Global Network of Interdisciplinary Internet & Society Research Centers Events Series

Regional Conference Germany 2013

Chances and Risks of Social Participation

NoC Working Sessions
November 23, 2013
Summary

Conference Venue:
Humboldt-Universität zu Berlin
Room E25
Unter den Linden 9
10117 Berlin
Germany

Session 1: Publication in the Field of Internet and Society

This first working session of the day focused on garnering innovative ideas and laying the foundation for future co-operation around joint publication activities within the NoC. Specifically, this session targeted the following questions: Is there a need for a new publication on Internet & society? If yes: Which distinguishing factors should such a publication have? Might new and emerging forms of publication, for instance those involving collaborative drafting processes, provide a way forward? Already-existing publication outlets such as blogs worked on by the NoC community were taken into account, leading the way towards further collaboration within the NoC in the future.

The discussion was first led by Juan Carlos de Martin of NEXA Center di Torino, who referred to the **potentially changing role of journals in the Internet age**. Journals have traditionally been a forum for intellectual discovery and scrutiny. They are also crucial to discipline building, as they allow for evaluation by the academic community itself, and are being evaluated by the outside, at the same time as showcasing disciplines and sub-disciplines. However, most journals are not accessible beyond the academic sphere. A question to ask is therefore how to make journals more accessible to the general public. There is also an issue of time lag. Do we therefore need a new Journal around Internet & society, or is what we are looking for already out there?

Participants agreed that in furthering Internet & society research in general, collaboration between disciplines is key. While participants remain undecided on the need to establish a new Internet & society discipline, participants agreed that the **landscape of Internet & society journals remains limited**. One successful example of a high-level multi-disciplinary journal focusing on Internet & society issues is the *Policy & Internet* Journal, which focuses on the relationship between policy and the Internet. Another Journal mentioned was *New Media & Society*. The perceived lack in Internet & society publication outlets might furthermore be at least partially closed by establishing a blog aggregator and cross-posting to interesting Internet & society research. Discussion showed, however, that further exploration of already-existing and potentially new publication outlets within the field of Internet & society might be necessary. It was mentioned that Internet studies are currently very phenomenon-driven, whereas it would be desirable to promote substantive research involving a commitment of time and effort. A tool or platform that stimulated such rigorous research on Internet & society would be seen a valuable addition to the publication landscape. Furthermore, participants criticized the lack of a forum that addresses methodological issues, for instance. A low threshold for understanding multidisciplinary research in the field is missing.

A highly relevant question with regard to a possible involvement in Internet & society debates is that of the **targeted community**. Meeting participants voiced the desire to target both academic and wider audiences. Others raised the concern that bridging the divide of being a public intellectual and an academic scholar may easily fail a publication. Perhaps the NoC might therefore focus more on providing a public-facing publication outlet. This might provide an

opportunity to explore more innovative formats aimed specifically at an online audience, involving collaborative writing, for instance. A blog aggregator might also be feasible. Key questions would be what would make a new publication format unique and different? What could an innovative business model for an open access journal look like? Perhaps the goal would be not to form a new journal, but to form strategic synergies and plan to publicize purposefully in already-existing publications.

As a practical contribution to the discussions around publication in the field of Internet & society, editor Frédéric Dubois introduced the **Internet Policy Review**, an open-access journal about Internet regulation in Europe that has been initiated by the Alexander von Humboldt Institute for Internet & Society (HIIG). The *Internet Policy Review* tracks public regulatory changes as well as private policy developments which are expected to have long lasting impacts on European societies. The journal's online platform (policyreview.info) offers peer-reviewed short-form papers and essays, as well as news and commentary on Internet governance aimed at academics, civil society advocates, entrepreneurs, the media and public policy makers alike. The presentation sought to give a brief introduction and outline of activities for 2014 before highlighting existing collaborations with researchers of the NoC and outlining opportunities to come.

