that “Leaders should instruct Trade Ministers to work toward an agreement in the WTO by the end of 1998 for the Internet to be declared a tariff free environment.”⁵ These points were to be pressed by

² Geisler, Dan. 18 September 1997. “APEC – Electronic Commerce Strategy.” Email to Ira Magaziner from Dan Geisler, Department of State. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 37, William Jefferson Clinton Presidential Library. Digital image on file with author.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

Ambassador John Wolf who would be visiting APEC member states in the week that followed the email from Geisler to Magaziner.⁶ By the November 1997 APEC Leadership Conference, US policymakers had begun to rally support for the *duty-free* Internet as evidenced by the Leadership Statement.

On Tuesday, 25 November 1997, at the conclusion of that conference, the *Leadership Statement* was issued. In it the APEC leaders agreed “that electronic commerce is one of the most important technological breakthroughs of this decade. We direct Ministers to undertake a work program on electronic commerce in the region, taking into account relevant activities of other international fora. . . . *This initiative should recognise the leading role of the business sector and promote a predictable and consistent legal and regulatory environment that enables all APEC Economies to reap the benefits of electronic commerce*” (emphasis added).⁷ Note that the language is consistent with US government Internet governance preferences: the business sector should lead and the description of the role for government on the Internet as ensuring that legal and regulatory initiatives are *predictable and consistent*. The US government was utilizing any means available in both bilateral and multilateral fora to achieve widespread support for the *duty-free* Internet. By first obtaining support, first from selected APEC-member nations, US policymakers strategically boxed in fellow APEC members, tacitly pressuring them to support the *duty-free* Internet at the bilateral level.

⁶ Geisler, Dan. 18 September 1997. “APEC – Electronic Commerce Strategy.” Email to Ira Magaziner from Dan Geisler, Department of State. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

⁷ APEC Economic Leaders Declaration: Connecting the APEC Community, Leadership Statement, 25 November 1997, Vancouver, Canada. Available at: http://www.apec.org/apec/leaders__declarations/1997.html#. Last accessed 17 September 2010.

In the months that followed the APEC Vancouver conference, US diplomatic missions in Asia were directed to engage counterparts in dialogue to assess what policymakers in Asia were thinking concerning global electronic commerce in general, and the *duty-free* Internet specifically. At those meetings, US officials were directed to provide a copy of the US-EU joint statement on electronic commerce to officials of foreign governments and then suggest that the US and the foreign governments with whom US officials were meeting issue a similar joint statement. In this manner, the US government utilized the US-EU joint statement on electronic commerce as a tool of persuasion with foreign governments.

By mid-January 1998, a cascade of diplomatic cables began to flow into Magaziner's office reporting on meetings of US policymakers with counterparts in Taiwan, the Philippines, Korea, Thailand, and Singapore.⁸ The cables are a study in contrasts, with some reporting significant thought and policy development and others reporting little more than passing attention to the *duty-free* Internet on the part of US economic partners in Asia. For example, on 16 January 1998, the Economic Officer at the US embassy to South Korea (Republic of Korea) reports that "A consensus appears to have emerged between the ROKG and the Korean private sector that Korea should try to play a leading role in developing and implementing EC technology and infrastructure. While the Koreans concur with many of the general principles contained in President Clinton's Electronic Commerce initiative, they clearly see a much larger role

⁸ On file with Author. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library.

for government in regulating and guiding the emerging sector.”⁹ The cable continued, characterizing Korean Internet policy as still in the formative stages of development. In contrast, a 12 January 1998 cable from the US embassy in the Philippines reported that the Government of the Philippines (GOP) had formed a committee to examine the *duty-free* Internet, but the committee had met infrequently and was unlikely to make any policy recommendations until after the elections in that country, which were to be held in May of 1998.

What these cables provided to Magaziner was a measure of the scope of opportunity for the US government to achieve the global institutionalization of the *duty-free* Internet. The cables also offered a view of the issues of concern for APEC members that US policymakers would need to address at an APEC-sponsored seminar on electronic commerce scheduled for 10 March 1998 in Brunei. This seminar was organized in response to directions from APEC leaders who, at their November 1997 conference in Vancouver, had called for a regional seminar on electronic commerce at the ministerial level. A schedule of deadlines for organizing the seminar was faxed to Magaziner from the US Trade Representative’s Office on 13 January 1998.¹⁰ The first deadline for “Final Agenda Approval” was for Friday, 5 December 1997 less than a fortnight from the conclusion of the APEC November 1997 conference. By 6 February 1998, conference speaker bios and papers were to be completed and forwarded to

⁹ Diplomatic Cable: US Embassy ROK to Magaziner. 16 January 1998. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

¹⁰ “Seminar Planning Timeline.” APEC-PECC Communication and Information Policy Dialogue. Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 37, Folders 19-20, William Jefferson Clinton Presidential Library.

seminar organizers. Policymakers in the US saw an opportunity to leverage the APEC electronic commerce seminar to gain support for the *duty-free* Internet.

John Wolf, then serving as US Ambassador to APEC, faxed a memorandum with “three papers” for review and comment to Ira Magaziner on 4 February 1998 that further clarified the US Internet policy strategy in APEC. Wolf sought to emphasize in the accompanying memorandum that the US government needed to “push the pace of APEC’s agenda for Electronic Commerce.” He noted that the working agenda for the APEC electronic commerce seminar “includes a discussion about how to coordinate work on E Commerce.” Wolf then bluntly states, “I believe we need to be ready to shape and focus this discussion.” While APEC was a primary focus of US Internet governance diplomacy in Asia, Wolf also had an eye on Magaziner’s participation at a meeting in early 1998.

The meeting, APRICOT '98, was sponsored by an umbrella organization for information and communications technology industry trade groups that included the Asia Pacific Network Information Center (APNIC), the Asia Pacific Networking Group (APNG), and the Asia and Pacific Internet Association (APIA). The purpose of Magaziner’s presence at APRICOT '98 was to persuade the ICT industry in Asia to support the *duty-free* Internet and then lobby their respective governments accordingly in preparation for the 10 March 1998 APEC seminar. US strategy for rallying support for the *duty-free* Internet in Asia was two pronged, just as it had been in the cases of Brazil, Argentina, and the EU: US government officials would dialogue with engage counterparts in foreign governments, while simultaneously working to persuade local ICT industry to support the *duty-free* Internet. Attending APRICOT '98 fit into persuading

local industry to support the *duty-free* Internet to be followed by lobbying member governments on behalf of US Internet policy preferences.

The APRICOT '98 conference was scheduled from 16 February to 22 February 1998 and was held in Manila. On 17 February, Magaziner participated in a board meeting open to the public that also featured representatives from the APNIC, APNG, and the APIA. The next day, he gave the APRICOT '98 keynote address. In his remarks, Magaziner emphasized that "The US government believes that there will be more than a billion people on the Internet by the year 2005. The Internet will be a main economic engine for growth. This will include IT and E-commerce. Those who try to overregulate are going to fail and be left behind. Those [who] realize that to grow they must be free, will succeed."¹¹

Magaziner went on to emphasize that treating the Internet as a *duty-free* trade zone ensured that governments would not impede technological innovation, the spread of information technology, or the growth in electronic commerce. Hesitancy to accepting a *duty-free* Internet was most pronounced where management of the domain name system (DNS) was concerned, and is reflected in the free flowing dialogue between APIA board members, the audience, and Magaziner that had occurred at the board meeting on 17 February. The discussion reflected concerns about potential US domination of Internet technology, as well as the potential for extra-territorial application of US intellectual property law; APRICOT '98 participants wanted the US Government to clarify that it was not seeking to extend US intellectual property laws extraterritorially. In

¹¹ Record of discussions by Ira Magaziner with the APIA Board and members, in an open meeting held during APRICOT '98 on the 17th February 1998, in Manila, Philippines. Available at <http://www.ntia.doc.gov/ntiahome/domainname/130dftmail/APIA.htm>. Last accessed 9 November 2010.

spite of such perceptions, in 1998, US policymakers pressed forward with three initiatives in support of the *duty-free* Internet.

The first initiative was to shape the APEC work program on electronic commerce to conform to the *duty-free* Internet. Indeed, US policymakers' effort in 1998 to shape the regional work program concerning the *duty-free* Internet, which began at APRICOT '98, wove through APEC seminars and ministerial conferences, and culminated at the November 18, 1998, APEC Economic Leaders Conference in Kuala Lumpur, Malaysia. These efforts, for example, include the June 1998 ministerial conference on telecommunications and information technology industry held in Singapore, where the ministerial declaration includes that it "recognizes . . . the private sector's primacy in the development and use of electronic commerce in the region, which is key to economic growth in the next century."¹² Later in June, APEC ministers of trade gathered on the 22nd and 23rd in Kuching, Sarawak, Malaysia, and expressed support for the expansion of electronic commerce in the region as an important driver of economic growth and development.¹³ At the 1998 APEC Economic Leaders conference, which had been blindsided by the Asian financial crisis, leaders still issued a "Blueprint for Action on Electronic Commerce" that reflects US Internet governance preferences for limited government intervention, leadership and self-regulation by the private sector in the expansion of electronic commerce, and that, in general, where government

¹² "The Third APEC Ministerial Meeting on the Telecommunications and Information Industry." Singapore, 3-5 June 1998. Ministerial Press Statement. Available at http://www.apec.org/apec/ministerial_statements/sectoral_ministerial/telecommunications/1998.html. Last accessed 11 October 2010.

