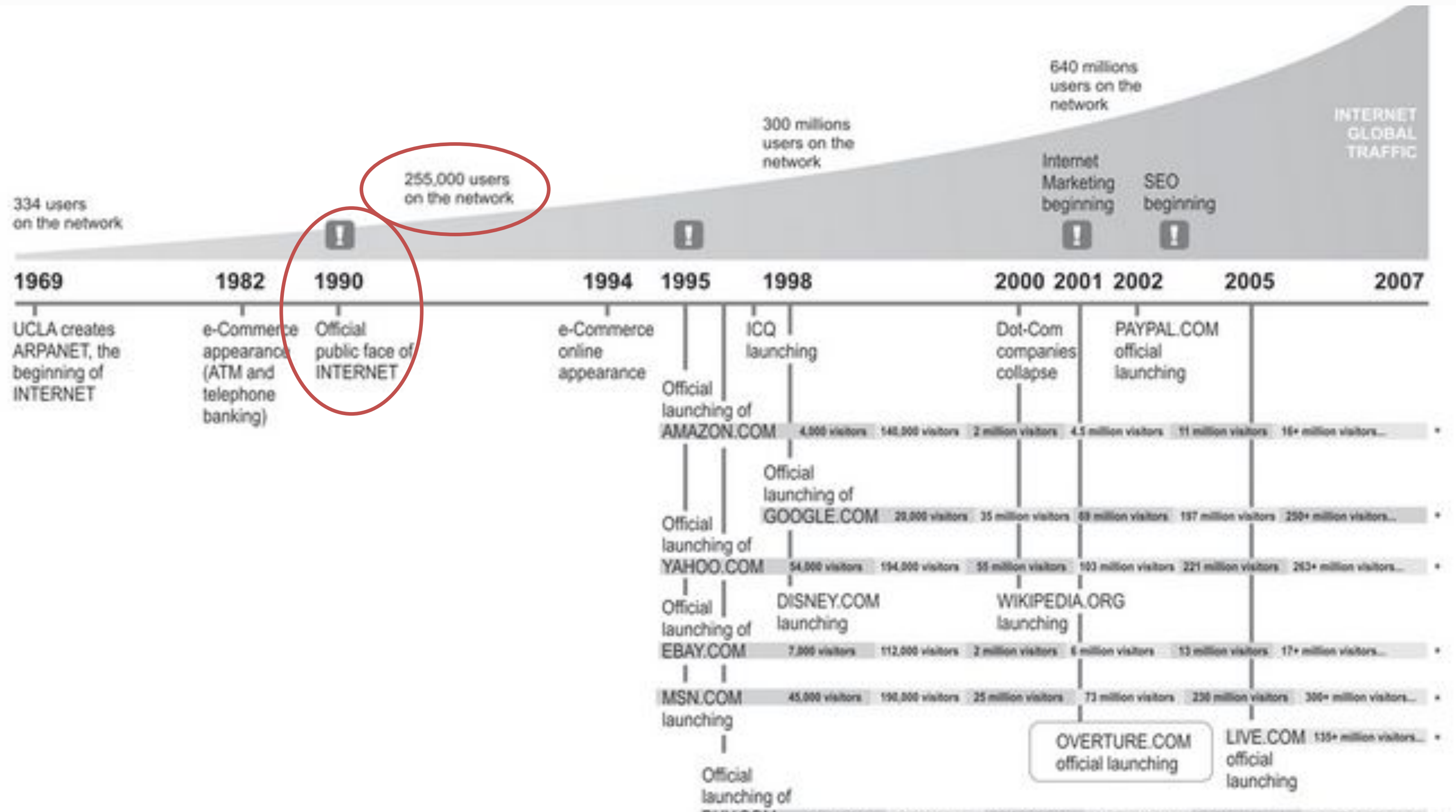


Contemporary Trends in Digital (Trade) Governance and Rulemaking

July 2025





1990s: the development of the commercial Internet. Tension between **territorially-based** legal and political systems and the **transborder** expansion of capital and digital technology.



In that context, the tension was ‘solved’ by removing barriers to the movement of goods, capital and technology.

US as the frontrunner



Presidential Directive - Electronic Commerce

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Presidential Directive

THE WHITE HOUSE
Office of the Press Secretary

For
Immediate
Release

July 1, 1997

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

The invention of the steam engine two centuries ago and the subsequent harnessing of electricity for communications ushered in an industrial revolution that fundamentally altered the way we work, brought the world's people closer together in time and space, changed the way we organize our economies, and brought us greater prosperity.

Today, we are on the verge of another revolution. Inventions like the integrated circuit, the computer, fiber optic cable, and the Internet are changing the way we work, learn, and communicate with each other.



Internet Histories

Digital Technology, Culture and Society

Routledge
Taylor & Francis Group

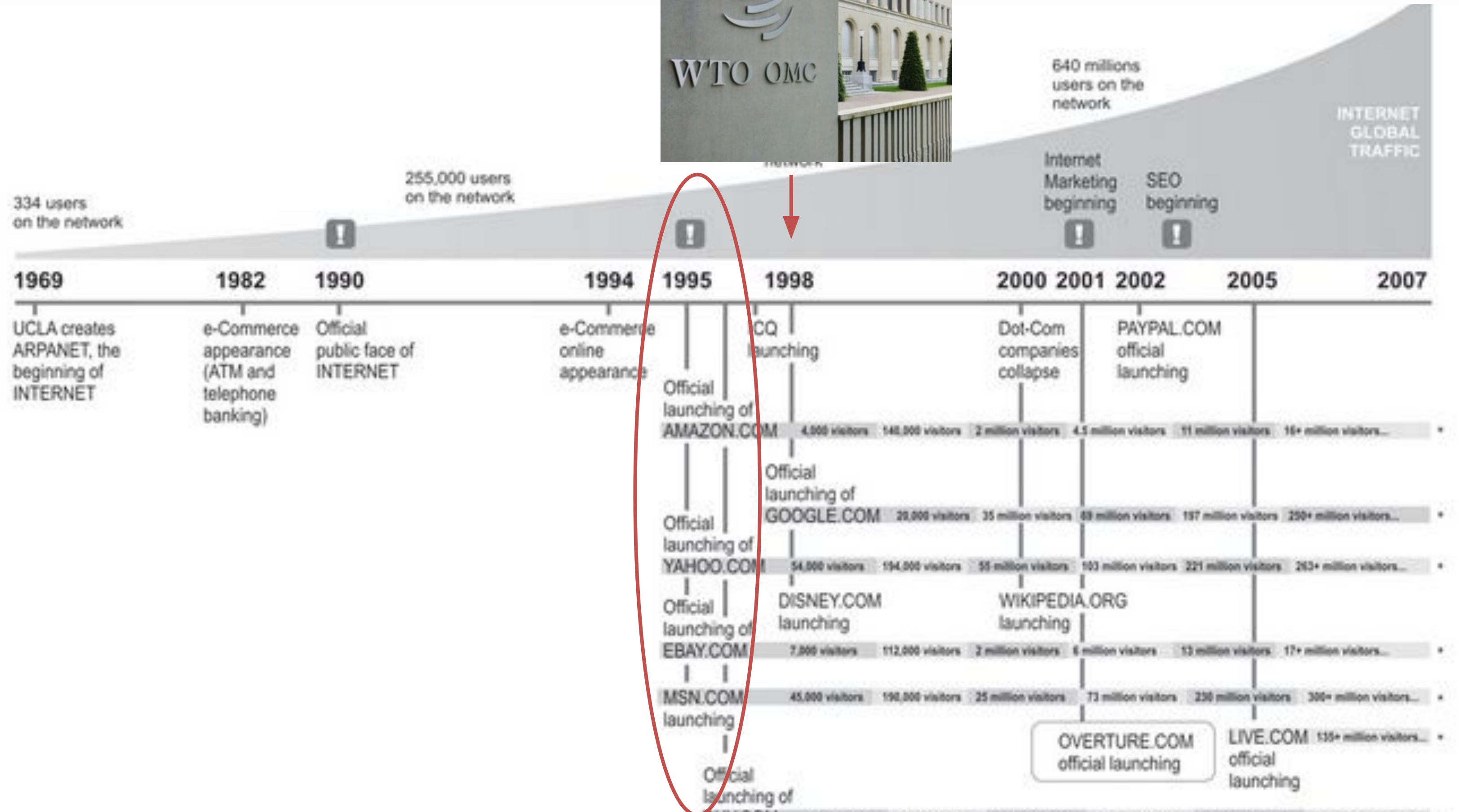
ISSN: 2470-1475 (Print) 2470-1483 (Online) Journal homepage: <https://www.tandfonline.com/loi/rint20>

Laying the foundation for a commercialized internet: international internet governance in the 1990s

