60, boulevard Saint-Michel - 75272 Paris Cedex 06 - France
email : presses@mines-paristech.fr
http://www.pressesdesmines.com
ISBN : 978-2-911256-57-8
Dépôt légal : 2012
Achevé d'imprimer en 2012 (Paris)

Normative Experience in Internet Politics

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Normative Experience in Internet Politics

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Foreword Mireille Delmas-Marty

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Foreword

The Internet: disrupting, revealing and producing rules

Mireille Delmas-Marty[1]

The Internet is a disruptive force in its relationship with various legal systems. As the Internet deployment goes beyond the scope of the current legal frameworks, States endeavour to "reterritorialize" it; value systems are intermingled; the axes of formal validity are distorted. This situation is chiefly attributable to the fact that law is becoming interactive (via exchanges of norms) and evolving (due to technological progress).

As a result, the Internet must be interpreted as revelatory of globalisation. At the same time, it is an instrument that makes law more complex (as the debate between sovereignism and universalism is made impossible), its comprehensiveness is altered (as actual situations become unpredictable from a legal standpoint) and its coherency is fragmented (owing to the competing norms transmitted by the Internet).

The Internet and legal systems

I would like to share a few thoughts on the relationship between the Internet and legal systems. This will also bring us back to the colloquium's main theme: 'Internet Governance and the Dynamics of Commons: "The Issue of Access"'. However, I would propose a slight change in terminology, in order to speak about "the interactive and evolving trend

[1] Conclusion to the Vox Internet colloquium held in Paris on 26-27 March 2010. This speech was transcribed by Clément Mabi.

between common good and governance". I view this relationship between the Internet and legal systems in three ways.

Firstly, I will say that the Internet is **disruptive** for legal systems, as it challenges the three axes of legal validity, namely *empirical validity* and the *effectiveness* and *efficiency of norms*. The Internet goes beyond the bounds of the law, operating both in a virtual space and in real time. States are completely overwhelmed by this shift, and are unable to cope with the problem. But at the same time, we see that states have not entirely withdrawn from this field: a process of reterritorialization is under way, and this raises issues for jurists, as the Internet is not a "territory" in the traditional legal sense.

The second axis is one of values. Its validity is axiological; here again, the Internet is disruptive insofar as it is a source of value conflicts – conflict between human rights and property rights, between human rights and competition rights. Also, within the category of human rights, security and freedom are conflicting.

A few years ago, Harvard professor Charles Fried [Fried, 2000] published a fairly virulent review of Lawrence Lessig's book *Code and Other Laws of Cyberspace* [Lessig, 1999], entitled "Perfect Freedom or Perfect Control?". With the "war against terror", we realise that the Internet has also become an instrument for control and surveillance. At present, there is ambivalence in France regarding this subject: around 50,000 cases of court-ordered surveillance are linked to the Internet every year. In the US, the authorities can implement surveillance via the Internet without a warrant. Thus, in the field of conflicts and values, the Internet also disrupts the legal system.

The final axis is of greater interest to jurists than to non-jurists. I will use the term "formal validity". Indeed, legal systems traditionally operate in a hierarchical and stable fashion. Legal certainty, hence the predictability of a norm, is linked to this type of operating mode.

At the same time, in reality, Internet law shows that the law is becoming interactive, with exchanges between national norms. The Yahoo! affair[2] is

[2] The french anti-racist association LICRA complained that Yahoo! were allowing their online auction service to be used for the sale of memorabilia from the Nazi period, contrary to Article R645-1 of the French Criminal Code *(Code pénal)*. These facts were

an example of such exchanges on the national, regional, European, US and global levels. Law is also evolving. I remember a meeting where members of the French Constitutional Council, which had issued a decision on digital law just before the HADOPI Law was passed, said: "We worked a lot on this decision, but when we issued it, the technologies had already evolved, and the decision no longer had a practical application, but had become purely theoretical". Therefore, even though law is interactive and evolving, it is unable to keep pace with technical changes. However, this disruption is perhaps not a specificity of the Internet.

