



**EUROPE TO THE RESCUE OF THE INTERNET :
DEMOCRATISING INTERNET GOVERNANCE RELYING UPON A EUROPEAN POLITICAL
AND INDUSTRIAL AMBITION**

Joint information mission : 'A new role and strategy for the European Union in Internet governance'.

President : Mr. Gaëtan GORCE, Senator for the Nièvre

Rapporteur : Mrs Catherine MORIN-DESAILLY, Senator for the Seine-Maritime

Report N°696 (2013-2014)

It was in 1989 that the European Organisation for Nuclear Research, (CERN) made available to the public an application called the World Wide Web, from which the Internet, born in the United States in the 1960s, became increasingly popular. Today, almost 40% of the world's population is connected to it. This development thus emerged on both sides of the Atlantic, and yet, the Internet which we, Europeans, use in 2014, is very largely American – the Old Continent has not come to grips with the challenges associated with Internet. Whilst this still young technology is about to revolutionise developing countries and expand towards objects - 'the Internet of things', the revelations of Edward Snowden in 2013 transformed the Internet into a global political issue. Upon the initiative of its UDI-UC group (*Union des Démocrates et Indépendants*-Union of Democrats and Independants), the French Senate set up at the end of 2013 a Mission composed of 33 Senators and entrusted with the analysis of the new role and strategy the European Union should adopt in worldwide Internet governance. The 2005 World Summit on Information Society defined Internet governance as 'the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures and programmes that shape the (technical) evolution and (practical) use of the Internet'.

I. INTERNET GOVERNANCE, A NEW FIELD OF WORLDWIDE CONFRONTATION

1. Internet, the end of a myth

- With its origins based in the world of research, before being rapidly taken over by American military and commercial interests, the **Internet very quickly became known for its cross-cutting capacities and open architecture, thus making it a technological instrument accessible for and to all.** With its decentralised 'end-to-end' architecture, any user can now develop potentially successful global innovations thanks to this network of networks, holding out the promise of ground-breaking progress in health, energy, education, transport... Internet is totally revolutionising economic models and more globally, reshaping relations among people and their relationship to the world.

- The Internet in fact appears as an extension of legal and economic power. Since the beginning of the 1990s and even before the World Wide Web was generally used, the

United States had taken legal and fiscal measures to achieve a leadership position in this technology. Thus today for example, out of the 50 leading digital media companies, 36 are American. In the 2000s, both China and Russia built up their own ecosystems of leading digital companies. Europe, lacking political will, now lives under the commercial domination of the American Net companies; and this dominant trade position is the basis for legal domination, with many domain names covered by American jurisdictions, as is also the case for litigation relating to the general conditions of use of the major Internet platforms.

Because of the network effect, the Internet is becoming hyper-centralised, favouring major private companies which are organised as verticalised silos, particularly in the mobile sector, where they provide devices, operating systems and applications. **These**

major players defy States: they reduce the resources available to Governments through their tax optimisation measures, compete State-run public services, threaten countries' economic and cultural models and even mint their own virtual currency.

Becoming a 'colony of the digital world', Europe is largely outdistanced by this redistribution of powers. The Old Continent is even going backwards – only 8 European companies are now amongst the top 100 high-tech groups in the world, compared with 12 two years ago. There are several explanations for this. Despite having healthy telecommunications operators, Europe in fact does not have leading players at both ends of the digital value chain, i.e. equipment manufacturers and content and applications suppliers, also called '*over the top*' OTT services. Thus Europe faces the threat of only having access to knowledge through non-European players.

- **Moreover**, changes in technologies and attitudes have transformed **Internet's** promise of liberty into a **terrific tool for surveillance**. The advent of big data, with the easy storage and processing of information, has encouraged the exponential collection of data, especially personal data, which the Internet of things should develop even further. All this information can thus be exploited both by the Internet giants, as well as by intelligence services, as the Snowden affair so clearly revealed. The system has become one which collects data everywhere.

At the same time, the increasing dependence of our societies on the Internet has become a factor for vulnerability - the network is now the theatre for real attacks by States, organisations or even individuals whose aims are economic espionage, destabilisation, and the sabotage of critical infrastructures. Hacking has become a weapon and IT vulnerabilities have become a market.