Meghan Grosse

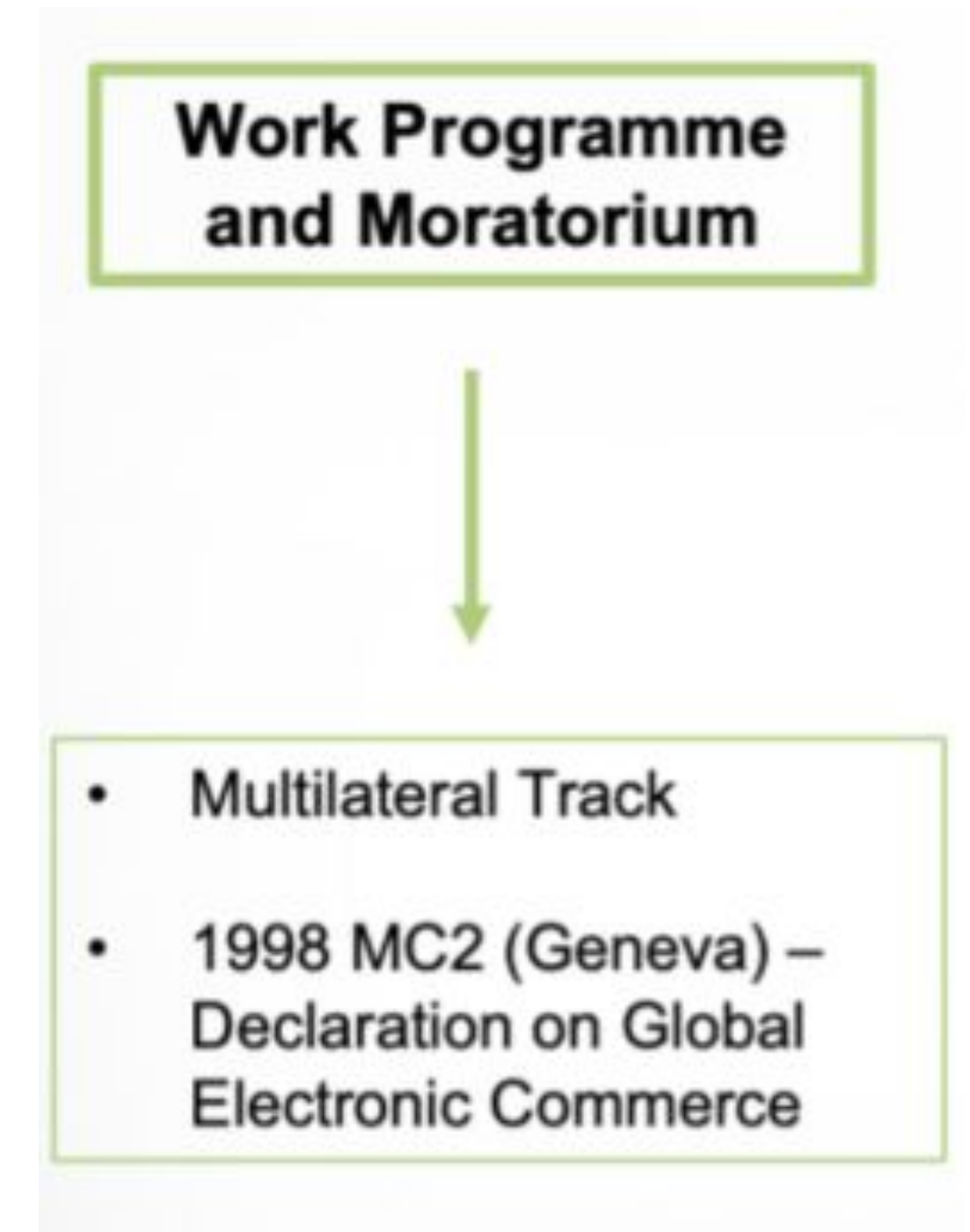
To cite this article: Meghan Grosse (2020): Laying the foundation for a commercialized internet: international internet governance in the 1990s, Internet Histories, DOI: 10.1080/24701475.2020.1769890