Order and pluralism in the age of globalisation

This line of thought prompts a second remark: we tend to overestimate the Internet's specificity from a legal standpoint, as these are all problems of globalisation in general, the internationalisation of law and the globalisation of law. Moreover, the reasoning is valid not just in the legal field: it is also applicable in the fields of politics (the issues of power) and the economy (inequalities linked to the logic of the market economy).

All these issues are thus not unique to the Internet, and this leads me to say that instead of seeing the Internet as a disruptive force, it should perhaps be viewed as a revealing force, *i.e.* as a sort of mirror of globalisation. This mirror raises the question that Jean-Michel Cornu elegantly refers to as "the tragedy of the three C's"[3]. This tragedy lies at the heart of globalisation, including for jurists. Complexity, which is the tragedy's starting-point, is

not contested but the defense rested on the fact that these auctions were conducted under the jurisdiction of the United States. It was claimed that there were no technical means to prevent French residents from participating in these auctions, at least without placing the company in financial difficulty and compromising the existence of the Internet contents. The defendants noted that their servers were located on US territory, that their services were primarily aimed at US residents, that the First Amendment to the United States Constitution guarantees freedom of speech and expression, and that any attempt to enforce a judgement in the United States would fail for unconstitutionality. As such, they contended that the French court was incompetent to hear the case.

[3] Namely, that it is impossible to combine the three terms of complexity, comprehensiveness and coherence. See the first Vox Internet seminar Report (2005), appendix 4, available online at: www.voxInternet.org/article.php31id_article=11&lang=fr.

inevitable, in my view, insofar as the legal rules being implemented no longer fall into the traditional legal order. As mentioned above, the new order is not hierarchical or stable, but interactive and evolving. The debate between sovereignism and universalism is outmoded. Classic sovereignism does not answer cross-border questions such as those raised by the Internet, climate change, or many other issues. It is clear that universalism, aimed at uniformity, is also entirely inadequate. Universalism that intends to impose identical norms for the entire world does not function on a European level, much less on a global one. For this reason, I would use the term "orderly pluralism" [Delmas-Marty, 2006], combining two terms that are contradictory from a jurist's perspective, as "a plurality of orders" also implies "disorder" or "chaos".

To reach a minimal level of harmony on an international, regional or global level, we must accept both a certain pluralism and a certain order. The two must be combined. We thus enter much more complex legal systems. Yet legal thought is unprepared for complexity. Therefore, jurists must implement a sort of "cultural revolution". This is where we run into the tragedy: once complexity becomes necessary for pluralism, if we wish to avoid a hegemonic world order and the juxtaposition of levels of sovereignism, we must make use of pluralism and therefore complexity, which brings us back to the tragedy, *i.e.* a lack of comprehensiveness and coherence. The tragedy is that the "three C's" can never function together. If complexity is increased, comprehensiveness is decreased, whereas comprehensiveness is, in the eyes of jurists, linked to the implementation and predictability of a norm. Losing predictability, which defines comprehensiveness for the jurist, means losing coherence: the more complex the system, the more the values it conveys are heterogeneous.

In terms of comprehensiveness, we also lose out because of a problem that jurists seldom consider but which seems very important, in my view: the question of speed. The speed, or pace, of integration is very different depending on the local context. Even within a single context, the pace of evolution may vary and, as I already mentioned, technology evolves much more rapidly than the law. Due to these varying speeds, we witness the development of asynchronous and dys-synchronous phenomena. The Internet is perhaps one of the best catalysts for revealing these phenomena. I have mentioned other examples, such as climate change, but I think

that the Internet best reflects globalisation from the perspective of this obligation to consider "the three C's" beyond the tragedy.