2. The Snowden earthquake has transformed Internet governance into a global geopolitical issue

- Internet governance today resembles the web in as much as both are 'distributed', i.e. there is no central authority governing either Internet or any of its network, transport or application layers. A whole range of bodies (Internet Engineering Task Force-IETF, Internet Architecture Board-IAB, Internet Society-ISOC, World Wide Web Consortium-W3C, Internet Corporation for Assigned Names and Numbers-ICANN...) participate in a form of self-regulation of the network, which has proved to be effective and functions on a bottom-up and consensual model, as D. Clark

(President of the Internet Architecture Board from 1981 to 1989) describes: 'We reject kings, presidents, and voting. We believe in rough consensus and running code'

- For historical reasons however, this governance is *de facto* American. The American Internet giants have everything to gain from being represented in these different organisations which themselves are often linked to American universities; 10 out of 13 root servers are in the United States; ICANN is a company registered under Californian law which manages the root files of the domain name system, a kind of central Internet directory to which the American company VeriSign also contributes, and all of this takes place under the supervision of the US Department of Commerce. Managing domain names and, in particular, creating new generic extensions has enormous economic and even political consequences, as can be seen by the case of '.vin' and '.wine'. In addition, ICANN suffers from conflicts of interests, its management is too opaque, it offers no satisfactory right of legal appeal and it is only accountable to the American Government, which thus, since the inception of ICANN in 1998, has become the hallmark of trust in the system.

- **Such American domination of Internet governance is being increasingly challenged.** The Tunis Agenda, published at the end of the World Summit on the Information Society in 2005, recognises the equal importance of all stakeholders – governments, the private sector, civil society - in Internet governance and calls for their enhanced cooperation. It created for this purpose the *Internet Governance Forum* (IGF), a multistakeholder forum under the aegis of the UN, which is not however just an interstate body. Having only a consultative role, this forum which meets once a year, has a mediocre record and is challenged by many other events in the world of Internet governance. It was at the **International Telecommunication Union (ITU) Conference in Dubai in December 2012** that the opposition between the supporters of States becoming more involved in Internet governance - a move fraught with suspicions of more surveillance, control and censure - and the supporters of multi-stakeholderism, finally broke out into the open. A resolution in the annex to the Final Agreement, called on the ITU, a UN body, to play a bigger role in worldwide Internet governance. In this context, Europe's voice is barely heard, expressed only through the DG Connect of the EU Commission, without the backing of the Council which brings together all the member

States. With the United States depicting all those who question the status quo as enemies of freedom, is the European Union not well-placed, even expected, to explore a third way forward, based on a truly inclusive approach to Internet governance and on democratic values?

- **From June 2013 on, Edward Snowden's revelations** about the mass on-line surveillance practised by the American intelligence services with the collaboration of leading Internet companies, brought about an international shockwave. By stating that the USA had deliberately weakened on-line security, particularly within the IETF, Snowden's revelations shook the confidence people had in the Internet, and have negatively impacted the earnings of the American digital industry, which in turn protested to the American Government. **In Montevideo in October 2013**, the Internet governance bodies called for a globalisation of the supervision of the Internet root file, whilst the Brazilian President organised a world conference on Internet governance in April 2014. In November 2013, both Brazil and Germany pushed through a UN resolution re-stating the right to privacy in the digital era. **The United States, the 'guarantors' of on-line freedom, have lost the moral high ground in the Internet stakes**, making it henceforth impossible to preserve the status quo in the current system of Internet governance.

- The Snowden affair has ushered in **an era of suspicion vis-a-vis the USA, which comes on the back of the increasing fragmentation of Internet** due to Governments' or commercial strategies. A divided Internet would go against the open spirit of Internet and provide more opportunities for censorship for those who control closed territories. How then may the

confidence of Internet users, and on-line security, be re-established whilst preserving the unity of the network? President Obama, in his State of the Union speech in January 2014, did not provide sufficient answers. One month later, the German Chancellor called for a 'European Internet' to be created, and the European Parliament voted in March 2014 in favour of a very combative report in reaction to on-line surveillance practices. It was finally on **14th March**, as the NETmundial Conference in Brazil approached, that the **American Administration made a significant gesture by announcing its intention to reduce its role in the management of the domain name system**, a proposal which the Congress has since contested.