To link to this article: <https://doi.org/10.1080/24701475.2020.1769890>

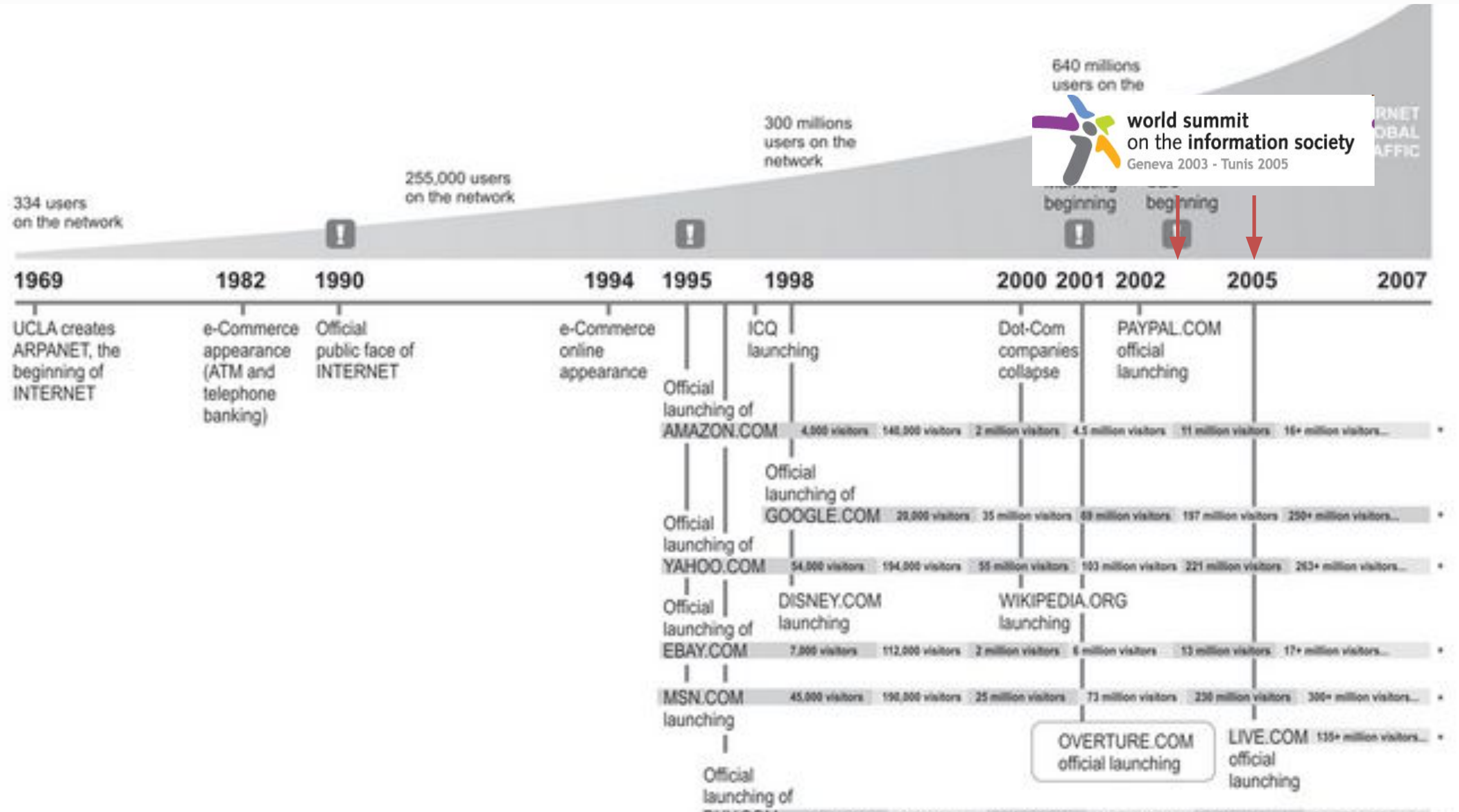


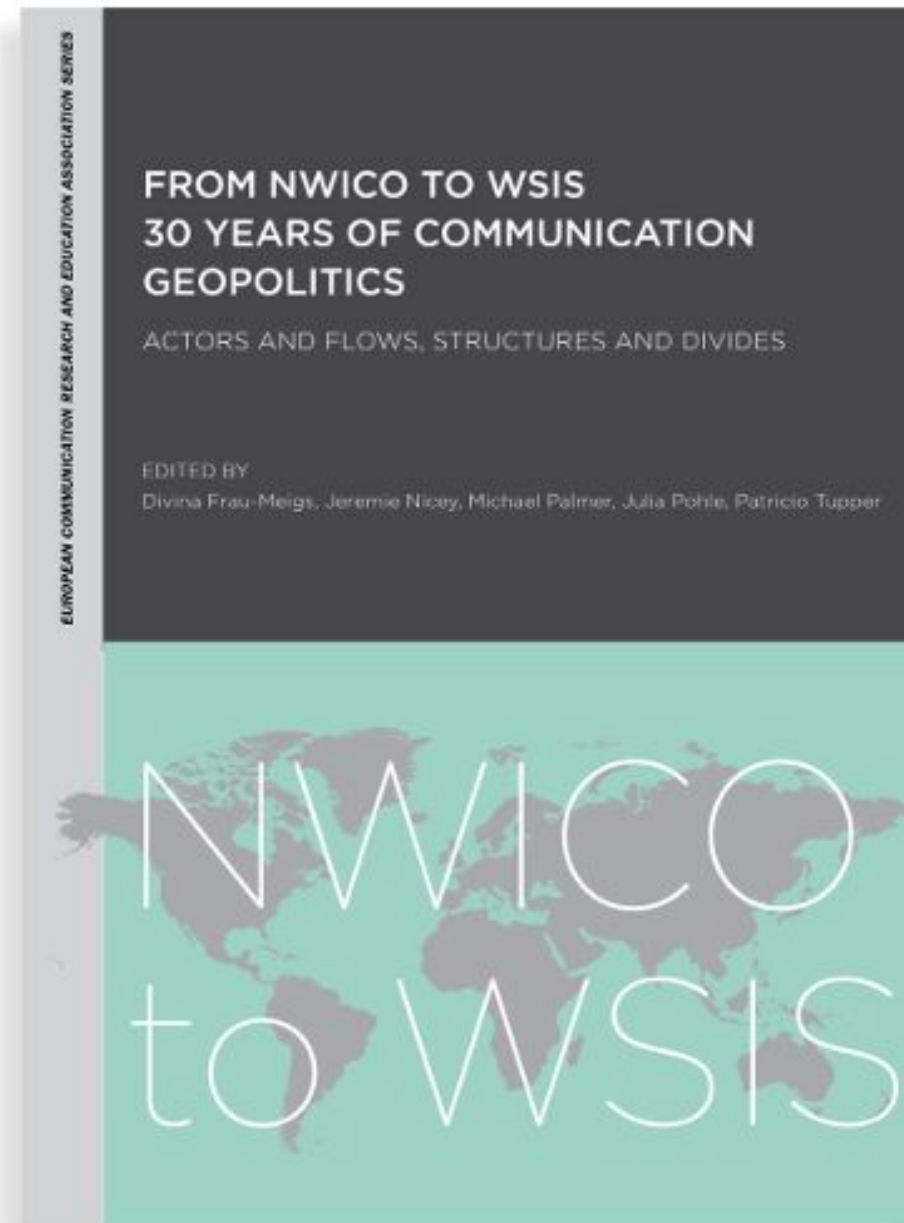
WTO agreements relevant to e-commerce

- **General Agreement on Tariffs and Trade (GATT)**
- **General Agreement on Trade in Services (GATS)**
 - The GATS Annex on Telecommunications and the Telecommunications Services Reference Paper
- **Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)**
- The Information Technology Agreement (ITA) and its update (known as ITA-II).
- The Technical Barriers to Trade Agreement (TBT)
- The Trade Facilitation Agreement (TFA)



Exploratory nature. Exchange of views, enhance understanding





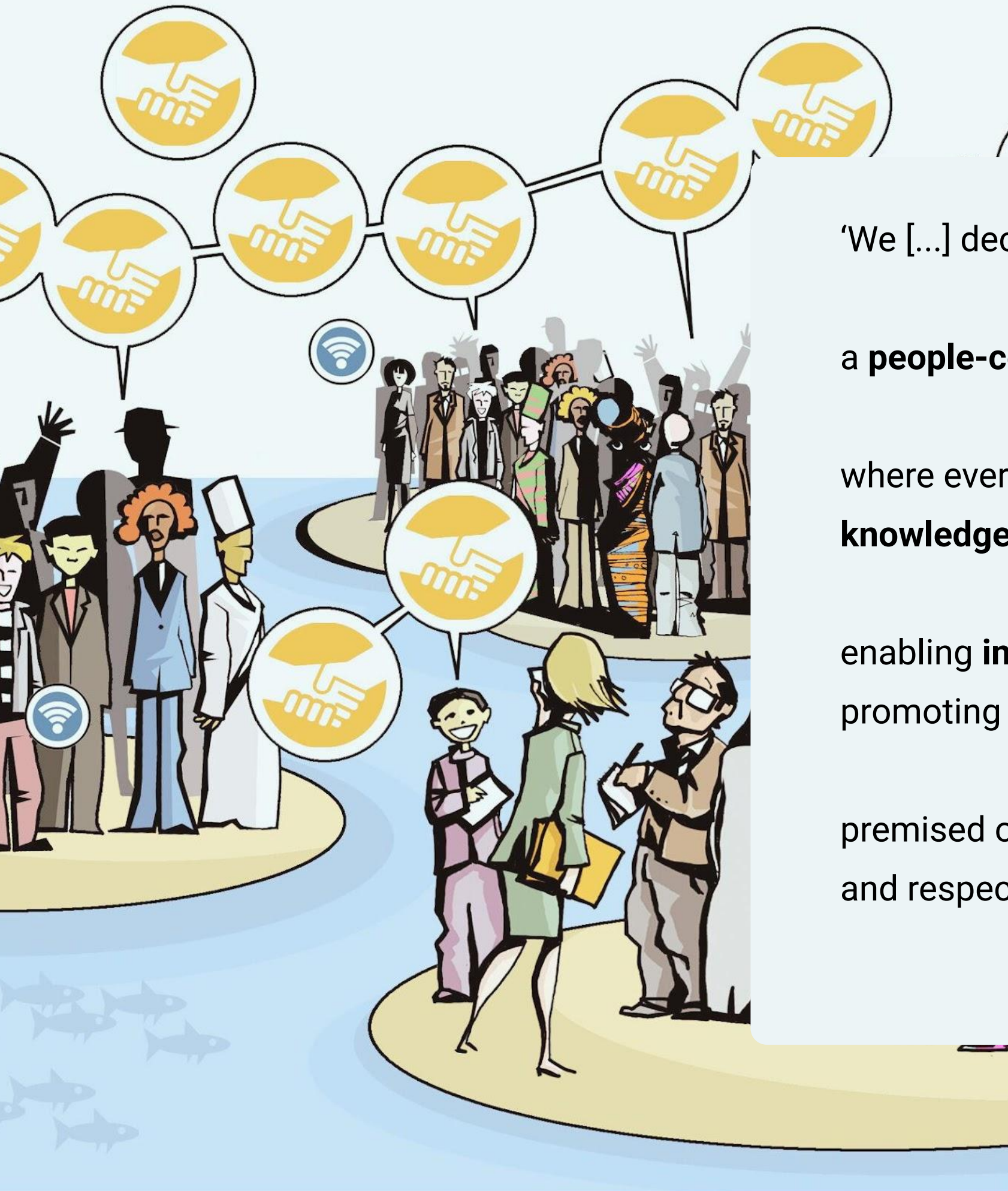
DISTRIBUTED FOR [Intellect Ltd](#)

From NWICO to WSIS: 30 Years of Communication Geopolitics

Actors and Flows, Structures and Divides

Edited by [Divina Frau-Meigs](#), [Jérémie Nicey](#), [Michael Palmer](#), [Julia Pohle](#), and [Patricio Tupper](#)

Two major regulatory activities have framed global media policies since World War II: the New World Information and Communication Order (NWICO) and the more recent World Summit on the Information Society (WSIS). Through