The goal of Internet governance would thus be to endeavour to correct this tragedy by identifying how the Internet is a source of renewal for regulations and for the way that regulations are represented. In this respect, the Internet not only disrupts and reveals, but also regulates. To break free of the vicious circle of the "tragedy of the three C's", maybe we must reverse the order, and move from common good to governance. It would appear that, in order to trigger a virtuous dynamic, we cannot refer to the metaphor of the "bazaar" or to that of the "cathedral"[4]. A dynamic is not something that is fixed or static, but rather a transformation process. Whenever fundamental rights are mentioned, "human rights" are viewed as the foundation for value. In reality, this is much more a transformation process for legal systems than an actual foundation. Therefore, again, I prefer to speak of a transformation process rather than a foundation.

Transformation process synergies versus the "tragedy of the three C's"

To return to the question "where are the virtuous dynamics?", there are three conditions that fit with our concerns. We can cite the need to reduce incoherence and to tackle a lack of comprehensiveness; and these two conditions give rise to a third one: the need for control, and thus for a new form of governance. Reducing incoherence means emphasizing values; but, as mentioned earlier, we cannot adopt a uniform universalism of values that would be suspected of "dressing up" imperialism, with Western values being imposed on the entire world. It is therefore desirable to move towards a new humanism, or rather, towards a humanisation process: I prefer the latter expression, which entails a synergy between fundamental rights. For example, the French Constitutional Council debated the HADOPI Law not in terms of a fundamental right to Internet access, but in terms of access as a means for applying the fundamental right of free expression and communication. Fundamental rights, but also the right

[4] In the terms of Eric Raymond [Raymond & Young, 2001].

to privacy and most of the basic rights in the Universal Declaration of Human Rights or UN agreements, are at the heart of the "humanisation" of the Internet.

This process will not be sufficient, due to the lack of an adequately developed global mechanism for controlling the respect of fundamental rights. Therefore, a synergy must be created with transformation processes other than fundamental rights, *i.e.* with the famous "global public good". Basically, we are attempting – and I believe it is not an impossible goal – to create a synergy between the rationale of the global public good, which is based on the market economy and therefore perhaps more effective, and the idealist rationale of human rights and fundamental rights. A synergy must be found in order to reduce the incoherence, and this involves intersecting fundamental rights and global common goods. This is not a path for removing incoherence, but for diminishing it. The objective is not to reach common rules for defining values and imposing them indiscriminately on the entire world, but instead having common principles that, with a certain leeway for interpretation (on a national level), would set in motion something resembling "harmony" on a global scale.

This mission appears challenging if we work only in the field of fundamental rights, even if the scope is broadened to global common goods. It is desirable to tackle the lack of comprehensiveness while striving to improve (here, we are in the realm of formalism) predictability, despite complexity. What is needed is a new kind of formalism, hence the concept of an "imaginative form of law" to imagine new principles, new techniques and new models. Taking into account that the sovereignist and universalist models are both outmoded and inapplicable, a pluralist model must be invented, founded on techniques of creating norms that are not purely hierarchical.

The technique of allowing for a degree of interpretation at the national level, which enables a shared principle to be applied with leeway for each state, is already used in Europe with the European Court of Human Rights[5], which is a good example. A polychronous system could also be developed, *i.e.* a normative space that functions at various speeds. Here

[5] See the official website: www.echr.coe.in

again, Europe has experimented with this via the Schengen Area or the Euro Zone. This is also being attempted on a global scale, with the Kyoto Protocol to tackle climate change. New principles such as subsidiarity, which enables the local, national and global levels to be interconnected, must also be developed.

The need for control, a catalyst for designing a new kind of governance

The global level only intervenes when the other levels prove ineffective. Here again, this fact is currently being experienced in European law-making. This work of imagining a new legal system must also involve inventing a **new formalism** more suited to the actual world than current legal rationales. A few years ago, I wrote a book on the rather provocative topic of "vagueness in the law" [Delmas-Marty, 2004], in which I did not assert that vagueness is antithetical to law, but rather that law could be made with a strict formalism using vague concepts as a starting-point, based on methods of vague categories. Indeed, a legal reasoning can be built using imprecise norms, with a rational of gradation and a requirement of compatibility that is not necessarily conformity. Thus, the reasoning changes, more complex thresholds for compatibility become necessary, which enables the lack of comprehensiveness to be tackled and predictability to be strengthened.