As a publication outlet, the *Internet Policy Review* faces many of the questions addressed above. Hybridity is its defining aspect, it being both academic and public-facing, with scholarly and popular accessibility presented side-by-side. As such, it has a blog-aspect and is trying to match the speed of Internet-related developments with a review process. Going into an opinion and commentary direction, it is not an established journal but rather a place where preliminary research can be showcased with appreciated peer review. Its thematic focus is currently European policy-oriented, with contributions also from other NoC centers. The *Internet Policy Review* team is currently exploring collaborations with journalists on news, and has found the combination of journalistic news and academic approach successful. Going forward, the *IPR* team is reflecting on where it may land within the Internet & society landscape, thus not only looking for collaborating with NoC participants interested in contributing to the *IPR*, but also eager to contribute to the discussion around NoC publication activity in the future.

In conclusion, meeting participants agreed to follow up on the idea of a blog aggregator, and to **establish a working group** strategically working on the idea of a novel publication forward. It was therefore decided to set up a mailing list (publications@networkofcenters.org) for operators of publication outlets at an operational level. All interested NoC participants are welcome to propose people who should be on this mailing list, via which we hope that the conversation around publications within the NoC context may evolve over the coming months.

Session 2: Online Intermediaries

NoC Joint Research Project on Online Intermediaries - Current Status and Possibilities for Collaboration
Urs Gasser and Wolfgang Schulz

Building on previous conversations at NoC regional events, *Urs Gasser* of the Berkman Center for Internet & Society at Harvard University, and *Wolfgang Schulz* of the Alexander von Humboldt Institute for Internet and Society (HIIG) gave an update on the current status of the first NoC joint research project on online intermediaries: Intermediaries in various forms – meta media such as search engines as well as user generated platforms, app stores and microblogs – play an essential role in opening up the potential of the Internet and capitalizing on its generativity. At the same time, intermediaries are increasingly powerful institutions that shape the public networked sphere and sometimes develop significant market power. Pursuing a variety of objectives, governments around the world have developed legal regimes aimed at governing online intermediaries, often using liability mechanisms as the means of regulation.

Previous conversations amongst NoC participants showed steady progress of the intermediaries discussion, resulting in (1) a concerted research effort around the question of how different liability regimes might best be mapped, what practices can be used going forward, and which methodology might be applicable to case studies; (2) a plan to explore liability and responsibility of online intermediaries from a regional perspective, focusing on Brazil, India, Vietnam and Turkey, for instance; (3) an effort of looking into the regulation of online intermediaries.

Issues addressed in outlining this joint research project included determining the appropriate level of detail of the underlying methodological questions. In order to make results comparable to an appropriate extent, *Urs Gasser* and *Wolfgang Schulz* outlined a set of guiding questions. In addition to country studies – i.e. for Brazil and India – a selection of case studies, focusing e.g. on eBay in Turkey and social media providers in Vietnam, will deliver deep dives. The latter promise to deliver highly interesting results with regard to the impact of responsibility and liability regimes on business models. It is hoped that overall and moving forward, this research project will be a truly collaborative effort leading to a repository on intermediary-related issues. An ambitious white paper of policy recommendations and use case examples will ideally form the result of this collaborative effort. Next conversation will happen in April 2014, where case study authors will discuss their work in a NoC working meeting.

The **Internet & Jurisdiction Project Database**, introduced by *Paul Fehlinger*, could potentially contribute to an overview over existing jurisdictions by collecting case studies using a social sciences approach. Within the Internet & Jurisdiction project database, over 800 cases, many of which focus on intermediary liability, have been collected since 2012. A crowd-based filter is being used to identify the top 20 cases of the previous month, for instance. Thus, the project aims to provide a global overview on Internet & Jurisdiction. In order to further explore

possibilities for collaboration with the NoC, a learning call will be scheduled likely for January 2014.

Yasin Beceni and *Nilay Erdem* of BTS Partners, a leading ICT law firm in Turkey, further elaborated on the deep dive case study approach of the joint research project by outlining their **case study on eBay and Turkey**. Within the last 10 years, the ICT sector has become one of the flagship industries in Turkey. However, the Turkish legal system – which has been mostly transposed from Germany and Switzerland – sees highly excessive demands from the Turkish government to get user information from intermediaries on all kinds of interaction. eBay has entered the Turkish market 2,5 years ago. Given that Turkey has no clear regulation for online intermediaries, the Turkish government has been demanding user information also from eBay. Online intermediaries are deemed hosting providers not liable for the content on the platform, but if they are notified about questionable content, they must remove it. The case study on Turkey and ebay promises highly interesting results with regard to the effect of unclear liability regimes on business innovation.