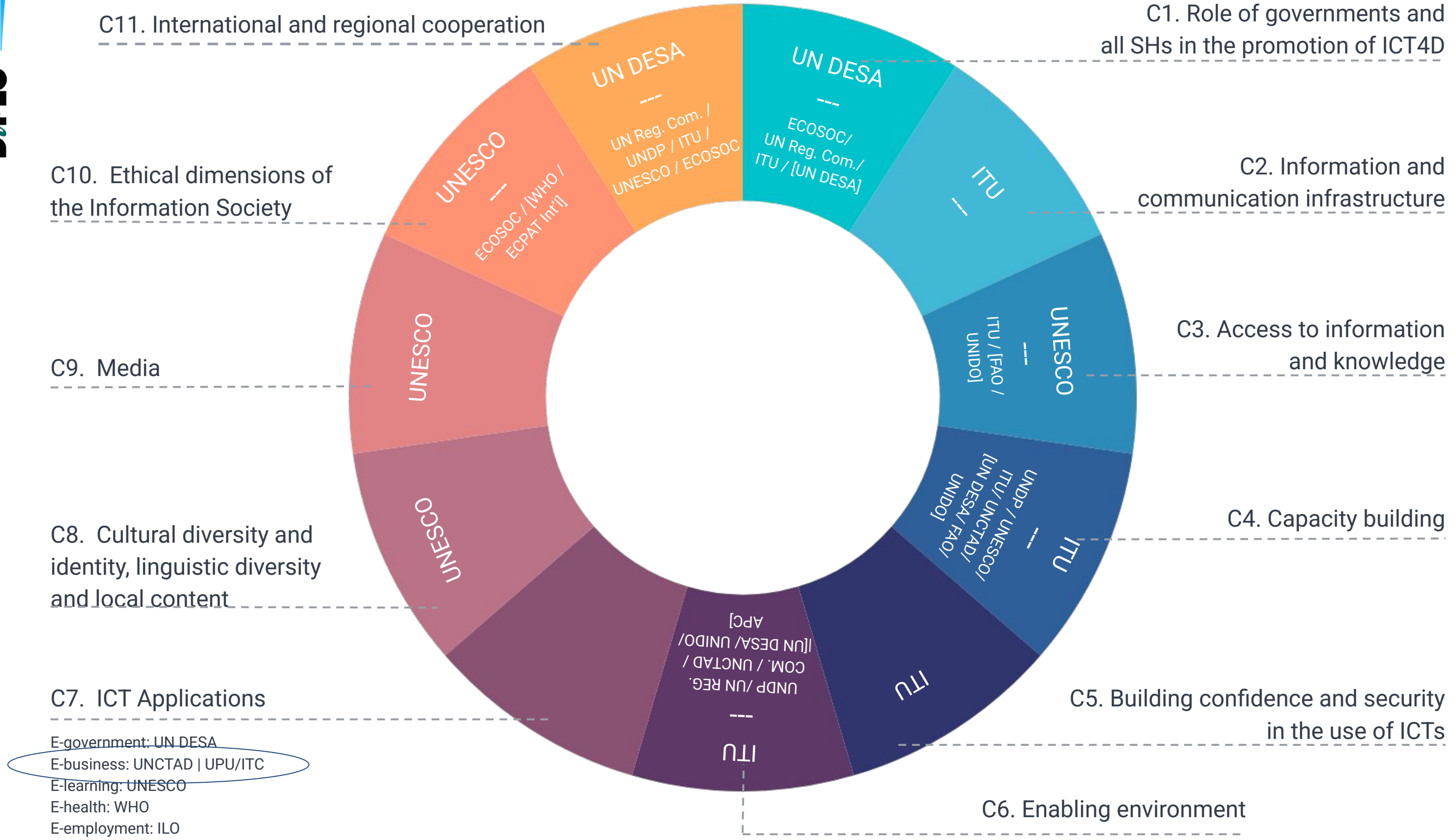


‘We [...] declare our common desire and commitment to build
a people-centred, inclusive and development-oriented Information Society,
where everyone can create, access, utilize and share **information and knowledge,**
enabling **individuals, communities and peoples to achieve their full potential** in
promoting their sustainable development and improving their quality of life,
premised on the purposes and principles of the **Charter of the United Nations**
and respecting fully and upholding the **Universal Declaration of Human Rights.**’

(Geneva Declaration, 2003)

WSIS Action lines

(co)facilitators



ITU, UNESCO, UNDP: 'leading facilitating roles in the implementation of the Geneva Plan of Action' (Tunis Agenda).

- E-government: UN DESA
- E-business: UNCTAD | UPU/ITC
- E-learning: UNESCO
- E-health: WHO
- E-employment: ILO
- E-environment: WMO
- E-agriculture: FAO
- E-science: UNESCO

The building blocks of digital interdependence



- **Technical: 1983** - The TCP/IP became the mandatory Internet protocol.
- **Political/diplomatic (2000s)**: Post-WSIS internet governance regime (WSIS process, IGF)
- **Regulatory**: (digital) trade liberalization at the WTO (1990s) and later through e-commerce/digital trade in FTAs (2010s)

The outcome: a global internet, consumer choice, access to markets, and a digital (interdependent) economy

The flipside: narrowing 'policy space' for governments

Digital sovereignty: a taboo expression

E-commerce rulemaking would take place outside the WTO

- **PTAs regulating e-commerce/digital trade**
- 'First wave' of US FTAs
- UMSCA
- CPTPP
- EU FTAs
- RCEP
- Digital Economy Agreements (DEAs) (new development)

US as the main hub providing the blueprint for e-commerce rulemaking

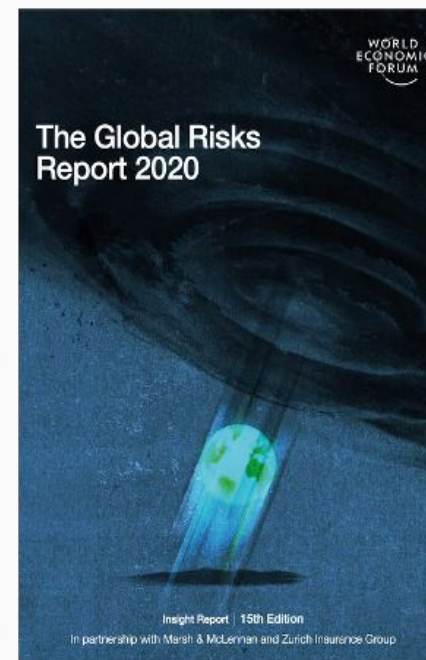
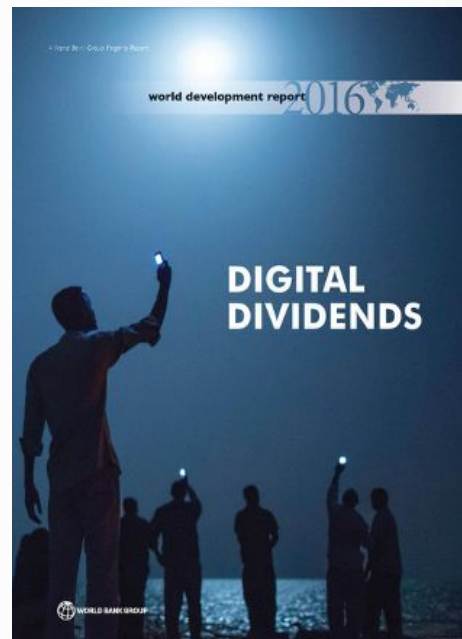
USTR had a very clear mandate in 2002: remove and prevent new trade barriers. US Digital agenda: strong lobby from tech and entertainment industry:

- Very strong IP protection
- As little interference as possible from governments
- Remove and prevent barriers to e-commerce

US FTAs celebrated therein (i.e. Australia, Bahrain, Chile, Singapore, **South Korea** Central American Countries, etc) contain **WTO-plus** and **WTO-extra** provisions in the broader field of digital trade.

- Data flows: KORUS
- IP chapters TRIPS-plus and extra. i.e. limitation on intermediary liability
- Services: negative list, dropping MFN exemptions

Concentration in the digital economy



Two countries stand out as the frontrunners in harnessing the value of data: the **United States and China**