Basically, reducing incoherence strengthens legitimacy, and tackling the lack of comprehensiveness bolsters predictability. However, these two methods of correcting the "tragedy of the three C's" will only work if there is control. If we concede leeway for interpretation on a national level, without a system of control, states will transform this leeway into absolute sovereignty. The same logic applies for the lack of comprehensiveness and new formalism. Therefore, there is a need for control that requires a third renewal effort, which brings us back to governance. If we wish to move towards an "Internet commons", *i.e.* by going beyond the concepts of fundamental rights and global public goods towards something in the common order, this must involve a new form of governance.

This new governance would articulate the roles of the various players: public-sector players, which have not entirely withdrawn from this issue; private-sector players (but here, the "hotchpotch" concept of civil society must be avoided, as the interests of economic agents do not coincide with those of civic or scientific stakeholders). The role of experts is absolutely vital in this type of field. Work must be done on the roles held by the various players and on the different regulatory modes, which will undoubtedly have to combine self-regulation, co-regulation, and inter-regulation, and include future supra-regulation in order to ensure a minimum common ground. This reconfiguration is combined with options for placing this common ground in context so that it does not diminish the cultural wealth of humanity, namely, its diversity. Thanks to technology and because we must find answers suited to the increasingly complex real world, the Internet offers an extraordinary opportunity to think of a way to eliminate the "tragedy of the three C's", or at least make it a less pressing and oppressive issue.

Conclusion

To set up a virtuous dynamic for Internet regulation and invent new transformation processes for the law, several paths can be opened up:

- Reducing the law's incoherence while avoiding universalism and finding synergies between fundamental human rights and global public goods;
- Tackling the lack of comprehensiveness of the law by improving its predictability, which requires a new formalism, new techniques and new legal models (*e.g.* by distinguishing between local and global extensions for the application of rules);
- Inventing a means to control the law, along with new governance modes needed for the large number of players involved and norms generated, between regulation and supra-regulation. This would come down to imagining the conditions for "common ground" that applies both universally and locally.

Introduction

From Internet Governance to Internet Politics

Françoise Massit-Folléa, Cécile Méadel, Laurence Monnoyer-Smith

The history of the creation and development of the Internet is undeniably, albeit very unevenly, shared between public organisations and private firms, between application developers and service and content providers, between international infrastructures and national regulations, between collective actors and autonomous individuals. The regulation of this new worldwide eco-system therefore, lying as it were at the crossroads between technology, economy, law and social practices, was very quickly given the term "governance".

In suggesting that private actors – particularly major firms or Non Governmental Organizations (NGOs) – join with States and intergovernmental organisations to regulate collective issues, governance does indeed appear to be "the sum of a myriad – literally millions – of control mechanisms driven by different histories, goals, structures and processes" [Rosenau, 1997]. It is not surprising then that many view it as an apolitical or non-legal concept[6].

In terms of the Internet, the primary aim of governance was "critical resource management", namely the management of the IP addresses and domain names that direct the flow of messages and data in the digital world. Created under the liberal-libertarian practices of the first network

[6] See [Lascoumes & Le Galès, 2004] and [Campbell, Crépeau & Lamarche, 2000].

pioneers, the IANA-DNS system[7] was largely appropriated by the government and private firms of the United States. Its democratisation and internationalisation were the subject of many a heated debate during the World Summit on the Information Society (WSIS, held from 2003 to 2005 under the auspices of the UN), which proved pioneering compared to previous summits by declaring its opening up to « civil society ».

In the definition produced during the WSIS, the scope of the concept was expanded and at the same time became blurred:

> "A working definition of 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." (Tunis Agenda, art. 34, 2005[8]).