Presentation: Intermediary Liability and Privacy Protection
Jef Ausloos and Aleksandra Kuczerawy

The discussion around online intermediaries was further elaborated by a presentation by *Jef Ausloos* and *Aleksandra Kuczerawy* of KU Leuven. The slides to this presentation may be found here. Current research on intermediary liability covers a variety of issues. The growing role of intermediaries has led European policy makers to take a horizontal approach, exonerating intermediaries (under certain conditions), regardless of the nature of potential accusations. It might therefore seem surprising to see that the eCommerce Directive specifically states that its liability exemptions do not apply in a data protection context (art. 1(5)(b)). Unlike other issues (such as copyright or freedom of expression), the interaction between privacy/data protection and intermediary liability has not been thoroughly investigated yet. Many factors have contributed to the growing relevance of Internet intermediaries as 'Information Gatekeepers' and shortcuts to the protection of privacy and personal data. It has been demonstrated that – in practice – it is often very hard for an individual to identify the original uploader/publisher that is responsible for a privacy/data protection harm (whether related to defamatory, sensitive or other personal information). Trends in copyright enforcement over the past decade have demonstrated the appeal of intermediaries as large, centralized points of control through which redress can be sought (e.g. takedown or access restriction). Little research has been done, however, on the role of these intermediaries in a privacy and data protection context. Many important questions, such as under what circumstances they can(not) be held liable for taking actions with regard to personal data, still remain unanswered. The inherent cross-border nature of these issues, as well as the presence of – often widely diverging – approaches to privacy and data protection in different jurisdictions, also highlights the importance for more globally coordinated/oriented research.

Citing a concrete example, the Google vs. Spain case (a paper by Jef and Aleksandra is available [here](#)) set the stage, and was used to demonstrate the interaction between data protection, freedom of expression, and intermediary liability. Intermediaries do not need to monitor content, but they do exert a certain level of care, for instance in the case of child pornography. This again raises definitional issues in a transnational context: what is qualified as child pornography in one country may be considered harmless in other jurisdictions. Key questions within the Google vs. Spain case concern online reputation management through intermediaries; the distinction between the activities of intermediaries and those of original publishers; and the relationship, in a European context, between the eCommerce and Data Protection Directives. Is there a right to erasure, and if yes, where are the boundaries to the protection of freedom of expression? Where are the intermediary liability exemptions? The regulatory framework in the EU is complicated as the eCommerce Directive pursues a horizontal approach at the same time as exempting anything that is dealt with in the Data Protection Directive. Anything not under such an exemption is implementable by the particular country. As policy-makers are not always on the same line, this creates confusion with regard to the relationship between these two directives. The implementation of notice and take-down safeguards is not the same across Europe, for instance. Intermediaries tend to have no incentives to keep content up. Should the law provide for such incentive?

NoC participants pointed to the functions-based role of regulation that only becomes content based when the intermediary itself provides content. These are the cases where regulations overlap, and where conflicts arise. This argument was mentioned to underline concern about the future of function-based regulation. Subsequently, the question was raised where intermediaries become so involved with their content that they have responsibilities. On the other hand, intermediaries should not only be considered at the applications level, but also from an infrastructure perspective. What, for instance, about prioritizing certain data? Which role does software-defined decision-making play in this debate? Citing the system of torts in Latin America as an example, participants referred to an evolvement in legal debate. One key argument exempting ISP's from liability is referring to the content in question having been uploaded by a third party. Judges have now started arguing that the third-party liability argument does not hold because other intermediaries have removed similar content in the past.

The lack of any empirical foundation for making policy recommendations was mentioned as a key challenge to be addressed by the NoC. The hope was expressed that the first joint research project on online intermediaries might contribute to a foundational layer, helping to make informed decisions. This was said to be all the more relevant because data protection cases often-times do not go to court. Going forward, attention should address not only problems regarding intermediaries, but also the ecosystem being created around them. If Google implements an algorithm to automatically take down child pornography content, for instance, why should this approach not be taken by other intermediaries?