50%
of the world's
hyperscale
data centres



highest rates
of **5G**
adoption in
the world

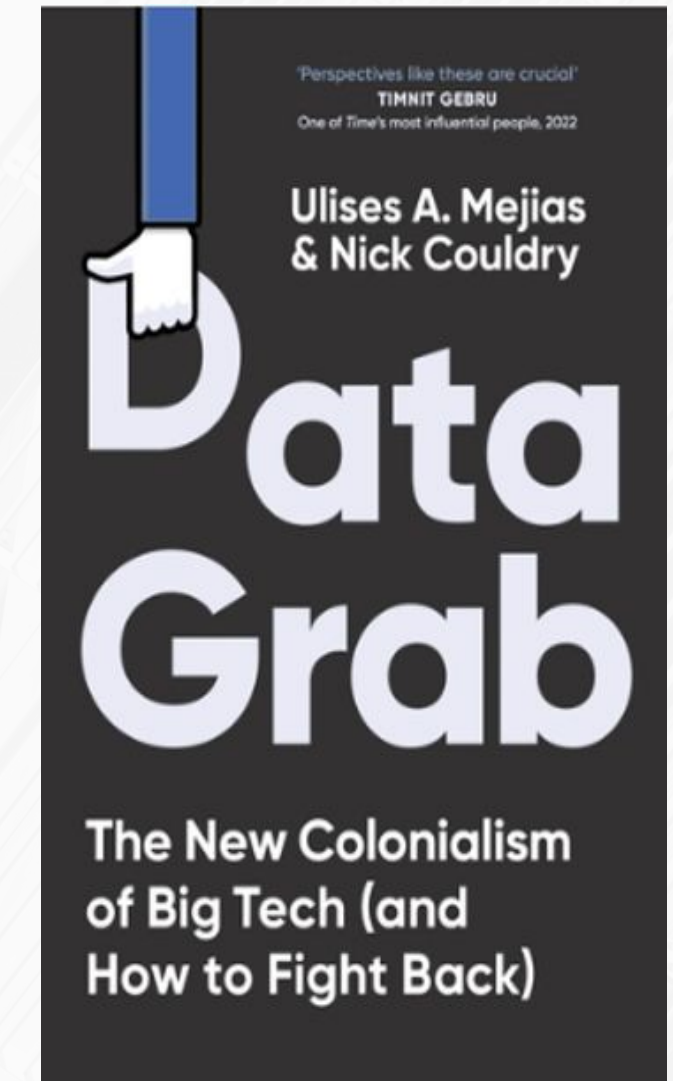
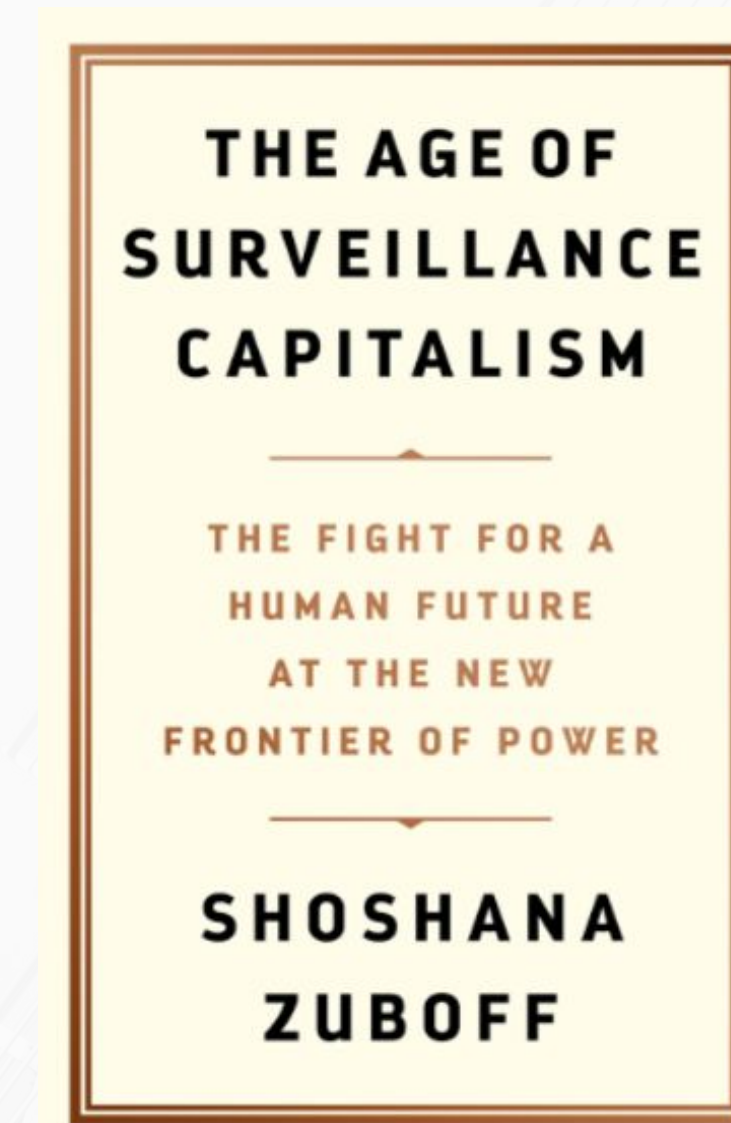


94%
of all funding
of AI
start-ups



90%
of the market
capitalization
of the world's largest
digital platforms

2010s: Digital liberalism with a social project



US wavering support for the liberal order

18. Jan 2023, 9:38 pm

U.S. Trade Chief Says Globalization Is Running Into Limitations

By Yuka Hayashi



U.S. Trade Representative Katherine Tai said the world needs to shift to a new trading system. (Geert Vanden Wijngaert/Associated Press)

ICYMI: Ambassador Katherine Tai Touts Worker-Centered Trade Agenda That Delivers for All Americans

October 08, 2024

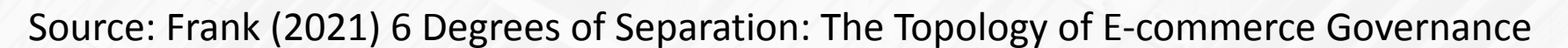
"Fundamentally, what we're doing is innovating the way you do trade policy, innovating the way globalization is going to play out into the future."

WASHINGTON – In interviews with the Associated Press and AFP, United States Trade Representative Katherine Tai highlighted the Biden-Harris Administration's worker-centered trade policy and what it means for workers, both home and abroad.

Ambassador Tai illustrated how a worker-centered trade policy is bolstering manufacturing, and supporting American jobs and key industries through important trade tools like tariffs and the United States-Mexico-Canada Agreement's Rapid Response Mechanism.

The Biden-Harris Administration's trade policy prioritizes labor standards over mass production, protects workers instead of large corporations, promotes resilient supply chains in the 21st century global economy, and builds an economy from the bottom up and the middle out.

Adoption of much softer and loose trade collaboration, via mechanisms such as the Indo-Pacific Economic Framework for Prosperity (IPEF), from 2022.



Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

- Agreement between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.
- The CPTPP incorporates most of the TPP provisions by reference.
- All original TPP signatories except the US reached agreement in 2018 to conclude the CPTPP. Came into force on 30 December 2018. UK joined in 2023.
- From 2018 to 2021, intra-CPTPP trade increased 5.5% overall, and trade between members that previously lacked FTAs grew 13.2%.

CPTPP: E-COMMERCE CHAPTER

- **specific rules on data:**
 - **explicit ban on data protectionism:** 'Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person'
 - **localization measures prohibited:** art. 14.13(2) prohibits the parties from requiring a 'covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory'.
 - **restrictions are permitted only for legitimate purposes** if they do not amount to 'arbitrary or unjustifiable discrimination or a disguised restriction on trade'
- **low standards of data privacy protection**
- **Provision that limits requests to access the source code of computer programs.** Such requests could lead to trade secret violation.
- **Rules on consumer protection, spam, cybersecurity (very soft, collaboration) and network neutrality.**

Continued shift of rulemaking to the Asia-Pacific with Regional Comprehensive Economic Partnership (RCEP)



Provision Area	CPTPP	RCEP
Cross-border data flows	✓	✗
Data localization restrictions	✓	✗
Source code protection	✓	✗
Paperless trade / e-documents	✓	✓
Online consumer protection	✓	✗
Personal data protection	✓	✗
Open internet access	✓	✗
Cybersecurity cooperation	✓	✗
Dispute settlement (digital)	✓	✗

China, Costa Rica, Ecuador, Indonesia, Ukraine, Uruguay, and Taiwan have applied to join.

WTO-plus provisions: Digital governance through digital trade? What are the setbacks?

- Electronic signatures and authentication
- Liability
- Data flows
- Localization of computing facilities
- Open (government) data
- Open Internet access
(net neutrality)
- Online consumer protection
- Privacy and data protection
- Spam
- Access to the source code
- Cybersecurity
- Telecommunications

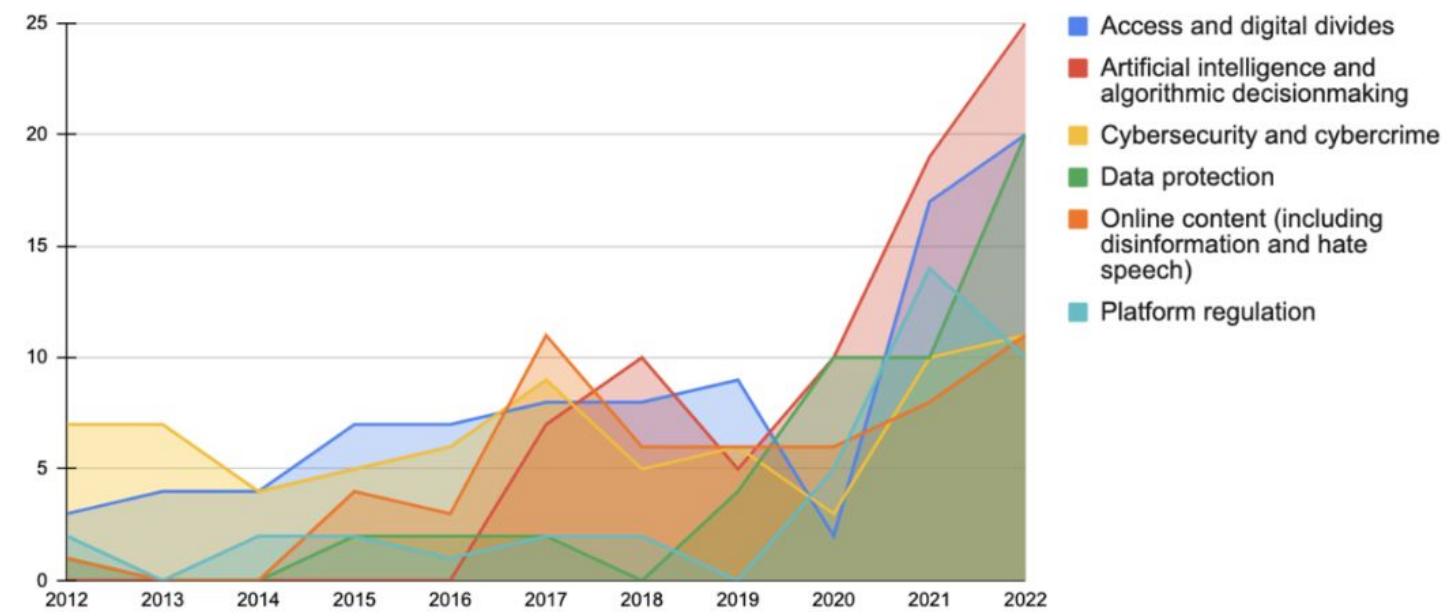


Image 1. Chart of relevant issues as reflected in the number of IGF sessions from 2012-2022 (Source: IGF website, tracked by GPD)