¹³ "Meeting of Ministers Responsible for Trade: Statement of the Chair." Kuching, Sarawak, Malaysia, 22-23 June 1998. Available at http://www.apec.org/content/apec/ministerial_statements/sectoral_ministerial/trade/1998_trade.html. Last accessed 11 October 2010.

intervention was needed, “technology neutral, competitive market-based solutions which can be safeguarded by competition policy, and effective industry self-regulation, should be favoured.”¹⁴ US policymakers sought to ensure that consensus was achieved on regional and bilateral bases in preparation for moving to such global fora as the WTO to institutionalize the *duty-free* Internet globally.

Simultaneous with US diplomacy within APEC, negotiations within the WTO were initiated by the US trade representative. As momentum began to accumulate among state and international organization actors for the *duty-free* Internet, the EU made a surprise counter proposal to the US-promoted not-for-profit market-based entity for managing the DNS. The EU proposal – known interchangeably as the Internet Charter or the Bangeman Charter – threatened the hard won momentum for the *duty-free* Internet. US policymakers moved quickly to quash the threat.

The Internet Charter

The US Government released a policy Green Paper on 30 January 1998 that offered a detailed sketch of the organizational structure for the DNS management entity through the National Telecommunications and Information Agency (NTIA), which is part of the Commerce Department. US policymakers positioned the Green Paper as a more detailed statement of policy than the *Framework for Global Electronic Commerce* (the *Framework*) released on 1 July 1997. Releasing the Green Paper through the NTIA enabled US policymakers to leverage the rulemaking procedures followed by US bureaucracy when issuing new regulations in response to new legislation. Proposed regulations are subject to an open comments period in which individuals or groups may

¹⁴ “APEC Blueprint for Action on Electronic Commerce.” 18 November 1998. Available at http://www.apec.org/apec/leaders__declarations/1998/apec_blueprint_for.html. Last accessed 11 October 2010.

submit opinions concerning new regulations in an effort to shape the final rule. Allowing for a sixty-day comments period enabled US policymakers to claim that the process through which a DNS management entity was formed was transparent and offered a forum in which all Internet stakeholders could participate in shaping the new entity.

In the Green Paper, the US Government reiterated the objective set by President Clinton on 1 July 1997 in the *Framework* that management of the DNS should be private-market based. The US Government then claimed that “shared principles have emerged from our discussions with Internet stakeholders.”¹⁵ The document then lists those shared principles that include stability, competition, bottom-up coordination, and representation. The new entity “would be headquartered in the United States” and be funded by fees paid by top-level domain name registries for the right to register domain names within a top-level domain.¹⁶ The Green Paper explicitly eliminates governments from any role in the new entity – save that of the US. However, US policymakers intended for the US Government to remain in an oversight role only as long as was required to ensure that the DNS, the root, and the new entity were stable. The new entity, to begin operations on 30 September 1998 would be structured as a not-for-profit corporation subject to US laws, meaning that a board of directors would be necessary and was intended by US policymakers to be the vehicle of representation within the new entity. That government would not have a role in the new entity sent shivers throughout the EU Commission concerning US dominance of the Internet.

¹⁵ US Government, Department of Commerce, NTIA. 1998. “Improvement of Technical Management of Internet Names and Addresses; Proposed Rule.” Available at <http://www.ntia.doc.gov/ntiahome/domainname/022098fedreg.txt>. Last accessed 4 September 2008.

¹⁶ Ibid.

In response, on 4 February 1998, the EU issued a press release entitled *Globalisation and Information Society: Commission proposes International Charter to strengthen world-wide coordination*.¹⁷ The EU was proposing that a global dialogue occur to develop “a common global approach” that “would be a multi-lateral understanding on a method of coordination to remove obstacles for the global electronic marketplace.” To initiate the global dialogue, the EU called for a global conference at the ministerial level to occur sometime in 1998 or 1999. Policymakers in the US viewed the EU Internet (or Bangemann) Charter with suspicion, fearing that momentum for the *duty-free* Internet would become trapped in never ending global negotiations. Indeed, the Internet Charter proposed by the EU generated normative dissonance that US policymakers had to contain in defense of the *duty-free* Internet. On 11 February 1998, Magaziner received a cable from Colin Helmer, assigned to the US diplomatic mission at the EU. In that cable, Helmer reported on a meeting he had attended with staff of the EU directorate headed by Bangemann. The purpose of that meeting was to ascertain how committed the EU was to pushing the *information society* norm, encapsulated within the Bangemann-generated Internet Charter, as the basis for the global Internet governance regime.

As reported by Helmer, at that meeting representatives from the EU assured their US counterparts that an Internet charter, “would be about the process of reaching decisions on the issues of e-commerce, rather than providing any answers itself.”¹⁸

¹⁷ Copy of press release may be accessed at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/98/114>. Last accessed 1 October 2009.

¹⁸ Weinschenk to Magaziner. 11 February 1998. “Bangemann Charter Info.” Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 20, Folder 7, William Jefferson Clinton Presidential Library.

According to Helmer's report, the EU officials stressed that the charter "would not be legally binding" and that any organizational model would be similar to that of the Trans-Atlantic Business Dialogue (TABD), which has no standing secretariat, participants are responsible for covering their own expenses, and any work projects are carried out "as interested parties take [them] on or [don't] if there is no interest."¹⁹ The report concludes with the EU agreeing to assist the US in achieving a WTO agreement for the *duty-free* Internet. Andrew Weinschenk, the State Department official who forwarded the cable to Magaziner, was of the opinion that Helmer's report "suggests . . . that we have greater leverage in negotiating what the 'Bangemann Process' looks like (or whether there ought to be such a process) than we previously thought."²⁰ Helmer's report offered some reassurance to US policymakers that the threat posed by the Internet Charter was less than perceived and that they could therefore count on EU support for the *duty-free* Internet as US policymakers began negotiations within the WTO to institutionalize the *duty-free* Internet within the global trade regime.

Then, on 4 March 1998, Robert Verrue, the head of the EU Directorate General XIII, met with Magaziner and "Under Secretary of State for Economic and Business Affairs Stu Eizenstat, Under Secretary of Commerce for International Trade David Aaron, and others to push [the Internet Charter]."²¹ That the EU would send a high-ranking official to meet with US officials to promote the *information society* left US policymakers with some uncertainty concerning EU support for the *duty-free* Internet.

¹⁹ Weinschenk to Magaziner. 11 February 1998. "Bangemann Charter Info." Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, Box 20, Folder 7, William Jefferson Clinton Presidential Library.

²⁰ Ibid.

²¹ Ibid.

According to a memorandum faxed 13 March 1998 to Magaziner and other members of the NEC/NSC interagency taskforce by Andrew Weinschenk at the State Department that reports on that meeting, the US Government had no position concerning the EU charter proposal. Instead, the U.S Government had developed talking points, included in the faxed memorandum that US policymakers were to use when discussing the EU Internet Charter proposal. The talking points were sets of questions intended to assist US policymakers to gauge support among counterparts in foreign governments for the EU Internet Charter proposal so that Magaziner and the NEC/NSC interagency taskforce could assess what counter-moves needed to be undertaken to protect the *duty-free* Internet. A few weeks later, Bangemann sent Magaziner a letter dated 1 April 1998 that described EU policymaker intentions for the Internet Charter.²² The letter can be read as an attempt to assuage US policymaker concerns and as an attempt to persuade the US government to take a position in support of the Internet Charter.

In his letter, Bangemann sought to reassure US policymakers that the Internet Charter was not a proposal for a formal intergovernmental organization charged with managing the day-to-day operations of the Internet. Rather, the proposal of an Internet charter was to be a framework within which dialogue could occur among concerned Internet stakeholders – state and non-state actors – on issues affecting Internet governance. The Internet Charter was to be a vehicle for coordinating national policies pertaining to Internet taxation, privacy, or intellectual property protections. Bangemann goes so far as to acknowledge that, “there is a risk that divergent approaches will emerge causing uncertainties for businesses and consumers and leading to

²² Letter, Bangemann to Magaziner. 1 April 1998. The Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

fragmentation, and even over-regulation of the electronic marketplace.”²³ These are concerns shared by US policymakers and this statement appears to establish common ground for the EU and the US to build consensus for global governance of the Internet.

But US policymakers assumed that what the EU considered to be over-regulation was far different from what US policy makers considered to be over-regulation. Indeed, Ambassador Don Abelson, then working in the Office of the US Trade Representative, but assigned as a working-level member of the NEC/NSC interagency taskforce, bluntly expressed the US policymakers’ view of EU policymakers’ intentions: “Bangemann at the EU, wanted top down management” of the Internet, whereas US policymakers “[t]ried to create a series of approaches based on the US bottom-up partnership between government and business.”²⁴ According to him, even businesses in Europe were concerned that the EU Commission was overreaching. “European companies did not support the Bangemann approach. They were looking to the US to convince the Commission in Brussels and member-states that a top-down approach was not the best approach in this sector.”²⁵ These US policymakers’ views of the EU Internet charter would be plainly in person by Magaziner to Bangemann on 26 May 1998 during a meeting that occurred at EU headquarters in Brussels. Accompanying Magaziner to the meeting were USEU Deputy Chief of Mission Donald B. Kursch and USEU Economic Affairs Officer Colin Helmer. At this point, EU policymakers were well into planning for a roundtable discussion on the Internet Charter with other governments and private sector

²³ Letter, Bangemann to Magaziner. 1 April 1998. The Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

²⁴ Abelson, Donald. 2010. Phone Interview, 23 September 2009. Notes on file with author.

