



**UiO** • **Institutt for privatrett**

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# **Internet Governance by Contract: Its Rationale, Utility and Legitimacy**



## **Brendan Edgeworth (2003):**

“[r]ights are determined increasingly by reference to private contractual agreement rather than public regulation so that contract once more, as in the 19th century, ‘swallows up’ much of the subject matter it was seen to ‘disgorge’ ”

## Clinton-Gore Administration (1997):

“governments should establish a predictable and simple legal environment based on a decentralized, *contractual* model of law rather than one based on top-down regulation”

## **Nancy Kim (2013):**

“Mass consumer online agreements . . . lack many of the features of traditional contracts. They are weightless, obscure and ubiquitous—and thus easily ignored. They offer fine print in an environment where colorful images dominate over text.”

## Packet Clearing House study (2010-11)

Of 142,210 interconnection/peering agreements (supposedly embracing 86% of all Internet carriers at the time) only **0.49%** were written.

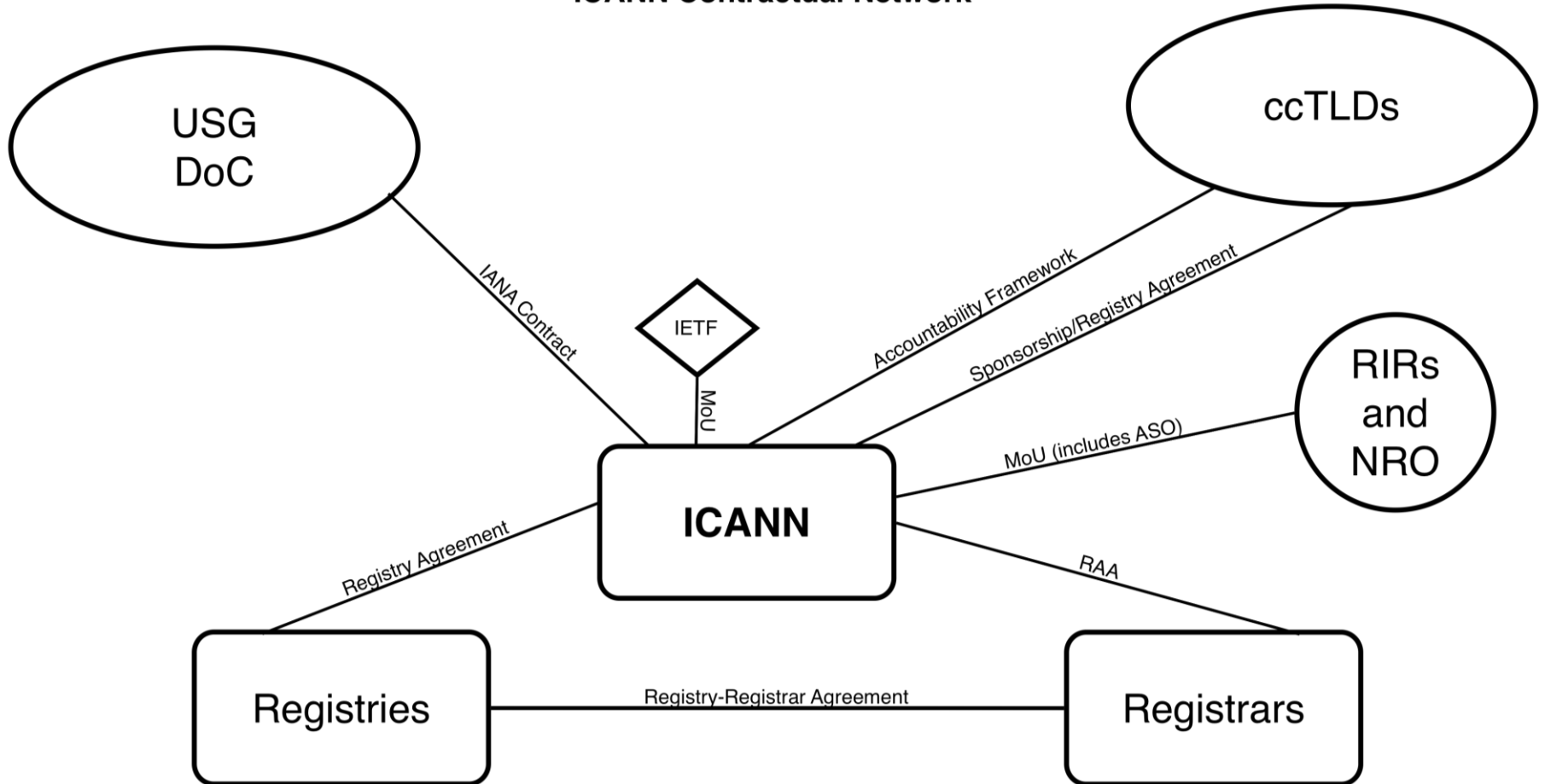
## **Robert Ellickson (1991):**

“lawmakers who are unappreciative of the social conditions that foster informal cooperation are likely to create a world in which there is both more law and less order.”