- **The NETmundial Conference**, which brought together all the stakeholders on 23rd and 24th April in Sao Paulo, **is a major step forward**: the final declaration of this conference, which was organised by a young democracy, **enshrines certain fundamental principles and values for Internet and its governance**, and condemns on-line surveillance, without renouncing the principles of the unity and openness of Internet. However the role of governments must be clarified: **the task of reforming Internet governance still remains**, starting with ICANN, a private American monopoly which is gaining in power but not in responsibility.



Image : eduscol.education.fr

II. AN HISTORIC OPPORTUNITY TO ENSURE THAT THE FUTURE INTERNET REFLECTS EUROPEAN VALUES

1. The European Union: voicing demands for a form of governance that guarantees an open Internet, and respects fundamental rights and democratic values.

- The Internet is a global commons, and it is this fundamental principle which guides States' actions to ensure that it may be enjoyed by all. Its governance cannot be completely privatised and must be based upon a dialogue between the technical and the political players, since both are involved in Internet's architecture. This Mission therefore

invites all Member States of the European Union to agree to **embody the founding principles of the NETmundial of Sao Paulo in an international treaty open to all States, which could be ratified on line by Web users.**

This Mission also recommends globalising the governance of Internet on the basis of the NETmundial principles and calls for:

- the creation of a network of bodies to provide a distributed and transparent Internet governance, by formalising the roles of and interactions between ICANN, Internet registers,

W3C, IETF, IAB, the ITU, the managers and operators of root servers, the operators of top level domain names;

- the transformation of the Forum for Internet Governance into a World Internet Council, with its own budget and responsible for ensuring that the decisions of governance bodies comply with the Sao Paolo principles; all the organisations belonging to the governance network would be required to account to this Council, to avoid the serious dysfunctions that have already occurred being repeated, and imperilling on-line security;

- Europe to organise a celebration of the tenth anniversary of the World Summit for the Information Society in 2015, thus promoting this new globalised architecture of Internet governance.

It is also important to **reform ICANN** to restore confidence in the domain name system, thus:

- ICANN should be transformed into WICANN (World ICANN), an organisation established under international law, or preferably, Swiss law, based on the model of the International Red Cross Committee, in charge of the international supervision of domain name root files, thus replacing American supervision;

- make WICANN report to the World Internet Council, or at least, to an internal general assembly and give the Council or this assembly the power to approve nominations to the WICANN Board, and also the accounts;

- create an independent and accessible appeals system, whereby WICANN's decisions could be revised or repealed ;

- establish a functional separation between WICANN and the IANA's (Internet Assigned Numbers Authority) operational functions, to distinguish between those who draw up policies and those who individually attribute domain names;

- define criteria to guarantee the independence of the members of the WICANN board to reduce conflicts of interests.

Above all, the ICANN steering group set up to organise the transition period must be composed of members appointed by the stakeholders in ICANN, using transparent and democratic processes, and the steering group must also include the representatives of other stakeholders that are not currently represented on the board of ICANN.

2. The European Union must take its digital future in hand and make its voice heard on questions of Internet governance

- **Regulating the players of the European digital ecosystem must be more proactive**, to ensure that Europeans gain more from value creation, without sacrificing the principle of Net neutrality. Content and application suppliers must be covered by stricter **rules on competition** to ensure that neutrality applies not only to networks but also services. Parallel to this, European **taxation** must evolve to make on-line service providers contribute more to the public expenditures of European states. Lastly, new ways must be found to guarantee the future of European culture over Internet, beginning by aligning VAT rates for digital and physical cultural goods and services.