²⁵ Abelson, Donald. 2010. Phone Interview, 23 September 2009. Notes on file with author.

participants scheduled for 29 June 1998. The purpose of the roundtable event was to drum up support for the EU approach to Internet governance. Without US Government support, however, the EU Internet Charter could do nothing more than cause consternation on the part of US policymakers, US ICT businesses, and EU ICT businesses out of apprehension that a top-down governance structure would ultimately be formed that would impede the growth of the *duty-free* Internet. Indeed, the cable reports that, “US industry representatives in Brussels remain concerned about the Charter proposal, but at the same time are hesitant to recommend that their CEOs offend a powerful figure like Commissioner Bangemann by turning down his invitation to a roundtable.”²⁶ Any participation by US ICT industry representatives in a roundtable would be political, lacking any substantive support for the Internet Charter.

The 26 May meeting between Magaziner and Bangemann came on the heels of a letter from William Daley, then serving as Secretary of Commerce, to Commissioner Bangemann that explicitly states the US position concerning the need for an Internet Charter. The letter from Secretary Daley was in response to a letter Bangemann had delivered – with a copy of the proposed Internet Charter – to Secretary Daley a few weeks before. In his 15 May 1998 response, Daley writes that “It is our impression that international coordination of most of the issues you raise is already adequately addressed in existing global fora. It is also important to emphasize that as this international coordination proceeds, it must be industry-led and encourage and rely on

²⁶ Diplomatic Communiqué, 1 June 1998. “Electronic Commerce: Magaziner and Bangemann Discuss the International Charter, Internet, and Privacy.” The Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

industry self-regulation, to the greatest extent possible.”²⁷ Secretary Daley concludes the letter with some chastisement: “[W]e encourage you to seek industry leadership in developing this key new area of the economy.”²⁸ This precise language was also employed Daley’s subordinate, Under Secretary of Commerce Stuart Eizenstat in a letter he sent to Bangemann dated 26 May 1998.²⁹ The direct and plain language of the responses by Secretary Daley and Under Secretary Eizenstat to Bangemann communicated that the US Government already had a vision of Internet governance, was well into constructing global consensus based on that vision, and that the EU must adapt to, adopt, and fully support the US approach to global governance of the Internet. The 26 May 1998 meeting between Magaziner and Bangemann was a mere formality.

According to the 1 June 1998 diplomatic cable reporting on the meeting, Bangemann reiterated to US policymakers in attendance that the Internet Charter was not intended as “legally binding,” but instead would be “consensus building.”³⁰ Bangemann stressed that “he was inviting industry to take the lead in developing the charter, but added that governments should be in the cockpit as well.”³¹ Bangemann

²⁷ Letter, William H. Daley to Martin Bangemann. 15 May 1998. The Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

²⁸ Ibid.

²⁹ Letter, Stuart E. Eizenstat to Martin Bangemann. 26 May 1998. The Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

³⁰ Diplomatic Communiqué, 1 June 1998. “Electronic Commerce: Magaziner and Bangemann Discuss the International Charter, Internet, and Privacy.” The Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

³¹ Diplomatic Communiqué, 1 June 1998. “Electronic Commerce: Magaziner and Bangemann Discuss the International Charter, Internet, and Privacy.” The Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

than described how the roundtable would operate through a “steering committee” comprised of “seven industry representatives – two each from Europe, North America, and Japan, and one from the developing countries. The seven industry reps will be paired with seven “political’ figures.”³² Other members of the committee included “representatives from international organizations such as the ITU, OECD, WTO, and WIPO.”³³ Such an arrangement was precisely the sort of structure that US policymakers feared would bog down Internet governance in years of contentious political wrangling and negotiations having the effect of impeding the expansion of electronic commerce. Bangemann concludes his description of the roundtable by acknowledging “US dissatisfaction with the ITU, but insisted that they could not be left out.”³⁴

This last statement was the proverbial final nail in the Internet Charter coffin for US policymakers. “Magaziner responded that US industry is nervous about the Charter.”³⁵ Bangemann retorted that, based on his trip to Silicon Valley in late February 1998, “He had received strong support from industry leaders . . . and that Microsoft CEO Bill Gates has also given his backing.”³⁶ Magaziner made clear in response that the US position concerning the Internet Charter “would be conditioned on what it hears

³² Diplomatic Communiqué, 1 June 1998. “Electronic Commerce: Magaziner and Bangemann Discuss the International Charter, Internet, and Privacy.” The Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

from US industry.”³⁷ Bangemann apparently was unaware of the background politics that were undermining the EU proposal for a global Internet Charter of which he was the chief architect and champion. The US Government would not agree to an Internet governance regime, as described by Bangemann, out of fear that such a regime structure would inhibit the global expansion of the Internet and with it, expansion of US commerce and political ideals on which US national security rested.

The US position on the Internet charter echoes the observations presented in Chapter 3 by White House Office of Science and Technology Policy member, Michael Nelson, that the NEC/NSC interagency taskforce was driven by the overarching vision of Magaziner that the Internet represented a historical shift in the global economy and it was the primary duty of the US government to position US industry to take profitable advantage of that shift in order to ensure sustained job creation well into the twenty-first century – all bedrock views underpinning US national security. Consequently, Magaziner’s response to Bangemann, while certainly protective of the US ICT industry, at a deeper level, is best viewed in light of the open door framework that holds that US policymakers promote the expansion of US commerce and political ideals in support of US national security. On a trip to the US on 22 June 1998, subsequent attempts by Bangemann to personally lobby US policymakers and ICT industry leaders proved ineffectual. The dye as cast, EU policymakers never fully grasped the national security importance that US policymakers had placed on the global expansion of the *duty-free* Internet.

³⁷ Diplomatic Communiqué, 1 June 1998. “Electronic Commerce: Magaziner and Bangemann Discuss the International Charter, Internet, and Privacy.” The Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

An advantage that the *duty-free* Internet had over the *information society* is that the US was well ahead of the EU in generating momentum at bilateral and multilateral fora for US Internet policy preferences in the form of garnering support among state actors. The EU Commission was simply late to the game in efforts to offer an alternative vision of Internet governance. By mid-May 1998, the governments of Japan and the US had reached agreement regarding a joint statement on electronic commerce that partnered the two governments in promoting the *duty-free* Internet. The US had secured support for the *duty-free* Internet in much of the rest of Asia, further isolating the *information society* norm proposed by the EU. While US policymakers engaged in a counteroffensive against the information society, they were simultaneously working within the WTO to institutionalize the duty-free Internet within the extent global trade regime.

The WTO: Institutionalizing the *Duty-free* Internet

The USTR was the lead agency for the US Government as it negotiated within the WTO for an agreement that required all WTO members to treat the Internet as a *duty-free* trade zone. Other agencies were given specific assignments from President Clinton in July 1997 to negotiate similar agreements in support of the *duty-free* Internet. For example, the US Treasury Department was directed to negotiate bilateral and multilateral agreements to prevent the taxing of electronic commerce, which would make economic exchange cumbersome by increasing transaction costs beyond what the nascent electronic market was willing and able to bear. The Commerce Department was instructed to ensure that adequate protections were agreed to among nation-states for intellectual property and it was tasked with eventual oversight authority for a private, market-based Internet management and electronic commerce regulatory regime – what

later became the International Corporation for Assigned Names and Numbers (ICANN). Locating oversight authority for the Internet at the Commerce Department reflected US Internet policy preferences for the Internet to be a key economic engine for growth in the twenty-first century and as a platform for the expansion of US commerce and political ideals.

On 23 March 1998, Magaziner reviewed talking points for President Clinton concerning US efforts to-date to construct a global Internet governance regime. The document notes that “The rapid deployment of the Internet has been a great technical achievement but technology alone won’t guarantee the wide acceptance of electronic commerce and its benefits to the US economy.”³⁸ The following three points can be drawn from this statement. First, the US policymakers saw in the Internet the solution to increasing the rate of expansion within the domestic economy. Second, in order for that domestic economic expansion to occur, US policymakers needed to construct a global Internet governance regime that complemented the *duty-free* Internet. Third, US policymakers needed to generate as much support for US Internet governance policy preferences as possible. The next sentence in the talking points links the internet with keeping foreign markets open to US commerce: “The right for US companies to compete in foreign . . . markets, won at the WTO through US market leadership, along with the increasing number of Internet-based enterprises, provides the economic basis for US investment in electronic commerce. The next hurdle will be to keep foreign markets open to the full range of American goods and services that can be delivered using the Internet.” The US government would overcome this hurdle within the WTO.

