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The International Regulation and Governance of the Internet

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On 4 July, the Anti-Counterfeiting Trade Agreement (ACTA) was rejected by the European Parliament. This decision is a step in maintaining the open character of the Internet and should be seen as a victory by the European movement of Internet users. Political representation of the interests of the protesters may bring the issues of cyberspace into the mainstream of future political discussions. This activation of Internet users from all around Europe should be considered a vital asset and seen as potential for the future of Europe.

The digital revolution contributes to socio-economic development, but it also has some negative aspects. This is particularly manifested in dependence on digital products and their uses contrary to law. Hence, rapid development of the Internet and electronic communication has highlighted the lack of adequate legal regulations in the field of intellectual property rights (illegal copying and distribution) as well as fraudulent use of new technologies (theft of sensitive data or creating malicious software). Furthermore, the importance of Internet infrastructure has systematically increased, and the term “cyberattack” has appeared in national defence doctrines, such as in the U.S., where its International Strategy on Cyberspace reserved the right to use all necessary, appropriate means, including the military, to respond to hostile acts in cyberspace. This provoked a need to supplement internal legal systems and gain appropriate reactions from national legislatures and law enforcement bodies. However, it seems problematic for these groups to agree on common international regulation of the Internet.

Internet as an Object of Regulation. Difficulties in the international legal regulation of the Internet are caused by its character as a virtual, artificial space. Hence, even comparisons to international regulation governing sea or outer space are not adequate. Furthermore, international management and oversight of the Internet is multi-polar, resulting in some measure from its very nature as a network.

Despite the Internet’s recognised risks, the adoption of common international regulation seems not to be an easy task. The Anti-Counterfeiting Trade Agreement, or ACTA, has been the most controversial legal act to date. It was intended to protect intellectual property rights online. It went beyond the scope of regulation and protection of TRIPS (the WTO agreement on the protection of intellectual property rights) and other treaties adopted so far by the World Intellectual Property Organization (WIPO). Although regulation of the Internet was not the main subject of ACTA, the document generated very strong resistance from Internet users, especially in Europe. They charged that it was incompatible with the freedoms and human rights recognised by European law. As a consequence, and under the influence of these protests, the ratification process in Europe was delayed, and finally on 4 July the European Parliament rejected ACTA.

At the national level, Internet governance varies even across EU countries, notably with respect to the roles of government, civil society, and the private sector. As the Internet became widely deployed and accepted as a publicly available infrastructure and commercial service of national importance, national oversight responsibility was normally handed over to the national authority, which might delegate some of its powers to the private sector, for example, through industry self-regulatory mechanisms. However, the regulatory power for critical public infrastructure is retained by the government. In the EU, the European Commission tabled its most important proposals in the Telecoms Reform Package for reform of the digital market. All of the information-society policies

were contained in the Digital Agenda for Europe, which is a substantial part of the new economic strategy of the “Europe 2020” plan.

The Roles of Various Actors. At the international level, there is no single international (intergovernmental or private) organisation that coordinates all the issues related to the Internet, rather it involves a wide range of organisations. Some of those organisations are private-sector entities, some are intergovernmental. Each has unique strengths and contributes in its own way.

At the multilateral level, the issues of the Internet and information society are delegated to a specialised UN agency, the International Telecommunication Union (ITU). On 21 December 2001, the UN General Assembly approved Resolution 56/183, which endorsed holding a World Summit on the Information Society (WSIS) to discuss information-society opportunities and challenges. After the summit, the Internet Governance Forum was created to support the United Nations Secretary General in carrying out the mandate to convene a new forum for a multi-stakeholder policy dialogue—a body bringing together governments, NGO’s and users, directed by the Multistakeholder Advisory Group and the Secretariat. The UN mandate gives it the power to convene and the authority to serve as a neutral space for all actors to meet on an equal footing. As a space for dialogue, it could be used to identify issues to be addressed by the international community and shape decisions that will be taken in other forums. A similar role has been played since 1992 by the independent organisation The Internet Society (ISOC). It is a global, cause-driven organisation that is dedicated to ensuring that the Internet stays open and transparent.

A special role is played by the Internet Corporation for Assigned Names and Numbers (ICANN), a California non-profit organisation generally responsible for the technical aspects of the global network. A memorandum of understanding signed in 2006 by the U.S. Department of Commerce and ICANN confirmed the transfer of responsibilities to the latter to manage the network and gave ICANN a mandate that it operate in a democratic manner with a multilateral approach to Internet governance. This agreement is not a binding instrument of international law and there are initiatives to regulate the management of the network multilaterally.

Conclusions and Recommendations. Considering the issue of regulation of the Internet, we can distinguish four main issues. First, the issue of state sovereignty on the Internet and the related right to self-defence as a result of cyberattack. Second, the issue of intellectual property in cyberspace. Third, the issue of user access to the Internet as a human right and with freedom of expression. Fourth, the issue of the internationalisation of the Internet’s technical infrastructure management and restrictions on the role played by ICANN.

It could be ventured to say that every country will have to deal with each of these issues. But for the EU, existing regulations should be carefully analysed because they will shape the future use of the Internet, and are therefore of interest to users and service providers, as well as to governments. In the face of proposals to oversee the Internet and limit access to resources on the network, the unified voice of the Member States advocating the retention of the libertarian nature and openness of the Internet should be clear and decisive.

From the European point of view, the activation of Internet users should be considered a vital asset and potential for the future. The formal organisation of the protesters into so-called Pirate Parties, which become active in Sweden and Germany, may indicate the shape of future discussions about important policy issues focused on the availability of the Internet, access to digital goods and information and the functioning of a modern information society in the EU.

From the Polish perspective, the most important issue is ensuring the widest possible public access to the Internet, as it is directly related to the economic and social development of Poland. For this purpose, the Polish Ministry of Administration and Digitization is preparing an Internet Freedom Charter, which should balance the conflicting interests of users and owners in cyberspace. Although the importance of cybersecurity issues will increase in the near future, it seems that Poland should not support the idea of a universal treaty regulating the Internet because of the risk of censorship. Poland should, however, support the idea of establishing European institutions responsible for network security at the EU level. This will increase the infrastructure’s resilience