- Moreover, **the European Union must create a stringent and realistic data protection system** in this era of the cloud and big data. Europe's approach, based on the fundamental principle of personal data protection, is a valid one, and this can give European digital industry a competitive advantage. But this approach must be strengthened and encouraged to modernise, through the rapid approval of the European regulations that are currently under negotiation and the introduction of a system which clearly defines responsibility in the field of data processing. This approach should be promoted internationally, thus requiring the renegotiation of the Safe Harbour, which the European authorities may decide to suspend if their demands are not met. These negotiations must also remain separate from those of the Transatlantic Treaty. In addition, the European Parliament's requirements concerning the transfer of personal data upon the request of third country authorities should be maintained.

- The European Union should also **develop its digital industry around one core, clearly stated ambition**, which implies *not* preventing - for reasons of European competition - the emergence of 'European Champions'. The EU must also facilitate access to financing for European companies and develop European digital clusters. In trade, a level playing field must be achieved (in relation to State subsidies or public procurement contracts), whilst defending our system of Geographic Indications and ensuring that any transatlantic liberalisation of the circulation of data is circumscribed by exceptions based on privacy and public security requirements.

This industrial ambition must **allow the European Union to use its own data to promote big data** : big data industry is of crucial economic importance, and reasonable ways must be found to aggregate potentially valuable economic data. *Open data* must

continue to be developed, mindful of the principles of anonymity and non discrimination.

France and Germany should take the initiative in launching **two industrial projects: the creation of a European operating system for mobile phones and a secure European cloud**. These systems would be open, but bear the stamp - through a 'label of excellence' - of reliability and transparency. Europe's potential in the security market should be exploited and European skills in coding, developed. The French and European extensions '.fr' and '.eu', part of the French and European legal systems, must be promoted as part of the drive towards legal security. Finally, Europe must prepare for the future of the Internet by playing a greater role in the leading international organisations which elaborate Internet standards, and ensuring that European standards for connected things promote their mutual recognition and interconnection and a common security system against attacks from outside.

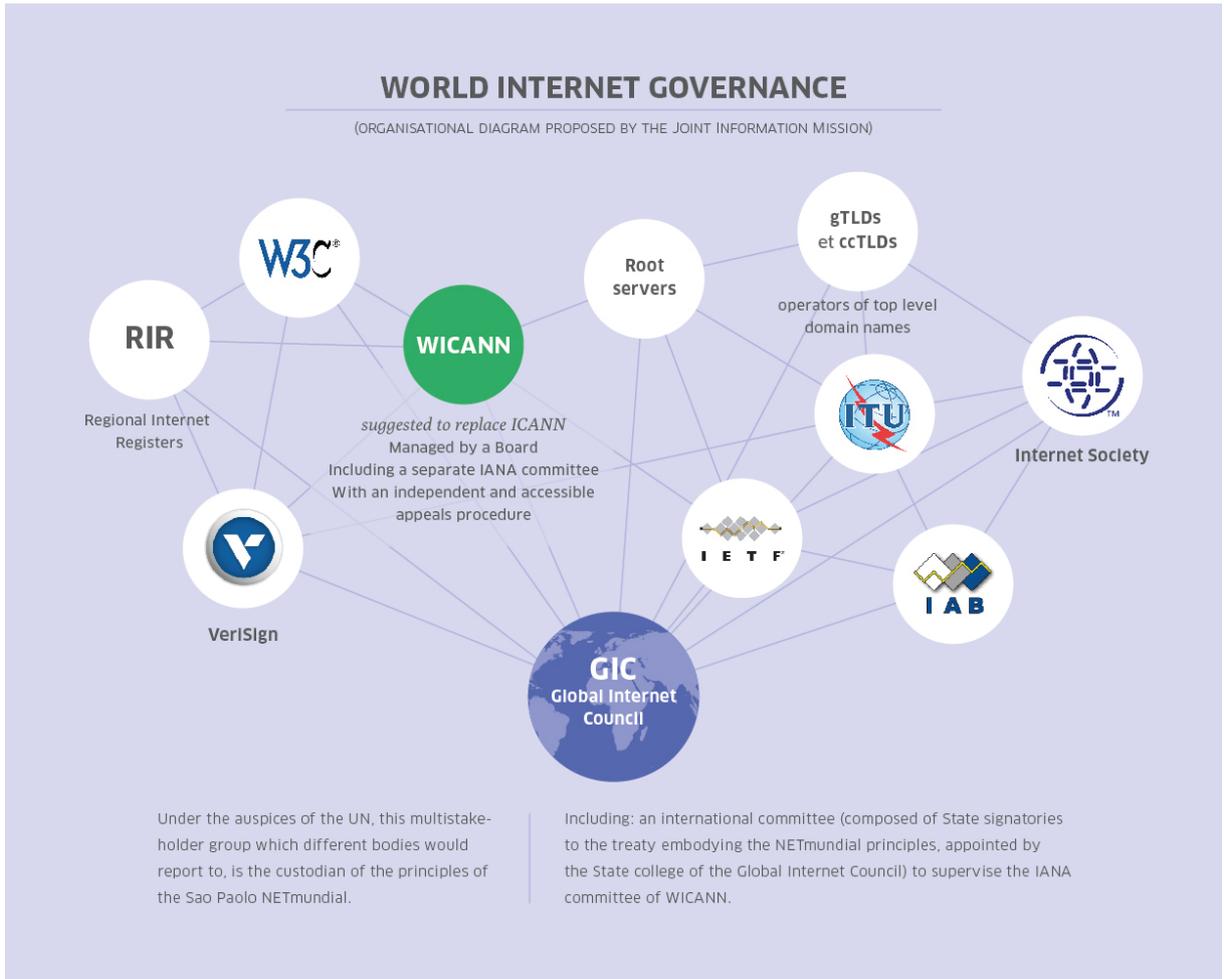
- Finally, the **European Union must encourage its citizens to feel more involved in the Internet**. Europeans must be made more aware of the digital world, which should be put at the heart of all learning processes, and training in this field should be given to all teachers.