³⁸ Facsimile to Matthew Hoffman from Greg Chang, Secretariat for Electronic Commerce, Department of Commerce. 23 March 1998. The Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

As consultations within the WTO moved forward, US government strategy to extract commitments concerning treating the Internet as a *duty-free* trade zone, began to payoff. Once commitments had been obtained, nations and other partners would stage press conferences at which joint statements on global electronic commerce would be issued. The EU was the first major economic partner to agree to a joint statement, released publicly on 5 December 1997 followed by a joint statement with Japan on 15 May 1998.³⁹ For the US, achieving bilateral agreements with the EU and Japan on Internet governance locked in nearly three-quarters (as of 1998) of the world economy to a *duty-free* Internet facilitating WTO negotiations that would end favorably for the US Government. Once the bilateral agreements were completed, the US could then work, wielding considerable clout, within the WTO to negotiate a WTO global electronic commerce agreement centered on the *duty-free* Internet and to which all WTO members would be obliged to adhere.

On 20 May 1998, Don Abelson, then working as a US Trade Representative, was the primary US negotiator within the WTO for ICT issues. He filed a report on the outcome of negotiations at the WTO regarding treatment of electronic commerce. The first sentence of the report is telling. He exclaimed, “We got it!”⁴⁰ One can almost sense the relief mixed with the jubilation at having achieved consensus in the WTO regarding the Internet as a *duty-free* trade zone. While other issues such as data privacy,

³⁹ Copies of the Japan-US and EU-US joint statements on global electronic commerce are on file with the author and available upon request. The statements are also accessible in the public domain: Japan-US at http://www.mofa.go.jp/POLICY/economy/e_commerce/statemt9805.html and the EU-US statement at <http://www.qlinks.net/comdocs/eu-us.html>.

⁴⁰ Email, Donald Abelson to Marten and Gregory W. Chang. 20 May 1998. “GEC: WTO Initiative.” The Domestic Policy Council – Ira Magaziner, Electronic Commerce Collection, William Jefferson Clinton Presidential Library. Digital image on file with author.

spamming, encryption and the status of the DNS remained unresolved and thorny issues, the US had achieved a global consensus for US Internet policy preferences. Magaziner deadpanned that, “We [the US Government] were able to secure agreements; it took a lot of work and time.”⁴¹ In Magaziner’s view, essential to securing those bilateral agreements was showing “ other countries how adopting the Internet was in their economic interest.”⁴² In the view of US policymakers, bringing the interests of other state and non-state actors in harmony with that of the US Government regarding global governance of the Internet was absolutely critical to generating global support for the *duty-free* Internet. According to Carr (2001), constructing a harmony of interests concerning specific policy questions is a time-proven strategy for maintaining a preponderance of power. What remained for US policymakers was to form a regime structure that accorded with the hard won and socially constructed harmony of interests among key economic partners on Internet management and electronic commerce regulation.

While the US push for harmony among key economic partners upheld the spirit of the law, the letter of the law was less often followed. Certainly the US went to great lengths to ensure an open and transparent process – even posting a draft framework on the White House website, welcoming public comments, and consulting with the ISOC and information technology developers, providers, and users – but it was impossible for the US to achieve absolute consensus among all Internet stakeholders given the disparate views concerning the purpose for which the Internet would be put in the post-Cold War era. The Internet policy preferences of US policymakers simply did not square

⁴¹ Magaziner, Ira. 2010. Phone interview with author, 5 April 2010. Notes on file with author.

⁴² Magaziner, Ira. 2010. Phone interview with author, 5 April 2010. Notes on file with author.

with those of the Internet as a decentralized political space characterized by libertarian or communitarian ideals and practices.

Rather, the Internet, in the view of the US government, can be characterized as the twenty-first-century open door to overseas markets. Magaziner argued that “When you are trying to create a predictable environment, the libertarian thing won’t work, we had to find a balance between [government], corporations, and keeping the Internet free.”⁴³ By “free” Magaziner meant the absence of government encumbrances that would stifle technological innovation, creative entrepreneurship, and expansion of US commerce and political ideals via the medium. The *duty-free* Internet was the full expression of the long-held policy preferences of US policymakers. Indeed, *duty-free* Internet reflected the US national interest: a stable and secure democracy through uninhibited global expansion of commerce and political ideals. The final phase in US Internet governance policy was developing legal protections for holders of intellectual property rights, thereby ensuring that free-market principles could operate on the Internet, in contrast to the EU Internet Charter proposal. The EU attempt at generating momentum for the information society, including the hosting of a roundtable conference in June 1998, was futile in the face of US Government successes at obtaining bilateral and multilateral agreements that institutionalized the *duty-free* Internet among state and non-state actors and within the extent global trade regime.

The EU Internet Charter proposal and the US proposal for a not-for-profit market entity reflected distinct policy approaches to global governance of the Internet. Whereas US policymakers were content to set the rules for market participation and then step aside to allow market participants to compete, EU policymakers were more inclined to

⁴³ Magaziner, Ira. 2010. Phone interview with author, 5 April 2010. Notes on file with author.

intercede on behalf of market participants in order to protect social or cultural norms or champion market participants over others (Venturelli 2002). These disparate Internet governance policy approaches reflect disparate perceptions on the part of US and EU policymakers concerning market advantages of domestic high technology industries. Policymakers in the US were supremely confident in the capability of US high technology industry to compete and win market share, while EU policymakers, aware of market disadvantages for the EU high technology industry relative to the US, took a more active role in the marketplace in an attempt to make the EU high technology industry competitive with the US high technology industry. Consequently, EU policymakers characterized the US market advantage as “dominant” in order to generate momentum against US Internet governance proposals.

ICANN: Protecting Intellectual Property and Managing the DNS

The formation of a DNS management entity represented the final bastion in the Internet governance regime constructed by US policymakers to protect the *duty-free* Internet as a platform for expansion. In this section, I argue that the primary purpose of the market-based entity was to protect intellectual property rights (IPRs) against infringement, thereby ensuring that market actors could with confidence utilize the Internet as a commercial platform. In order to achieve this objective, US policymakers had to balance concerns over the above and continuing US oversight of domain name registration practices. The controversy over DNS management is popularly known as the *domain name wars*.⁴⁴

⁴⁴ It is not my intention in this section to offer a detailed analysis of the politics associated with designing and implementing the new DNS management entity that eventually became ICANN. Rather, it is sufficient for my argument to carry to establish the primary purpose for ICANN from the perspective of US policymakers. Mueller (2002) provides an excellent and detailed analysis of the domain name controversy

The domain name wars gave rise to the term “cyber squatting” that described the practice of registering a domain name like “*www.pepsi.com*” with the intention to sell the domain for a quick profit to the intellectual property holder. Pepsi-Cola is a registered trademark (intellectual property) of PepsiCo, a diversified food and beverage manufacturer with 2009 revenues that exceeded \$42 billion and that employs 203,000 people.⁴⁵ According to the Coalition against Domain Name Abuse (CADNA), a lobbying entity headquartered in Washington, D.C., formed by such corporate behemoths as Dell Computers, Verizon Communications, Hewlett-Packard, Wells Fargo & Co., HSBC Holdings, and Nike, Inc., the practice of cybersquatting inflicts economic damages on intellectual property rights holders of approximately \$1 billion annually.⁴⁶ The US Government was particularly concerned about protecting the intellectual property rights of US multinational corporations, especially high technology and media companies, and ensuring that future global trade over the Internet would be efficient. Indeed, market participants must have confidence in the rules of the market for markets, whether barter or Internet, to function properly.⁴⁷

Following this economic logic, the US Government had issued a Green Paper on 30 January 1998 that proposed a not-for-profit market-based entity be formed to manage the domain name system and serve as a protection against intellectual property rights infringements. In this manner, existing market institutions would be

and the formation of ICANN, see Chapters 8 through 10 especially. Also see Mathiason (2009); Bach & Newman (2007); Mueller, 2007; Simon (2006); Drezner (2004); Mueller (1999); Froomkin (2000).

⁴⁵ The PepsiCo profile is available at http://www.hoovers.com/company/PepsiCo_Inc/rrrjji-1-1njg78.html. Last accessed 4 October 2010.

⁴⁶ See <http://www.cadna.org/>. Last accessed 4 October 2010.

⁴⁷ North (1990). Also see Boettke, Coyne, and Leeson (2010) or Higgs (1997).

mapped onto cyberspace, thus creating the rules-based structures necessary for markets to function efficiently. The US Government was explicit in the Green Paper on this score: “For cyberspace to function as an effective commercial market, businesses must have confidence that their trademarks can be protected.”⁴⁸ The groundwork for US commercial expansion through leveraging the Internet was being laid through the US Internet governance policy proposal. This Green Paper was intended by US policymakers to assuage the domain name controversy, then reaching a crescendo.⁴⁹ According to Mueller, state actors and regional organizations like the EU reacted forcefully toward the US Green Paper. Mueller accurately diagnosis’s the heart of the vociferous reaction to it as being a choice between a more “US centric approach” and a more “International approach” (2002, 168). US policymakers feared that an international approach would get bogged down in lengthy negotiations inhibiting the growth of the Internet and thwarting its use as a global platform for the expansion of US commerce and political ideals. Instead of assuaging fears, the Green Paper poured gasoline on an already blazing fire by contributing to the perception that the US was bent on dominating cyberspace because the US government insisted on retaining DNS oversight authority.⁵⁰

The crux of the controversy over continued US oversight of the DNS was the fear among policymakers in the EU, Australia, Canada, and Japan, among other state and

⁴⁸ Copies of the White Paper may be obtained at http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm. Last accessed 5 October 2010.