The idiom « Internet governance » now encompasses several meanings that go well beyond the management of IP addresses and domain names: political regulation through the Internet which, from Twitter protests through to "Wikileaks" provocations, defies traditional governments's ruling; the economic regulation of contents, which brings into confrontation new and more traditional models of production and consumption; the regulation of Internet access infrastructures on an international, national and local level, where equity is yet to be established; the regulation of behaviours, that disregards the regulation of technical artefacts; and finally the ethical concerns surrounding an open technology that is in constant evolution. Each of these levels combines, to varying degrees, technical, legal, cultural and market norms.

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[7] The Internet Assigned Numbers Authority (IANA) is the body responsible for coordinating some of the key elements that keep the Internet running smoothly. Whilst the Internet is renowned for being a worldwide network free from central coordination, some key parts of the Internet are globally coordinated – and this coordination role is undertaken by IANA. Specifically, IANA allocates and maintains unique codes and numbering systems that are used in the technical standards ("protocols") that drive the Internet. As regards to the Domain Name System, IANA manages the DNS root and the .int and .arpa domains. It is currently operated by the Internet Corporation for Assigned Names and Numbers (ICANN), a non-for profit Californian organization linked to the Department of Commerce of the US Government (source : IANA website).

[8] http://www.itu.int/wsis/docs2/tunis/off/6rev1.html

The weak descriptive value of the WSIS definition above corresponds to an even weaker value of prescription, insofar as no principle allows any of the various normative fields to prevail or even be articulated. This has prevented international agencies from making progress on the question of the priorities, means and tools for deliberation necessary to reach a consensus on the principles of governance. The UN left the discussion in the hands of a new informal agency, the Internet Governance Forum, which is a forum for non-binding, international, multi-stakeholder dialogue. So far however, it is between States and major firms within the framework of the G8 and G20, that the political stakes of the Internet endeavour to be formatted, despite attempts by civil society to stay in the game.

And yet the Internet, which was created barely 40 years ago for use by a handful of individuals, now numbers more than two billion users. Its weight in the economy is constantly growing, both in terms of jobs and Gross Domestic Product (GDP). Its importance in strictly political terms is widely recognised in traditionally democratic countries as well as in those countries that aspire to democracy. The more Internet tools and usage became widespread and diverse, the more the questions concerning its control entered the fields of public policy and rules of law. The debate shifted from issues of technical regulation to issues that combine economic considerations and human rights. This is true for the issues of Internet neutrality, intellectual property rights, freedom of expression or the protection of personal data on the various networks.

Three movements can be seen to distinguish the current context: the stacking up of laws that are often repressive, in an attempt to "civilise the Internet" in each individual country; the quest, which still remains vain, for a unifying international framework, having the agreement of all the stakeholders; the movement for the capture of public good by means of individual interest (industrials and/or followers) which seems almost impossible to channel. The theoretical or ideological debates surrounding governance, which in recent years have focussed on tools subject to manipulation and low legitimacy procedures, have not enabled the leap from technical governance to the "legal humanisation" of the Internet[9].

[9] Expression taken from Mireille Delmas-Marty (see Foreword).

What type of normativity for the Internet? A research question

This book is the result of the Vox Internet research programme, begun in 2003[10]. We first established a diagnostic under the heading "Internet Governance: the state of play and the state of law"[11]. In a second phase, we attempted to examine Internet Governance in the scope of a "democratic construction of norms"[12]. In order to determine whether, beyond the definition put forward by the WSIS, it was possible to construct a coherent Internet System governance that was efficient and fair, Vox Internet directed its efforts, on the one hand, to the study of the causes and consequences of developments in the Internet and the debates arising thereof; and on the other hand, to the analysis of four complementary sources of contemporary normativity: the technical architecture of the Internet, the reality of online social networking practices, the evolution in the economic models of what is termed the "digital society", and the challenge that the Internet poses in terms of national and international law [Lessig, 1999]. In an attempt to elucidate the multifaceted make-up of Internet norms, but also to assign to it a democratic aim, two questions framed the process:

- what are the reference frameworks that already exist and how do they help us understand the process of Internet normalisation, management and appropriation?
- what general principles could be used as a base for improvements to existing tools or the creation of new ones for Internet governance?