POST-CPTPP DEVELOPMENTS: DIFFUSION

- similar rules in other trade agreements:
 - 2016 **Chile-Uruguay** FTA
 - 2016 **updated Singapore-Australia** FTA (SAFTA)
 - 2017 **Argentina-Chile** FTA
 - 2018 **Singapore-Sri Lanka** FTA
 - 2018 **Australia-Peru** FTA
 - 2018 **United States-Mexico-Canada Agreement** (USMCA)
 - 2019 **Brazil-Chile** FTA
 - 2019 **Australia-Indonesia** FTA
 - 2019 **Japan-US Digital Trade Agreement**
 - 2020 **DEPA: Chile, New Zealand, Singapore**
 - 2021 **Korea-Singapore** DEA
 - 2022 **UK-Singapore** DEA
-
- **Taiwan, China and other wish to join the CPTPP; UK became a member in 2023**

Digital economy agreements are a new frontier for trade – here's why

Aug 24, 2022

- ‘Digital-first’ agreements that direct the parties to cooperate on a wide range of digital economy issues, **alongside** core CPTPP- or RCEP-style rules. Ex. DEPA, DEAs, upcoming DEFA.
- Predominantly ‘soft’ cross-border collaboration on issues as wide-ranging as data flows, digital identities, cybersecurity, consumer protection, competition, digital inclusion, AI.
- Some characteristics
 - Collaboration, partnerships
 - From ‘digital trade’ to ‘trade in the context of the digital economy’
 - Building blocks
- “Concerted open plurilateralism”. DEPA open to all members of the WTO (ex. UK, Canada, South Korea)
- Countries celebrating at bilateral level as well (ex. Singapore-Australia DEA, UK-Singapore DEA)
- ASEAN Digital Economy Framework Agreement (DEFA) (under negotiation) follows this model. Comprises nine core elements: data flows and data protection, trade facilitation, e-commerce, electronic payments and e-invoicing, digital identities and electronic authentication, cybersecurity, competition policy, emerging technologies, and ‘talent mobility and cooperation’.

DEAs: possibility to mainstream development?

For example, according to Mishra and Aggarwal (2022) **only 5 out of 379 FTAs surveyed by had provisions regarding digital inclusion; only 57 FTAs in contain provisions on supporting MSMEs.**

- **Digital inclusion:** DEPA includes a provision. Provides concrete suggestions on how to achieve cooperation, such as enhancing people-to-people links, identifying and addressing access barriers, improving digital skills, sharing methods and procedures for developing datasets (article 11.1).
- **MSMEs:** DEPA encompasses specific commitments for parties to mandatorily cooperate to support MSMEs in specific areas, such as access to credit and to procurement processes, and to help them in terms of regulatory compliance (articles 10.1 to 10.4).

Comparison of CPTPP/DEPA/DEA

NO.	Digital Trade Provisions	DEA	DEPA	CPTPP
1	Commitments to facilitate digital trade	✓	✓	✓
2	No customs duties on electronic transmissions	✓ Article 5	✓ Article 3.2	✓ Article 14.3
3	Non-discrimination of digital products	✓ Article 6	✓ Article 3.3	✓ Article 14.4
4	Domestic electronic transactions framework	✓ Article 8	✓ Article 2.3	✓ Article 14.5
5	Electronic authentication and signatures	✓ (+) Article 9	✗	✓ (-) Article 14.6
6	Paperless trading	✓ (+) Article 12	✓ (+) Article 2.2	✓ (-) Article 14.9
7	Electronic invoicing	✓ (+) Article 10	✓ (-) Article 2.5	✗
8	Electronic payments	✓ Article 11	✓ Article 2.7	✗
9	Express shipments	✓ Article 13	✓ Article 2.6	✓ Article 5.7
10	Online consumer protection	✓ Article 15	✓ Article 6.3	✓ Article 14.7
11	Cooperation on competition policy	✓ Article 16	✓ Article 8.4	✗
12	Personal information protection	✓ (-) Article 17	✓ (+) Article 4.2	✓ (-) Article 14.8

13	Unsolicited commercial electronic messages	✓ (+) Article 19	✓ (-) Article 6.2	✓ (-) Article 14.14
14	Submarine telecommunications cable systems	✓ Article 22	✗	✗
15	Location of computing facilities for financial services	✓ Article 25	✗	✗
16	Data innovation	✓ (-) Article 26	✓ (+) Article 9.4	✗
17	Open government data	✓ Article 27	✓ Article 9.5	✗
18	Source code	✓ (+) Article 28	✗	✓ (-) Article 14.17
19	Digital identities	✓ Article 29	✓ Article 7.1	✗
20	Standards and conformity assessment for digital trade	✓ Article 30	✗	✗
21	Artificial intelligence	✓ (+) Article 31	✓ (-) Article 8.2	✗
22	FinTech and RegTech Cooperation	✓ (+) Article 32	✓ (-) Article 8.1	✗
23	Dispute settlement	✓ (+) Article 21	✓ (+) Article 14	✓ (-) Article 14.18

The spaghetti bowl... (including being negotiated)