Session 3: Internet Governance

Project Idea and Proposal: Multistakeholder Models for Internet Governance
Urs Gasser & Dana Walters

This third discussion of the day focused on Internet governance. *Urs Gasser* and *Dana Walters* of the Berkman Center for Internet & Society at Harvard University proposed a **project idea on multistakeholder models for Internet governance**, based on the recognition in the Internet community that more needs to be done to address Internet governance, and the creation of a multistakeholder body, which would not replace ICANN or the Americans, but give voice to and address the concerns of the developing world. NoC participants discussed what could be a meaningful contribution of the NoC to the current debate about multistakeholder models for Internet governance. Should the NoC be involved in Internet governance discussions or not? What could be different modes of engagement?

In exploring the need for an involvement of the NoC in Internet governance debates, participants criticized a lack of substantial debate around Internet governance in currently established forums. Whereas some participants stressed the wish to be involved in academic debates, they would prefer to do so in an academic, not a political space. Here, the NoC might potentially close a significant gap.

A concrete opportunity to get involved is posed by the multistakeholder governance forum that will take place in Sao Paolo in April 2014. It might be possible for the NoC to utilize different low-level channels to provide analysis without over-exerting ourselves. The time might be right not to come up with analysis or a set of suggestions, but to condense reports. A possible contribution could be i.e. a document of etiquette that sets criteria for Internet policy. Take stock and work to measure. It might also be possible to lay out different scenarios for the future that could be used by governments and other actors as a basis for discussion. The Red Cross was cited as an interesting potential model for ICANN. Participants suggested looking at the Red Cross model as well as other models in order to evaluate different forms of governance. Indeed, participants agreed that efforts towards identifying benchmarks should be undertaken.

In exploring different models, participants suggested building up on previous discussions, e.g. undertaken in the context of the World Summit on Information Society in 2004-2005. The [2005 report of the Working Group on Internet Governance (WGIG)](#) provided, a definition (the first) of Internet governance, proposed to establish the Internet Governance Forum (IGF), and, under the header "global public policy and oversight" (starting on p. 23), spelled out and listed different models for more legitimate Internet governance.

In conclusion, participants agreed that the NoC should get involved in the exploration of new multistakeholder Internet governance models. As a concrete next step, the NoC will consider

organizing a side-event to the upcoming Global Multistakeholder Meeting on the Future of Internet Governance in Sao Paolo, Brazil, in April 2014.

Presentation: Governance Applied to the Digital Environment
- Elements of Direction, Control, and Power over Collective Processes Online
Mayo Fuster Morell

A presentation by Mayo Fuster Morell, Director of the [Commons Research Program (igopnet.cc)](igopnet.cc) at the Autonomous University of Barcelona, on **"what is meant by governance when applied to the digital environment?"** formed the conclusion of the day: Previous analysis and research of the governance of collective action in the digital environment has been based on analyzing specific governance aspects. However, the literature on the subject is lacking a comprehensive and holistic view of what governance means when applied to collective action online. The presentation provided a set of dimensions that define the governance of collective action online. The analysis used builds upon the Institutional Analysis and Development (IAD) framework for the study of the governance of natural commons developed by Elinor Ostrom school, by providing an adaptation of the IAD framework to the study of digital commons. The empirical analysis to illustrate the presentation referred to the specific case of common-based peer production of collaborative communities online (communities of individuals that mainly interact via a platform of online participation, with the goal of building and sharing a common-pool resource). The empirical data was drawn from a statistical analysis of 50 cases and a four case study-comparison of governance models (Wikipedia, Flickr, Wikihow, and Openesf).

The presentation, which is accessible online, entailed a call to NoC participants to engage in a collaborative effort to develop a common holistic framework of analysis of the governance of collective action in the digital environment. The effort, which will be supported by an FP7 European Research Grant, will involve the statistical analysis of 300 case studies, as well as a case study comparison. More information about the project may be found on www.p2pvalue.eu. Interested parties are invited to contact Mayo Fuster Morell directly (mayo.fuster@eui.eu).