As a medium for globalised communications, the Internet as a "global resource for transporting digital data" is confronted with the contradictory

[10] The programme was organised, under the scientific responsibility of Françoise Massit-Folléa, according to a multidiscipline framework, by network , on a European scale. From 2006 to 2010, it received the support of the « Agence Nationale de la Recherche » of the French ministry for further education.

[11] See http://www.voxInternet.org/spip.php?rubrique12&lang=en.

[12] Ibid.

movements of access and appropriation versus exclusion, openness and sharing versus capture and control. The sphere of its activity is simultaneously international and local, intangible and physical, invasive and ephemeral. This is true for its current form, and even more so in terms of what is expected from the Internet of the Future: the Internet of RFID, 'ambient intelligence', 'cloud computing' and the convergence with biotechnologies and nanotechnologies [Benghozi, Bureau & Massit-Folléa, 2009]. But according to the layer in question (computer protocols, data transport, naming and addressing, applications, uses), the weight and interest of the actors involved are very distinct. Even if we consider the Internet primarily as a new intellectual universe where digital content is transferred between people and/or machines, its media function remains ambiguous, because it combines bits and meaning, public and private messages, symmetrical and asymmetrical, or synchronous and asynchronous exchanges. Its uses, which go beyond the flow of content on the web, bring into confrontation communities and sovereignties, freedom of expression and public order, social skills and cybercrime, creative innovation and the defence of established positions.

The Internet then is at the heart of strategies that may appear erratic. At a time of search engines and social networks, the centralisation of 'core' resources (allocation of IP addresses and domain names), which appears paradoxical in a distributed network, has largely lost its criticality to the functioning of online exchanges. The dispersal of regulatory zones and the legal destabilisation that characterise the Internet do in fact concern increasingly vast sectors of global economic activity and act as an indicator of certain more general contemporary evolutions [Massit-Follea & Naves, 2008a]. By means of a dual movement of de-institutionalisation and re-institutionalisation, a multitude of public and private stakeholders are seeking to retain or gain power. The elaboration, or sometimes the imposing, of technical and economic norms that are "alternatives to legislation" [Boraz, 2006] constitutes one of the main characteristics of this situation.

Observation shows that certain technical decisions have major consequences. For example, filtering software or browser settings from opaque algorithms lead to State censorship or customer profiling that has little concern for the rights of the individual, even in so-called democratic societies. Decisions are taken but not acted upon (this is the case, among

others, for the successive legislation in the attempt to fight against content "piracy"). In general, the mechanisms for imposing regulations by public powers or supranational bodies are opaque and their effectiveness arbitrary.

The study of such a 'kingdom of uncertainty' presupposes going back over the way in which the Internet upsets existing normative references, including the establishing of norms and standards related to technology, to legislation, or to the social contract. We have adopted an approach according to which « this takeover of classical formalism by the recognition of a pluralism of norms reveals a change of perspective rather than a causality switch: in a situation where the coherence of existing rules, the hierarchical functioning of norms and the binary opposition (private/public, exterior/interior…) are contested, norms can be understood as potential forms of learning in a context of uncertainty." [Berten, 1997].

The purpose of this book is not to initiate yet another Byzantine debate on the concept of governance, which removes the normative foundations of its possible construction. Neither does it aim to square the circle between sovereignty and globalisation, between cooperation and competition, between freedom and security: we will leave to others the temptation to develop an international constitution of the Internet or a new article of the Universal Declaration of Human Rights. However, no-one can be satisfied with a system that "works technically but not politically"[13]. By deliberately adopting a multi-normative approach, our aim is to clarify the way in which the Internet governs as much as it is governed, and to situate Internet policies as close as possible to the actors that go to make it up. This being so, we will challenge the dynamics of regulation at work, their confrontation with more traditional forms of regulation and their capacity to formulate an open concept of Internet politics as "common management of a semi-common good"[14]. This constitutes both a phase of research and a new hypothesis.