⁴⁹ Copies of the Green Paper can be obtained at <http://www.ntia.doc.gov/ntiahome/domainname/022098fedreg.txt>. Last accessed 4 September 2008.

⁵⁰ See Mathiason (2009); Mueller (2007); Simon (2006); Drezner (2004); Mueller (2002); Franda (2001); Fromkin (2000); Mueller (1999).

non-state actors concerning the extraterritorial application of US intellectual property laws. Sovereign actors moved against the US proposal to ensure that IPR protections were coordinated among state actors within the World Intellectual Property Organization (WIPO). In response, US policymakers had to mollify concerns by agreeing to take a “light” oversight approach to the DNS and allow some small role for WIPO in the new regime structure. Allowing WIPO a small role appeared to placate the concerns of policymakers in other countries concerned about US dominance in the form of extra-territorial application of US intellectual property law.

On 5 June 1998, the US Government released a White Paper that superseded the Green Paper. Found in the White Paper is the following statement, “For cyberspace to function as an effective commercial market, businesses must have confidence that their trademarks can be protected.” The primary purpose of the new DNS management entity was to protect IPRs.⁵¹ In the White Paper, the US Government dropped the more controversial elements contained in the Green paper that had carved out a more robust US Government oversight role. Instead, the US Government would retain nominal oversight, continue to encourage market-driven governance and competition, and ensure the stability of critical internetworking technology. The new DNS management entity would include a WIPO-designed trademark infringement dispute procedure. The White paper was released through the National Telecommunications and Information Agency deep in the Department of Commerce. More a statement of policy than a proposal for new regulations from a regulatory agency, the White Paper was the result

⁵¹ Mueller (2002) stakes the same claim. See Mueller, p. 217. Mueller, however, argues that such a role for ICANN inhibits the utilization of the Internet as a communitarian panacea. See Mueller, p. 215 and pp. 265-267.

of intense negotiations between US and EU policymakers (Mueller 2002; also see Simon 2006).

In late June, 1998, enthusiasm swelled among Internet stakeholders who latched on to language in the White Paper that appeared to be an invitation from the US government for the Internet community to organize a not-for-profit corporation that the US Government could enter into agreement with to manage critical Internet resources. As a result, the International Forum on the White Paper (IFWP) was organized and sponsors included Internet service providers and domain name registries. The European Commission stepped forward to fund a series of meetings. Throughout the summer of 1998, a series of IFWP meetings were held beginning in Reston, Virginia, on 1-2 July 1998, then moving to Geneva, 24-25 July 1998, Singapore, 11-13 August 1998, culminating in Buenos Aires, 20-21 August 1998.⁵² While encouraging the IFWP process, policymakers in the US Government were ambivalent concerning the IFWP being primarily preoccupied with working directly with John Postel at IANA and with Network Solutions on a compromise that would facilitate the formation of the new DNS management entity envisioned by US policymakers. Up to this point, IANA had administered the DNS, while Network Solutions, based on a 1992 agreement with the National Science Foundation, managed the day-to-day operability of root server A. Mueller (2002) notes that IANA and Network Solutions had been delegated authority from the US Government as contractors to manage the DNS and root server A and, by virtue of this relationship, had an edge on maintaining their respective roles in the new global Internet governance regime.

⁵² Information on the IFWP is archived at <http://www.domainhandbook.com/ifwp.html>. Last accessed 5 November 2010.

Encouraging the IFWP served US Internet governance strategy in that US policymakers could claim transparency and an open process in which Internet stakeholders had input into the regime formation process, yet, prior to the release of the Green Paper in January 1998, US policymakers had begun considering articles of incorporation for the new DNS management entity. The IFWP provided cover for US policymakers who were working behind the scenes to complete the construction of a global Internet governance structure based on the *duty-free* Internet. Furthermore, from the perspective of achieving US Internet policy preferences, the controversy over domain names acted as a serendipitous diversion on behalf of the *duty-free* Internet in that the controversy focused attention away from the primary objective of US Internet governance policy: ensuring that the internet was utilized as a platform for the expansion of US commerce and political ideals.

As early as 6 January 1998, draft articles of incorporation were being circulated within the US Government for review and comment among representatives of agencies and departments serving on the NEC/NSC interagency taskforce led by Magaziner. Once again, US policymakers had determined the policy course to be pursued, released policy statements that sketched out that policy, asked for public feedback, made some adjustments to the policy in response to that feedback (thereby laying the groundwork to claim policy transparency and rough consensus), and then pressed forward with implementation of that policy intended to support long-term US policy objectives of expanding US commerce and political ideals. Instead of directly formulating the articles of incorporation, US policymakers allowed John Postel of IANA to work with legal counsel of his choosing to develop articles of incorporation. Drafts were periodically

provided to US policymakers for review. Thus, US policymakers were apprised of the progress Postel and his legal counsel had made on refining the actual legal structure of the new DNS management entity and had the opportunity to provide feedback. The IFWP produced alternative proposals that were submitted to the Department of Commerce in September 1998 (Mueller 2002). These alternative proposals served US Internet governance strategy by providing an air of transparency to US efforts to generate global support for the duty-free Internet that included the new DNS management entity.

Ultimately, the US Department of Commerce selected the proposal submitted by John Postel and formally entered into a contract with Postel to fold in his IANA operation into the not-for-profit corporation he had set up for that purpose. ICANN was formally organized on 30 September 1998. Postel had included with his submitted proposal a list of individuals whom he had vetted and who had agreed to serve on the board of directors for ICANN. An important part of the ICANN structure was the government advisory committee (GAC) on which the US had a permanent seat, while the other seats were to rotate among Internet stakeholders. The GAC was and is a forum in which state and non-state actors offer input into ICANN operations and was part of the compromise reached with the EU for government to have a role in the global Internet governance regime. ICANN included a Uniform Dispute Resolution Procedure (URDP) designed by WIPO that all domain name registrants had to agree to utilize in the event that questions arose concerning IPR infringements. The URDP had the benefit of ensuring that the global adoption of the Internet would not be impeded by litigation over IPR infringements. In essence, the URDP is an arbitration panel that draws from a pool

of arbitration specialists to hear complaints and render decisions. Mueller (2000) notes that those who file complaints about IPR infringement through the Uniform Dispute Resolution Procedure have a winning percentage of 80 percent. Once ICANN was officially incorporated, it was in California, thus subject to California and by default US law. The Department of Commerce entered into a memorandum of understanding (MoU) with ICANN to manage the DNS on behalf of the US government. This MoU was a mechanism for finessing the thorny issue of who owned what critical Internet resources. Grumblings persisted concerning the oversight role of the US Government in the new DNS management entity. Nevertheless, according to the US Government Accounting Office (GAO),

It is uncertain whether transferring control [of the DNS and the root] would also include transfer of government property to a private entity. Determining whether there is government property may be difficult. To the extent that transition of the management control to a private entity would involve the transfer of government property, it is unclear if the Department has the requisite authority to effect such a transfer. Since the Department states that it has no plans to transfer the root server system, it has not examined these issues. Currently, under the cooperative agreement with Network Solutions, the Department has reserved final policy control over the authoritative root server.⁵³

The US Government had funded the development of internetworking technology, funded the continued management of the DNS by IANA, and contracted with Network Solutions to manage the root. While US Policymakers were supportive of releasing internetworking technology for public use because doing so enabled the US Government to utilize the technology to expand US commerce and political ideals, transferring oversight authority to a multilateral organization was politically and legally

⁵³ GAO/OGC-00-33R| Commerce and ICANN. 7 July 2000. Accessible at <http://www.gao.gov/new.items/og00033r.pdf>. Last accessed 5 November 2010.

impractical. Since September 1998, the MoU with ICANN has undergone seven revisions and renewals with the US Department of Commerce. Two recent developments – multilateral oversight and expansion of the DNS – point toward the next stage of development that ICANN describes as the internationalized Internet.⁵⁴

The latest revision marks the end of US unilateral oversight of CIR. The 30 September 2009 agreement between ICANN and the Department of Commerce supersedes all prior agreements and memoranda of understanding between the parties. Being solely responsible for technical management of the DNS, ICANN is now accountable to a three-seat review board. The review board has two permanent seats, occupied by the Chair of the ICANN Government Advisory Committee (GAC) and the Assistant Secretary for Communications and Information at the US Department of Commerce (DOC), and one open seat selected by the GAC Chair and the CEO of ICANN. These changes in oversight of ICANN more fully incorporate the global community and weaken the charge that the US actively works to control the Internet through unilateral oversight of CIR. Still, the US is the only nation-state that possesses a permanent seat on the ICANN accountability review board that meets a minimum of once every three years to evaluate the performance of ICANN and this can only be interpreted as the US government acting to ensure an advantage over other participants in the ICANN Internet governance regime. While US Government Internet policy preferences are not opposed, in principle, to multilateral oversight, it is clear that the US is inclined to ensure that the duty-free Internet remains the basis for the global Internet governance regime by making permanent the US Government oversight role through

⁵⁴ ICANN Press Release, 30 October 2009. Available at: <http://www.icann.org/en/announcements/announcement-30oct09-en.htm>.