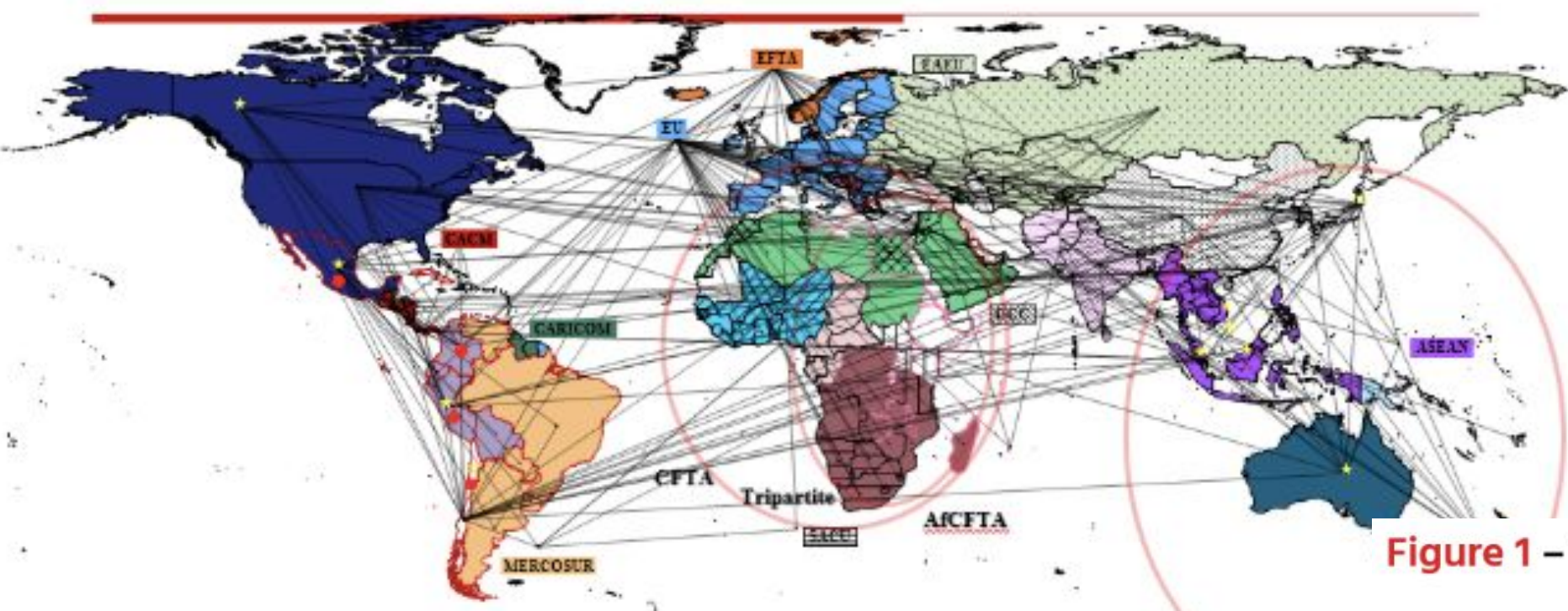
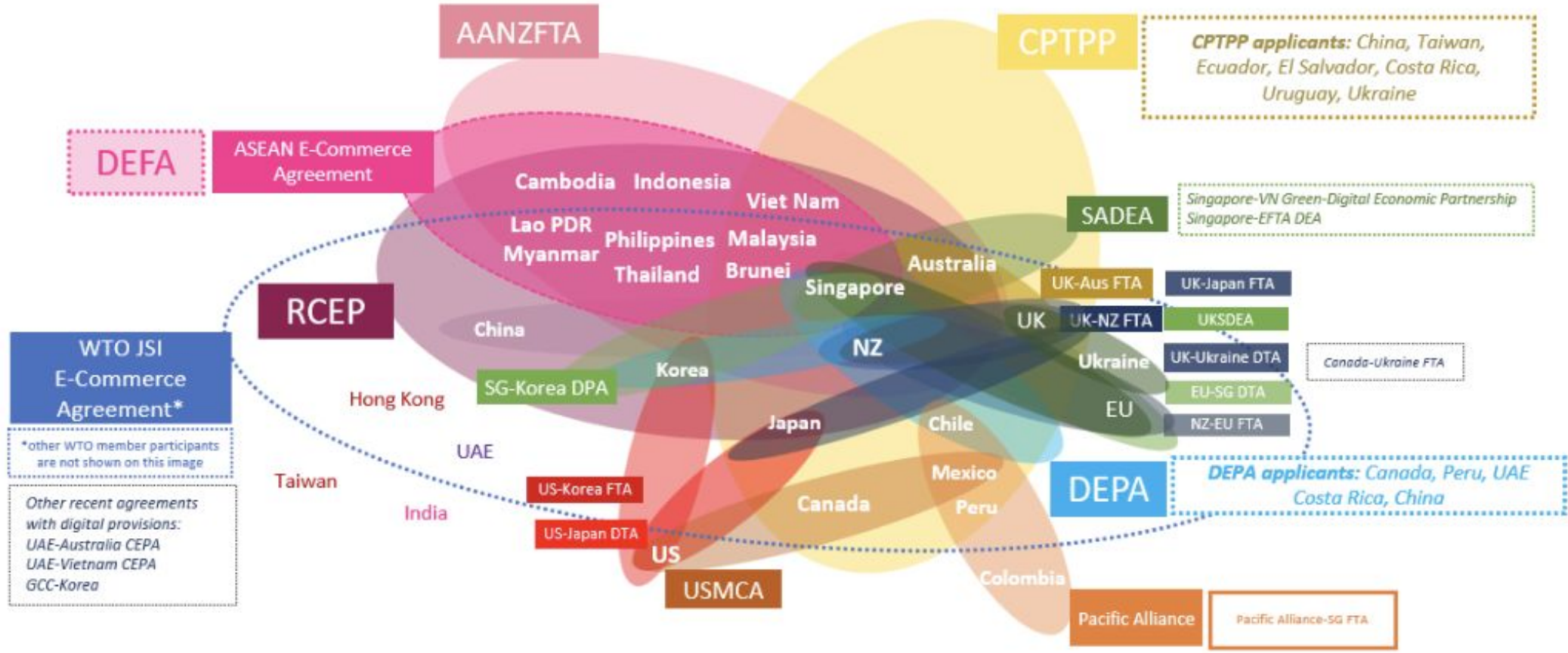


Figure 1 – The “digital noodle bowl” in the Indo-Pacific

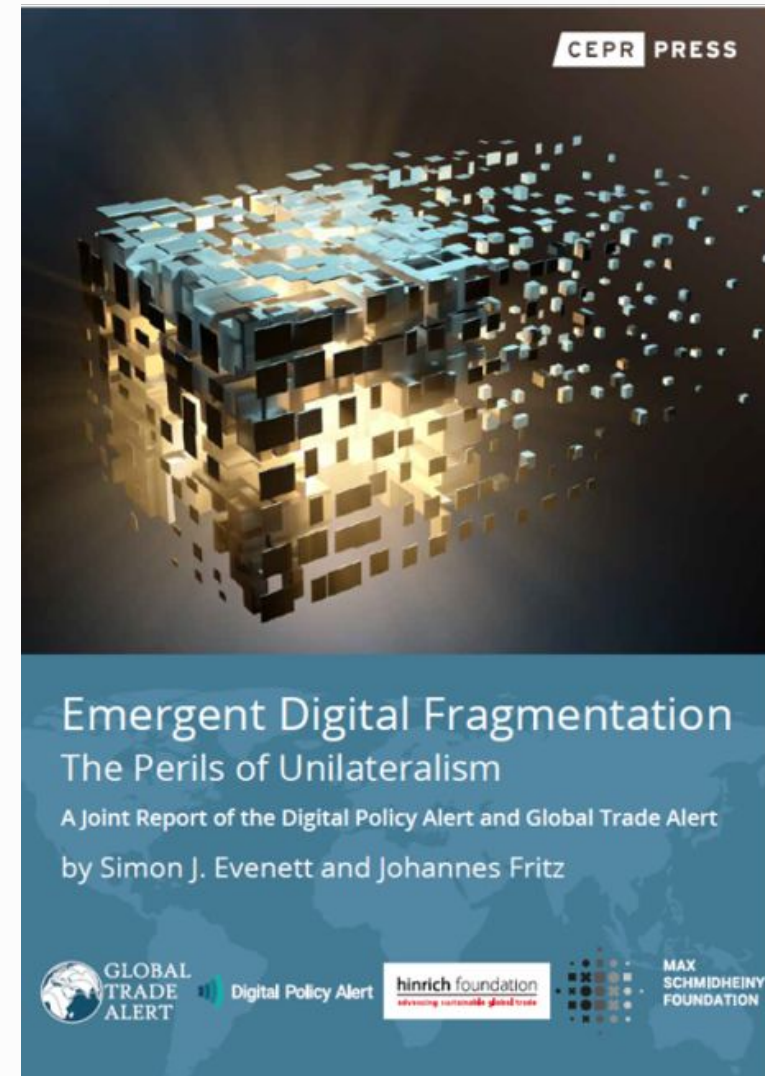
Source: RTA Section, WTO, March 2020.

- | | | | | | | | |
|-------|----------|-------|--------|--------|-------|--------|-------|
| NAFTA | CARICOM | EFTA | CIS | PAFTA | CEMAC | GCC | APTA |
| CACM | MERCOSUR | EU | EAEU | ECOWAS | SADC | EAC | SAFTA |
| CAN | LATA | CEFTA | AGADIR | WAEMU | SACU | COMESA | ASEAN |
- Pacific Alliance

Source: RTA Section WTO, 2020



Fragmentation: digital (in/inter)dependence

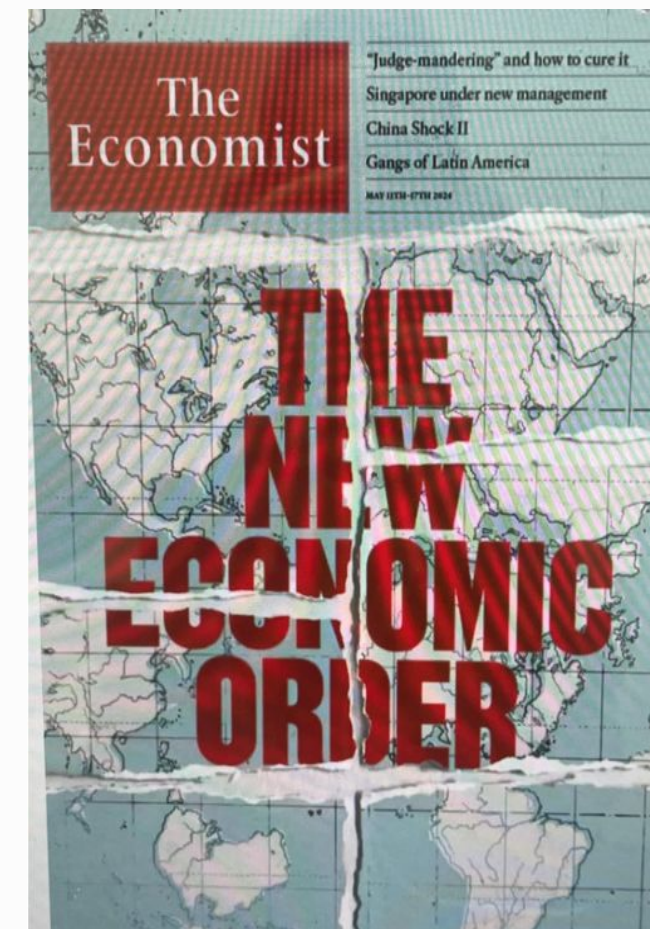


- Governments are in 'regulatory overdrive' in digital sectors since 2020.
- The three most active areas of state intervention are data governance, online content moderation, and competition.
- Unilateral state action in the digital domain raises the risk of fragmentation.
- Subsidy races are breaking out in the digital economy, most notably in the semiconductor sector.