[13] This appropriate expression was brought by Meryem Marzouki, co-founder of GigaNet (Global Internet Governance Academic Network).

[14] [Grimmelmann, 2010] : see details at the end of Chapter 2.

From one normativity to another

Here, as elsewhere [Monnoyer-Smith, 2011], the development of the Internet and its social practices create a strong denaturalising effect as much on the normative principles that regulate forms of cooperation between the actors, as on the technical architectures supporting them. The Internet therefore has helped to unfold[15] and examine the various existing forms of global governance, while at the same time stressing the considerable importance of historical, cultural and normative contexts in which international institutions have emerged. Now, certain characteristic features of the Internet and its uses undermine the benchmarks that a century of international cooperation helped to build. The principles of territoriality, universality of values and effectiveness that are presupposed in the regulation of actions, collide head-on with the fluidity of information flows, the heterogeneity of values relied on by the actors and the instability of web productions and architectures. This denaturalising effect brings to light a number of fundamental differences between the Internet as an object of regulation, and other domains that have been regulated internationally since World War II, such as for example telecommunications, air traffic or even space and sea.

On the one hand, the Internet today is perceived and claimed by the majority of users as a common good, in the same sense as a natural resource – even though it is made up of technical artefacts. In this respect, its appropriation by major powers appears less legitimate than in other domains where the population consider it "acceptable" for a State (or group of countries) having high performance technologies to claim the rights of commercial and scientific exploitation[16]. This appears even less legitimate in an international multi-polar context, which has challenged the traditional forms of domination by the major powers that emerged after the First World War. In this respect, Internet governance forms part of the movement of these new emerging and chaotic forms of governance

[15] In the sense of [Deleuze, 1988].

[16] Without the limits of this exploitation always being negotiated by international agencies. This is obvious from the difficult negotiations currently underway regarding gas and petrol reserves in the Arctic.

surrounding the physical common goods of mankind, whose importance has been obvious since the Rio Summit of 1992.

On the other hand however, the Internet and its related social practices are in fact more complex to deal with than other natural common resources such as water, marine resources or fossil fuels. And this for two reasons at least. The first is that we are dealing with a technological creation made up of artefacts. In this respect, the Internet must be approached both as a resource whose possession constitutes an issue of power, and as a technical infrastructure whose use constitutes an issue of domination. It is as important to protect it as a resource and give equal access for all, as to ensure that its territorial extension and its technical development do not result in forms of technological domination and neo-colonialism. By adopting a perspective taken from sociology of the sciences [Akrich, Callon & Latour, 2006], [Latour, 2006], it is possible to demonstrate that indeed any technical architecture carries with it standards, methods and norms that are imposed on those territories where it is deployed, without the latter always having the opportunity to object. Over and above the notion of international competition to establish norms among the various institutions that seek to demonstrate or reinforce their scope of competence (ICANN, ISOC, IETF, SMSI…), it is indeed this normative contradiction between the technical architecture and the places where it is developed which raises the question of the legitimacy of the norm. This multi-normativity, driven by technology on the one side and territories on the other, cannot be resolved by the determination of the location of the resource, as is the case for other natural resources.

The second specific characteristic of the Internet resides in its evolving and distributed nature. Unlike mankind's other common goods, the Internet benefits from the constructive input of a multitude of users and organisations that contribute to developing not only the content that circulates online, but also its overall architecture. The active intervention by States that invest in infrastructure, that facilitate or on the contrary control the flow of contents, also constantly adds to the evolution in the structure of a network that has become a complex patchwork of technical norms and values that emanate from the actors that contribute to it. It is easier then to understand the difficulty involved in controlling the particular resource that is the Internet. On the one hand, the efficiency