the GAC. Indeed, given the GAO legal finding, the US Government would be hard pressed to cease being a part of any oversight body for the global Internet governance regime.⁵⁵

The second recent development is the completion of a two-year study by ICANN on expanding the DNS to include international domain names or (IDNs). The focus of the study has been the country code top-level domains (ccTLDs), such as “.uk” for the United Kingdom, at the end of Internet addresses. The language currently employed on the Internet is US English, which has been viewed as an impediment to the spread of the Internet across the globe as non-native English speakers have had to learn English to utilize the Internet. ICANN with the ISOC have developed technology whereby Internet addresses registered under ccTLDs will be able to be expressed in other languages besides US English. So, for example, Chinese characters can be utilized in forming Internet addresses within the China ccTLD “.cn” or Cyrillic characters for composing Internet addresses under the ccTLD “.ru” for Russia. While there are concerns that the expansion of the DNS to include non-English characters increases the complexity of identifying the origins of fraud, spam, and cyberattacks or the cost to businesses and other copyright or trademark holders who must now register domain names in multiple languages, resulting in increased business costs, the potential incorporation of ever increasing numbers of Internet users harbors unlimited possibilities for the expansion of US commerce and political ideals. The George W. Bush and Barak

⁵⁵ Froomkin (2000) argues that Department of Commerce oversight that allows ICANN to issue rules concerning the management of the root and the DNS violates the US Constitution’s nondelegation doctrine or the Administrative Procedure Act which sets forth the procedures that US Government departments and agencies must follow when issuing new regulations.

Obama administrations have continued to emphasize the importance of the duty-free Internet to US economic and political expansion on which US national security rests.

US Internet Governance Policy post-Clinton Administration

The defense of the *duty-free* Internet continued through the Bush 43 administration and into that of Obama. During the Bush presidency, US Internet governance policy coordination was assigned to the Office of Science and Technology Policy (OSTP), part of the executive office within the White House though the Commerce Department through the NTIA was the oversight agency for ICANN and VeriSign, which had purchased Network Solutions in 2000. Dr. John Marburger, trained in Applied Physics at Stanford University, served as Science Advisor to the President and Director of OSTP during the Bush administration. In response to questions concerning US Internet governance policy during that time that I posed to him via email on 5 April 2010, Marburger wrote, “The [Bush] Administration policy was that the Internet should remain in the private sector, and not in any way [be] controlled by a government or by a multi-governmental organization.” He follows by describing the oversight of ICANN for which the Department of Commerce was responsible as, “very light-handed, permitting the rather free-form governance structure to evolve in response to market forces. In a sense, the arrangement with the Dept of Commerce was regarded as the most benign form of oversight possible.”⁵⁶

In other words, the US government did not seek to control the Internet, instead, US policymakers sought to protect the Internet from government control in order to allow the Internet to serve as a platform for commercial and political expansion. In

⁵⁶ Marburger, John. 2010. Email correspondence with author, April 5, 2010. On file with author.

response to a question concerning the view of the Bush administration toward the Internet as a communications medium, a commercial medium, or a technology for which US commercial enterprises ought to lead in developing and, especially, in exporting the hardware and software necessary for a nation-state to plug into the Internet and for consumers to enjoy an online experience, Marburger states, “The Bush Administration saw the Internet as all of the above.”⁵⁷ In short, the continuity in US Internet governance policy between the Clinton and Bush administrations is striking. Most important is that the Internet continued to be viewed as primarily a commercial medium for the purpose of directly expanding the market reach of US commercial enterprises overseas. The Obama administration has explicitly claimed the Internet as a vital component of US foreign policy for promoting commerce and democracy through the provision of access to information while retaining the view of the Internet as a commercial medium. President Obama and Secretary of State Hillary Clinton have linked an open and free Internet to promoting democracy and commercial expansion.

President Obama held a town hall meeting at the Museum of Science and Technology, Shanghai, China, on 16 November 2009. Mr. Obama, during that town hall, responded to a two-part question that asked whether or not Mr. Obama was aware of Chinese government censorship of the Internet and whether Internet users in China should be free to use Twitter. Mr. Obama stated, “I am a big believer in technology and I’m a big believer in openness when it comes to the flow of information. I think that the more freely information flows, the stronger the society becomes, because then citizens of countries around the world can hold their own governments accountable. They can

⁵⁷ Marburger, John. 2010. Email correspondence with author, April 5, 2010. On file with author.

begin to think for themselves. That generates new ideas. It encourages creativity.”⁵⁸

After expressing his commitment to an open and free Internet, President Obama then links the accountability of government and especially that of policymakers to citizens to increased access to information provided by Internet technology. Mr. Obama then describes the advantage his presidential campaign gained as a result of Internet-based political marketing in which “people became excited about our campaign” and “it really ended up creating the kind of bottom-up movement that allowed us to do very well.”⁵⁹ President Obama immediately followed his recollection of the political value added to his campaign by the Internet using commercial enterprise by claiming, “Now, that’s not just true . . . for government and politics. It’s also true for business.” He cites the case of Google and argues that because the Clinton administration unleashed the commercial potential of the Internet, new industries have been created and global commerce has been “revolutionized.”⁶⁰

Just two months later, on 21 January 2010, Secretary Clinton gave a speech at the Newseum in Washington D.C., that was titled *Remarks on Internet Freedom*. Echoing President Obama’s remarks during the town hall meeting in Shanghai on 16 November 2009, Secretary Clinton stated that “access to information helps citizens hold their own governments accountable, generates new ideas, encourages creativity and

⁵⁸ Obama, B. 16 November 2009. Remarks by President Barack Obama at Town Hall Meeting with Future Chinese Leaders. Available at <http://www.whitehouse.gov/the-press-office/remarks-president-barack-obama-town-hall-meeting-with-future-chinese-leaders>. Last accessed 1 April 2011.

⁵⁹ Ibid.

⁶⁰ Ibid

entrepreneurship.”⁶¹ In her remarks, Secretary Clinton stressed the potential for the Internet to serve as a technological means for opening closed societies politically and economically. Opening closed societies was but the first step of “progress,” and by that Secretary Clinton meant that the Internet can have a multiplier effect in economic development and as the “on-ramp to modernity.”⁶² Mrs. Clinton claimed, “we know from long experience that promoting social and economic development in countries where people lack access to knowledge, markets, capital, and opportunity can be frustrating and sometimes futile work. In this context, the Internet can serve as a great equalizer. By providing people with access to knowledge and potential markets, networks can create opportunities where none exist.”⁶³ The Internet, according to Secretary Clinton, offers low cost access to domestic and foreign markets and information: the bedrocks of democracy in her view. Both President Obama and Secretary Clinton link expansion of US commerce and political ideals to an Internet that is largely uninhibited by government intervention consistent with the *duty-free* Internet norm articulated by the policymakers in the Clinton Administration.

Summary

The US Government pursued a multi-layered strategy to achieve the implementation of a global Internet governance regime based on the duty-free Internet. Bilateral agreements with key economic partners were obtained in support of the duty-free Internet in order to lock in support for subsequent multilateral agreements with the EU and within the APEC and WTO. The EU Commission was particularly problematic

⁶¹ Clinton, Hilary Rodham. 21 January 2010. Remarks on Internet Freedom. Available at <http://www.state.gov/secretary/rm/2010/01/135519.htm#>. Last accessed 1 April 2011.

⁶² Ibid.

⁶³ Ibid.

for US Internet governance policy preferences by, on the one hand, ostensibly supporting US Internet policy preferences, then, on the other hand, working counter to US Internet policy preferences by proposing an alternative norm and regime governance structure. It appears that the EU Internet Charter proposal was a delaying tactic designed to 1) sap momentum from US Internet governance policy in order to stretch out global negotiations to provide an opportunity to gradually erode support for the *duty-free* Internet; 2) a political ploy for domestic consumption within the EU – the EU Commission could demonstrate that it, at least, had attempted to organize resistance to alleged US dominance; and 3) protect the unique cultural norms of EU member states, such as France, from being swept aside by a new media platform saturated with US cultural content and shaped by US norms. The US Government pressed forward with institutionalizing the duty-free Internet within the WTO and forming a private market based entity – ICANN – to manage the operability of the DNS while retaining oversight authority, regardless of EU Commission concerns. In effect, the EU delay tactic was designed to achieve the strategic objective of EU input in the final structure for the global Internet governance regime.

The formation of ICANN represented the success of the last element in the bulwark protecting the *duty-free* Internet. That bulwark was comprised of five elements: 1) retained US oversight by the Department of Commerce; 2) bilateral agreements on the commercial purpose of the Internet with key economic partners; 3) multilateral agreements in APEC and especially the WTO; 4) the formation of ICANN, which ensured that the Internet would remain free of government impediments to growth; and 5) protection of intellectual property rights ensured through the UDRP within ICANN.

Some have argued that ICANN represents a new animal in the regime jungle⁶⁴ owing to the unique organizational structure of ICANN and the operational and market role that ICANN fills in managing critical Internet technologies. Certainly ICANN reflects US Government national interests⁶⁵ concerning the structure of the global Internet governance regime and ICANN is still answerable to nation-states for how it conducts operational and market management of critical Internet technologies. The relationship between ICANN and nation-states may best be viewed in light of a principal-agent framework that accounts for the effects on national interests.