This also requires **bringing laws on the legal control of intelligence service activities up to date, and improving their political management**. The law must impose the initial consultation of the CNCIS (National Commission for Supervising Security Interceptions-Commission nationale de contrôle des interceptions de sécurité) and extend its control, allowing it to examine the proportionality of the means used by the intelligence services. A new independent

administrative authority could be created, based on the CNCIS – a Supervisory Committee for Intelligence Activities - empowered with approving intelligence-gathering operations, after reviewing their legality and proportionality. The investigative powers of the DPR (*Délégation Parlementaire au Renseignement* - Parliamentary Delegation for Intelligence) should also be reinforced. Finally, a European framework to control exchanges of information among intelligence services, should be set up.

In addition, **the governance of digital issues should be better structured politically**: within the Council of the European Union through specific ministerial meetings on digital technologies so as to overcome political barriers; within the European Parliament by creating special committees to examine Internet-related texts; in France, through the creation of both an interministerial Committee on Digital Technologies, reporting directly to the Prime Minister, and a **Digital Committee in the French Senate** whose members would also be members of a standing legislative committee.

Furthermore, the European Internet model should be promoted through a **proper digital diplomacy policy**. With a clear doctrine and adequate means at its disposal, these diplomatic efforts must be linked with an ambitious and consistent European industrial policy and use to its advantage all existing policy instruments such as the European Neighbourhood Policy, the 'Francophonie', and Convention 108 of the Council of Europe on the protection of personal data, thus promoting throughout the world respect for European values on the Internet.



	<p>Joint Information Mission ‘A new Role and Strategy for the European Union in Internet Governance’</p> <p>http://www.senat.fr/commission/missions/nouveau_role_et_nouvelle_strategie_pour_lunion_europeenne_dans_la_gouvernance_mondiale_de_linternet/index.html</p> <p>15, rue de Vaugirard 75291 Paris Cedex 06 Téléphone : 01.42.34.37.76 Télécopie : 01.42.34.32.92</p>	<p style="text-align: center;"><u>President</u></p> <p>Mr. Gaëtan GORCE Senator (Socialist) Representing the Nièvre</p>  <p style="text-align: center;"><u>Rapporteure</u></p> <p>Mrs Catherine MORIN-DESAILLY Senator (UDI-UC) Representing the Seine-Maritime</p> 
---	---	--