This new (geoeconomic) order

- The interests of the State first, not to protect the vulnerable, but to strengthen and protect the State itself in a context of geopolitical competition.
- Economic statecraft is technology statecraft
- Technology policy is a matter of economic and national security
→ link between technology and development at the backdrop
 - development assistance is dwindling.
 - development assistance has been an enabler of digital FDI



OPINION • WORLD

COLUMN

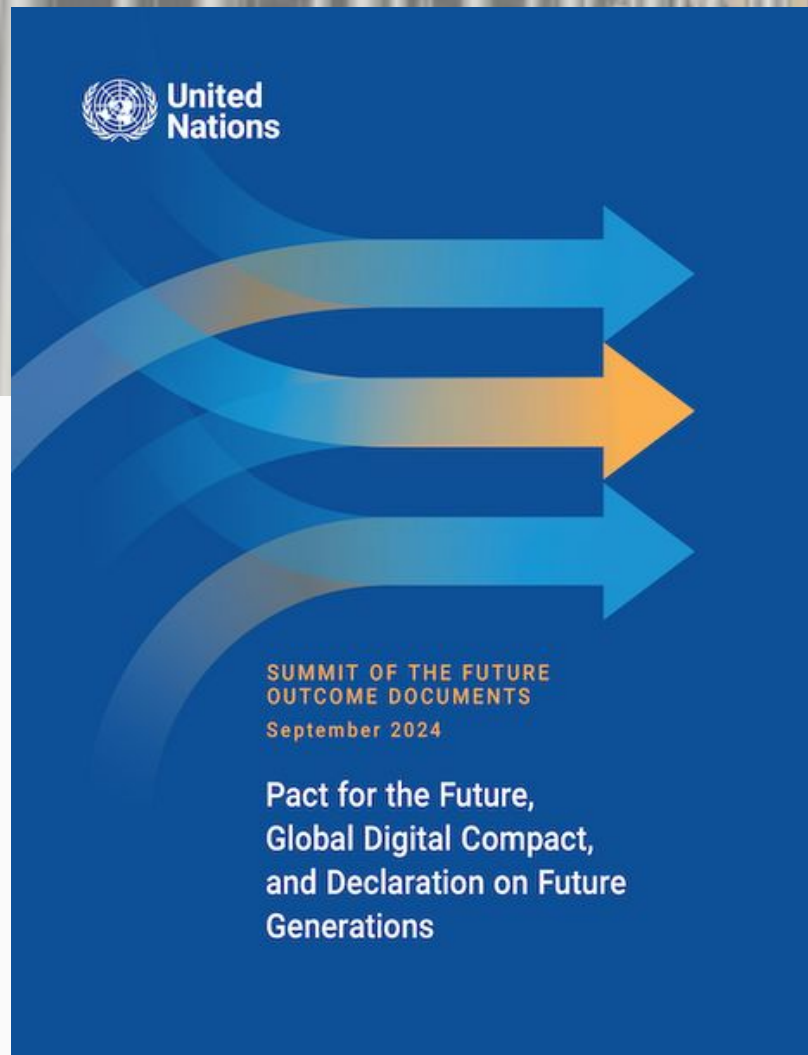
Julien Bouissou

'In the US as in France, the whole philosophy of foreign development aid is under threat'

The drop in funds earmarked for development assistance points to a change in political objectives pursued around these expenditures, writes Le Monde's Julien Bouissou.

Published on February 5, 2025, at 3:42 am (Paris), updated on February 5, 2025, at 7:48 am | ⌚ 2 min read • [Lire en français](#)





Trade governance and rule making must align with other international initiatives aiming to ensure a people-centered and development oriented information/digital society (i.e. WSIS, GDC).

Principles	Inclusive participation	Development oriented	Anchored in IL, including IHRL	Gender equality & empowerment	Environmental sustainability	Equitable & meaningful inclusion	Accessible & affordable data, tech, services
	interoperability	Safe, secure, trustworthy tech	Competition & innovation	Multistakeholder	Support for developing countries		Forward-looking
Objectives	Close all digital divides and accelerate progress across SDGs	Expand inclusion in and benefits from the digital economy for all		Foster an inclusive, open, safe, and secure digital space that respects, protects and promotes HR	Advance responsible, equitable and interoperable data governance approaches		Enhance international governance of AI for the benefit of humanity
Commitments, actions, calls	Connectivity			Human rights	Data privacy and security		
	Digital literacy, skills, capacities			Internet governance	Data exchanges and standards		
	DPGs and DPI			Digital trust and safety	Data for SDGs and development		
				Information integrity	Cross-border data flows		
					Interoperable data governance		



WORLD TRADE
ORGANIZATION

WT/MIN(24)/38
WT/L/1193

4 March 2024

Page: 1/1

(24-1989)

Ministerial Conference
Thirteenth Session
Abu Dhabi, 26 February-2 March 2024

WORK PROGRAMME ON ELECTRONIC COMMERCE

MINISTERIAL DECISION

Adopted on 2 March 2024

The *Ministerial Conference* decides as follows:

We agree to continue to re-invigorate the work under the Work Programme on Electronic Commerce, based on the mandate as set out in [WT/L/274](#), and with particular focus on its development dimension, taking into account the economic, financial and development needs of developing and least-developed country Members.

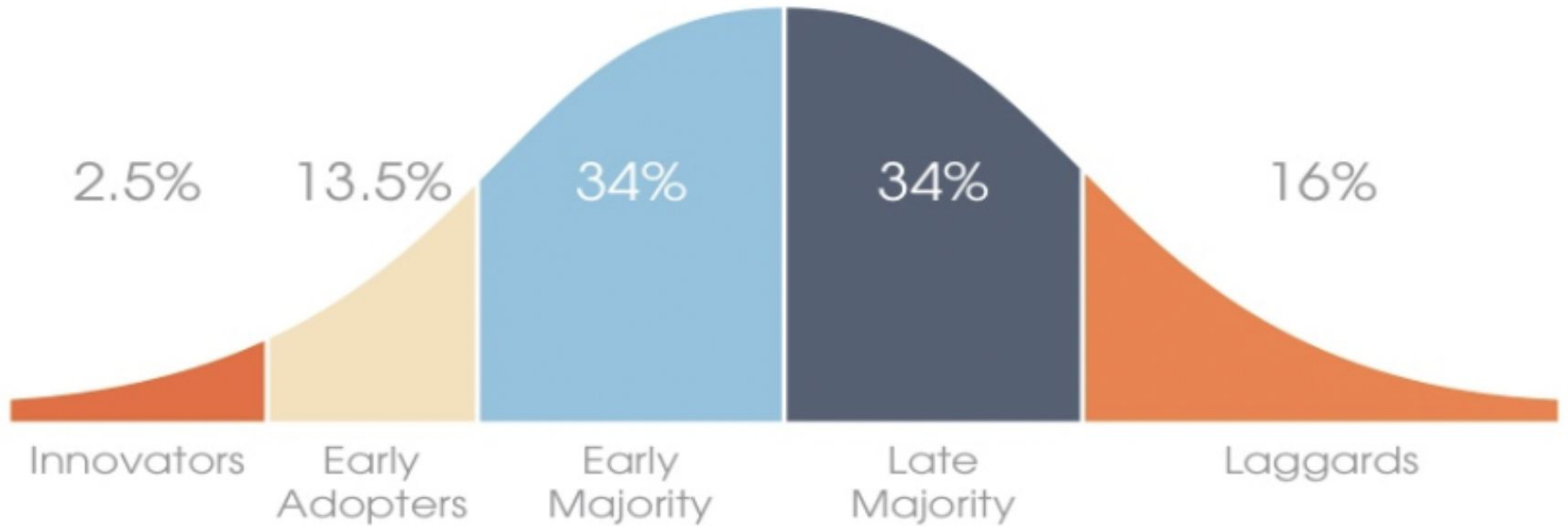
Paragraph 1

“We agree to continue to re-invigorate the work under the Work Programme on Electronic Commerce, based on the mandate as set out in WT/L/274, and **with particular focus on its development dimension**, taking into account the economic, financial and development needs of developing and least-developed country Members.”

Paragraph 2:

“We welcome the constructive engagement in the Dedicated Discussions which included the exchange of experiences and submissions on several e-commerce-related topics and agree to deepen such discussions on e-commerce-related topics as identified by Members building on work from previous Dedicated Discussions We agree to hold further discussions (...) **and how to level the playing field for developing and least-developed country Members to advance their digital industrialization**”.

The majority depends on diffusion and inflows of technology and skills



Thank you!

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