⁶⁴ Franda (2001); Froomkin (2000); Lessig (2004); Mathiason (2009); Mueller (1999, 2002, 2007, 2010); Simon (2006).

⁶⁵ Drezner (2004).

CHAPTER 6 CONCLUSION

This dissertation identifies the origins and purpose of US Internet governance policy. The policy of the United States toward governance of the Internet has been characterized as a threat to the use of the technology as a potential platform and medium for flattening political authority and enabling the global advent of democratic deliberation capable of transcending *realpolitik* among nation-states (Cogburn et al. 2005; Froomkin 2000; Lessig 1999, 2004; Mueller 2002, 2010). This characterization of US Internet governance policy has been taken at face value and it dominated the literature on this topic with little systematic examination of US Internet governance policy. To a large extent, US Internet governance policy has been distorted into a straw man for polemical purpose. This dissertation fleshes out US Internet governance policy, demonstrating that US policymakers pushed ahead with implementing a global Internet governance regime consistent with long-term policy aims and did so with the consent of leading economic powers. The crux of this dissertation is that US policymakers drove consensus among leading economic powers for intentionally assembling the duty-free global Internet governance regime that is infused with legitimate power and purpose to facilitate conditions conducive for expansion. Expansion is the link between the duty-free Internet, embedded liberalism, and US policymaker *Weltanschauung* as described by the Open Door. In what follows, I summarize the main arguments of this dissertation, point to directions for future research, and reflect on this dissertation's policy implications.

Summary of Arguments

Reviewing textual evidence collected through archival research and direct-interviews of former US policymakers led me to ask several questions that have guided this study. How did the critical events, policies, and policymakers coalesce to shape the social purpose of the Internet as a largely commercial medium? More specifically, why did US policymakers view the Internet as a commercial medium rather than as a medium for communications and information exchange in the post-Cold War era? How did the US succeed in generating consensus among disparate stakeholders concerning the normative structure of the present global Internet governance regime? What insights into the status of the state in a globalized, interdependent, and technologically interconnected world can answering these questions provide to international relations? Given that Internet governance remains a hotly contested issue in global politics and within the scholarly literature on this topic, how can understanding the purpose for US Internet governance policy illuminate the outlines of the controversy, thereby uncovering perhaps, possible resolutions? Finally, what can the case of US Internet governance policy tell us about the role of leading economic powers in developing regimes that preserve normative continuity in the face of rapid technological change?

I argue that, based on my findings, the assertion that the Internet is a catalyst for change from state-centric international politics to global community-centric politics currently lacks empirical support. Policymakers in the US forged consensus among other leading economic powers for a global Internet governance regime with power and purpose for fostering conditions favorable to political and economic expansion. US policymakers intended that expansion to be consistent with embedded liberalism, the normative framework of the post-World War II global political and economic order. Any

change that the Internet has been a part of must be viewed as norm-governed change in that the Internet was not part of revolutionary normative change, as was envisaged in the broader Internet governance and globalization literatures, but was instead harnessed in support of embedded liberalism. Thus, the duty-free Internet was intentionally developed by US policymakers to serve simultaneously as a platform for expansion of American products and political ideals and to protect embedded liberalism, the grand norm of the post-World War II global order designed and implemented to facilitate conditions conducive for expansion by all actors in international political economy (Polanyi 1944; Ruggie 1983).

Lacking sufficient working knowledge for the topic of Internet governance and US Internet governance policy meant that until I had gained sufficient understanding and expertise on the research topic I would have to postpone framing a research question and theory to explain findings. In Chapter 1, I described the iterative process of research and discovery that I experienced while relying upon a grounded theory research design as guide. Once I had gathered textual evidence and conducted textual analysis, I then framed the overarching question for this study: why did US policymakers view the Internet as a commercial medium rather than as a medium for communication? This question prompted me to search for a theory. Enter the Open Door interpretation of US diplomatic history. The core premise of the Open Door is that, from the foundation of the United States, US policymakers have shared a *Weltanschauung* – a belief or worldview – that security for the United States could be achieved through sustained commercial and political expansion abroad (Beard 1934a,b; Williams 1972).

I then moved in Chapter 1 to link the Open Door, a state level of analysis framework, with embedded liberalism, a system level of analysis framework, in order to 1) show the normative consistency between the two, 2) set the stage for the claim that norm-governed change best describes how the Internet was incorporated into extant global political and economic orders, and 3) set the stage for establishing the claim that the state remains the most potent political institution in global political economy for forming regimes. Critically, US policy shaped by the Open Door preceded embedded liberalism. One may plausibly view embedded liberalism as the globalized open door. Embedded liberalism is fundamentally intended to foster conditions in the global political economy conducive for expansion of free-markets and democracy, precisely the intended purpose of US policy from the perspective of the Open Door and embedded liberalism. State actors develop regimes to address issue areas that pose the possibility of norm-transforming change in order to preserve extant normative frameworks on which is suspended the global political and economic order. Having set the stage, Chapter 2 focused more directly on the notion that the Internet, as a component of globalization, is promoting normative change.

Chapter 2 argued that the strength of globalization and the Internet as catalysts for norm-transforming change was, perhaps, overstated. The idea of global governance as a response to anticipated norm-transforming change presented by globalization and attendant spread of the Internet is ambiguous at best. But this inherent ambiguity allows for the idea to become infused with normative assumptions that do not reflect the important role that states fill in implementing regimes charged with harnessing that change in support of the extant global political and economic order. In short, state

power is understated by the globalization and governance literatures as an important element in fashioning global governance responses to the prospect of norm-transforming change. Viewing global governance as a state mediated process accounts for the significant role that state power fills in developing and implementing regimes. This definition is consistent with the claim that the preponderant power of the United States was decisive in shaping the extant global Internet governance regime suspended on the duty-free Internet norm. The duty-free Internet is examined in more detail in Chapter 4. In the conclusion to Chapter 2 I described the contours of the extant global Internet governance regime to prepare the ground for detailing how US policymakers developed US Internet governance policy.

Chapters 3, 4, and 5 constitute the presentation of empirical findings, yet each tells a part of the story concerning the origins of US Internet governance policy. Chapter 3 traced the development of US Internet governance policy from the 1992 presidential election through July 1, 1997, the date on which President Clinton announced what would be US Internet governance policy. Chapter 3 establishes that President Clinton authorized his Domestic Policy Advisor, Ira Magaziner, to organize and lead an interagency taskforce drawn from members of the National Security Council and the National Economic Council to develop US Internet governance policy. Magaziner's view of the Internet was decisive in shaping US Internet governance policy. For Magaziner, the Internet represented, first, an historical development that portended the end of the heavy industry based economy; and, second, the Internet could be the technological means for opening overseas doors shut to US commerce and political ideals if given a regime that was implemented with that express purpose and power. In the post-Cold

War era, the taskforce he led proposed a policy to President Clinton that would purpose the Internet for commercial and political expansion abroad. This purpose for the Internet reflected views held by US policymakers that the economy of the United States, then just emerging from the 1991-92 recession, needed to pursue export led growth in order to create jobs and preserve the general prosperity of American society. Precisely the policy that the Open Door predicts US policymakers will pursue and consistent with embedded liberalism, which is designed to enable expansion abroad. The challenge and opportunity for US policymakers was to devise a norm that would be acceptable to other leading economic powers and that could serve as the normative framework for a global Internet governance regime.

Chapter 4 details the process within the US government that produced the norm on which is framed the extant global Internet governance regime. That norm is the duty-free Internet. The duty-free Internet delineates the relationship of the state to the market, the relationship of the state to society, and the relationship of the state to the individual in terms of the Internet. In brief, the duty-free norm specifies that the state is to refrain from implementing policy that would impede the utilization of the Internet as a platform for American commercial and political expansion. Any Internet-related policy the state may implement should support the duty-free Internet. The duty-free Internet became the rallying cry for US policymakers as they worked to develop consensus and generate momentum for US Internet governance policy preferences among leading economic powers.

After the announcement of US Internet governance policy by President Clinton on July 1, 1997, US policymakers coordinated, led, and, including Magaziner, engaged

in a concerted diplomatic effort to develop consensus among other leading economic powers. Chapter 4 also details the diplomatic strategy employed by US policymakers, which was to engage with counterparts in foreign governments to inform them of and gauge support for US Internet governance policy. Magaziner and other US policymakers moved to secure joint statements on electronic commerce from other nation-states in order to generate momentum that other leading economic powers would be unable to withstand and, ultimately, consent to US Internet governance policy preferences. Generating momentum was significant for the United States to achieve Internet governance policy preferences because other leading economic powers, especially the European Union (EU), were moving quickly to develop and propose alternative Internet governance arrangements.

Chapter 5 focused on efforts of US policymakers to obtain the consent from the Government of Japan for US Internet governance policy preferences. Following the same strategy as that employed vis-à-vis the EU, US policymakers engaged other nation-states within the Asia Pacific Economic Cooperation (APEC) forum in an effort to generate momentum that policymakers in Japan would be induced to join. Just as US policymakers were about to achieve global consensus, the EU publicly released an alternative proposal for global Internet governance that US policymakers were forced to confront before Japan would consent to US Internet governance policy preferences. The EU proposed the information society as an alternative norm to the duty-free Internet and called for a multi-lateral process to develop a formal global Internet governance organization. Fearing that a formal global Internet governance organization would stamp out innovation and inhibit the Internet as a platform for the expansion of American

commerce and political ideals, Magaziner and other members of the Clinton Administration quashed the EU proposal and pressed forward with transferring day-to-day oversight of Internet technical operations to a new entity charged with managing the domain name system and protecting intellectual property rights – the Internet Corporation for Assigned Names and Numbers (ICANN). Chapter 5 also describes how the US achieved institutionalization of the duty-free Internet within World Trade Organization frameworks, effectively limiting states from dis-incentivizing through taxation the use of the Internet as a platform for buying and selling goods and services transnationally.¹ After the Clinton Administration, both President George W. Bush and President Barak Obama maintained a steady course for US Internet governance policy. Chapter 5 concludes by arguing that the primary objective of US Internet governance policy post-1999 was to protect the extant global Internet governance regime based on the duty-free norm from being supplanted by a more formal multi-lateral and intergovernmental organization while continuing to champion the Internet as the technological key for opening overseas doors shut to American commerce and political ideals.

Directions for Future Research

The spread of information technology is facilitating political change, but change that is best characterized as norm-governed. Grassroots political movements have employed mobile networking technology based on the principles of Internetworking technology to organize and channel political participation in nation-states where grassroots political participation has been directly controlled and repressed by

¹ States do retain the right to impose local sales taxes on goods and services exchanged via the Internet within sovereign borders.

governments. Unable to suppress the groundswell for political change, governments in Tunisia and Egypt have fallen, civil war and ensuing stalemate in Libya has occurred, and governments in Syria, Bahrain, and Iran have viciously put down – for the time being – grassroots movements for political change. As the Internet moves from hardwired connectivity to wireless connectivity, the capacity of states to exert control over telecommunications systems will come under pressure. Examining how political movements utilize mobile and social networking technology to achieve political objectives will be a primary area of research going forward. Indeed, it is these sorts of grassroots movements that US policymakers, especially Magaziner and the interagency taskforce he led, hoped could develop if given fertile conditions and, in part, why the United States Government continues to prevent a formal multi-lateral and intergovernmental global Internet governance organization from emerging. Web 2.0 technologies developed because innovation was unrestrained by obtrusive top-down governance of the Internet. Should democracy take hold in formally authoritarian nation-states, in no small part because information technology was allowed to bloom unimpeded by top-down Internet governance, US policymakers would have realized long-held objectives for expanding American political ideals and commerce in regions of the world previously closed. The tradeoff to the duty-free Internet is, however, acceptance of some insecurity given relatively open computer networks. But with President Obama labeling US computer networks as “strategic national assets,” it is unclear how long computer networks will remain relatively open and free.²

² Obama, Barak. 2009. Remarks by the President on Securing Our Nation’s Cyber Infrastructure. East Room of The White House, 29 May 2011. Available at <http://www.whitehouse.gov/the-press-office/remarks-president-securing-our-nations-cyber-infrastructure>. Last accessed 17 May 2011.

Centering on the notion that cyber war is inevitable, a cottage industry has grown exponentially arguing that the United States is ill prepared for the commencement of cyber hostilities and its effects (Armistead 2010; Clark 2010; Denning 1999; Libicki 2007; Paul 2008; Verton 2003). The idea of cyber deterrence has been proposed as a policy guide, but the application of deterrence theory to the cyber domain remains uncertain due mostly to the problem of attribution. That is, the inability to attribute or identify who or what is launching a cyber attack. A nation-state? A terrorist group? Or a teen-age prankster looking for kicks and giggles? Short of the global adoption of biometric sign-on technology for computer operating systems that is deposited in a database for later retrieval by authorities, the problem of attribution stands as a barrier to the application of deterrence theory to the cyber domain. But, this by no means suggests that theories of international relations may not be applicable to cyber space. One may plausibly pose the question: What aspects of international relations theories are applicable to the cyber domain?

Other problems needing attention include which authorities within government are responsible for responding to cyber attacks? Is a cyber attack a criminal act or an act of war? Of course, this all goes back to the problem of attribution and there is no clear solution to this problem. In addition, there is the question about the potential violations of civil liberties by keeping biometric information of all computer users worldwide on file in a database at an undisclosed government facility. Do we trade privacy for security? All of these questions, to a certain degree, depend on how serious we take the threat of cyber war and it may be that the effects of cyber war on society have been overstated.

Rather, the most pressing threat is cyber espionage that either successfully extracts commercial, military, and government secrets stored on computer networks, or, degrades, through computer attacks, nation-state capability short of an actual act of war. The recent cyber espionage coup against Iran by, allegedly, the United States and Israel is an example of successful cyber espionage. The Stuxnet virus was specifically designed to target the software that runs the electric motors of high-speed centrifuges manufactured by Siemens – a German multinational high technology firm – and used by Iran’s nuclear research program. The virus instructs the electric motors to spin the centrifuges faster than is optimal, leading to kinetic failure (the break up of the centrifuge). Prior to the Stuxnet virus, it was estimated that Iran would have a nuclear weapon by 2010. As a result of the Stuxnet virus, fully a third of Iranian centrifuges were infected by the virus and taken offline. This outcome seriously degraded the capacity of Iran to produce weapons grade material, thereby pushing back the point at which Iran would be able to field a nuclear device to 2013 or later. Understanding the vulnerabilities of nation-states to similar computer network infections and what are appropriate policy responses should be given careful consideration by scholars and policymakers.

But perhaps the most pernicious cyber threat, in my opinion, is to economic institutions, especially financial markets. President Obama has asserted that, “America’s economic prosperity in the twenty-first century will depend on cybersecurity.”³ Financial markets were the first industry to widely adopt computer networking as a means for

³ Obama, Barak. 2009. Remarks by the President on Securing Our Nation’s Cyber Infrastructure. East Room of The White House, 29 May 2011. Available at <http://www.whitehouse.gov/the-press-office/remarks-president-securing-our-nations-cyber-infrastructure>. Last accessed 17 May 2011.

facilitating economic exchange. Trillions of dollars flow through cyber space each day doggedly pursuing the highest rate of return. It is not inconceivable that a computer virus could be unleashed on the computer networks of stock, bond, and money markets to manipulate buying and selling of financial instruments into a frenzy that causes them to collapse as the perpetrators walk off with billions betting against the market swings. This would be the ultimate larceny and one that would wreak economic havoc as the lifeblood of capitalism – financial markets – would have to be shut down for a period of time to analyze and repair infected computer networks. The loss of access to capital in an economy that relies on just-in-time inventory management and financing, consumer credit authorized through computer networks, and bank loans underwritten by computer programs that would be shut down for even a short period, would no doubt cause a significant economic dislocation. What is the role government has to play in ensuring the network security of financial markets? How does the private sector coordinate with government on cyber security, especially where intellectual property is concerned? These questions would shape and initiate this direction of research.

Another aspect of cyber security is protecting intellectual property from unauthorized technological transfer. Amsden (2001) has documented the significant role that technological and intellectual property transfer played in the process of industrialization and noted that the rate of industrialization increased significantly allowing states such as Japan and the United States to industrialize far quicker than Great Britain. Google, presently the premier search engine of the Internet, is scaling back its operations in China over concern to protect its intellectual property due to a penetration of its computer networks by hackers located in China for the purpose of

acquiring Google's intellectual property. The loss of intellectual property through hacking attacks affects the viability of a firm and, accordingly, job creation in an economy – the lifeblood of democratic politics from the perspective of the Open Door. In an information-based economy, intellectual property is the most important and valuable resource, requiring the coordinated vigilance of the private and public sectors. But to effectively prevent such unauthorized technological and intellectual property rights transfers, government must be allowed to install and operate surveillance technologies on the computer networks of targeted firms and, more broadly, the portions of the national computer network owned and operated by telecommunications firms. Doing so, however, potentially encroaches upon individual rights to privacy and raises the specter of an Orwellian government.

If there is an enduring theme in the politics of Internet governance that this dissertation was not intended to address, it is this tension between privacy and security. But framing the question in this way neglects the importance of technological and entrepreneurial innovation to the expansion of the Internet and attendant information technologies. Without innovation from wired to wireless Internetworking, from desktop to mobile networking, and the advent of social networking technologies, would an Arab Spring have occurred? Deibert et al. (2008, 2010) has reported that there are thirty-five nation-states that employ robust surveillance and Internet control technologies within their sovereign domains. But as the Arab Spring of 2011 demonstrates, the employment of such technologies is short-lived as grass-roots movements are able to harness their inherent flexibility and agility to adjust in order to achieve political change consistent with the very ideals and practices they observe and participate in on the Internet. The

Internet has become the very powerful catalyst for the sort of change envisioned by US policymakers. Keeping the Internet free and open remains the most critical policy of the United States concerning the Internet. The *Weltanschauung* of US policymakers identifies the most significant cyber threat as that which seeks to transform the duty-free global Internet governance regime. As long as the US has the power to do so, US policymakers will quash any attempts at norm-transformative change that would overturn the continuity between embedded liberalism and the Open Door in favor of norm-governed change that supports the duty-free Internet.

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BIOGRAPHICAL SKETCH

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