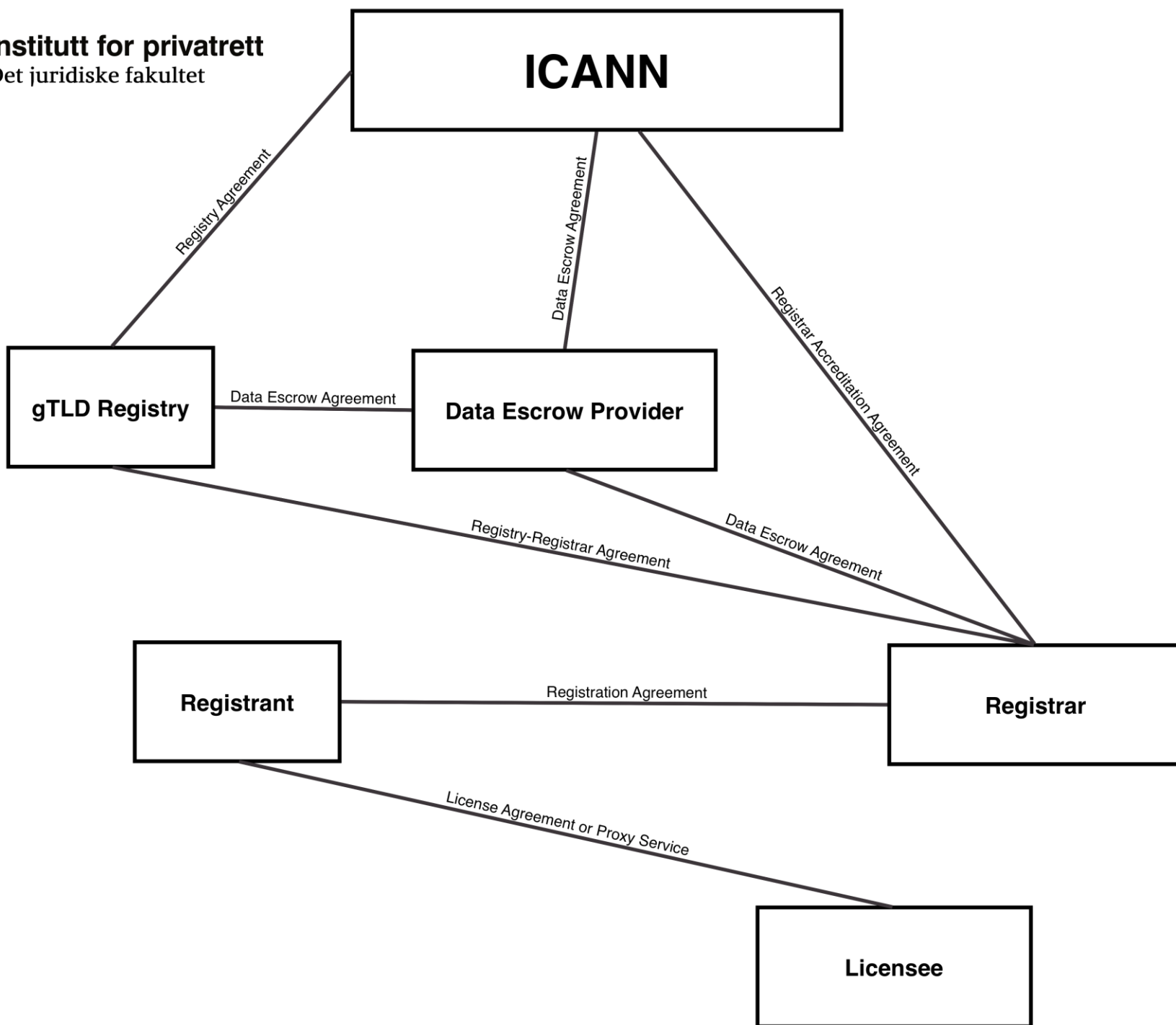
## **Bernt Hugenholtz (1999):**

“The structure of the Internet facilitates the establishment of a multitude of contractual relationships between information producers and end users, either directly or through intermediaries. The Internet (or more precisely, the World Wide Web) is uniquely suited for this purpose. Both its “textual” environment and its interactive nature are ideal conditions for a contractual culture to grow and flourish”

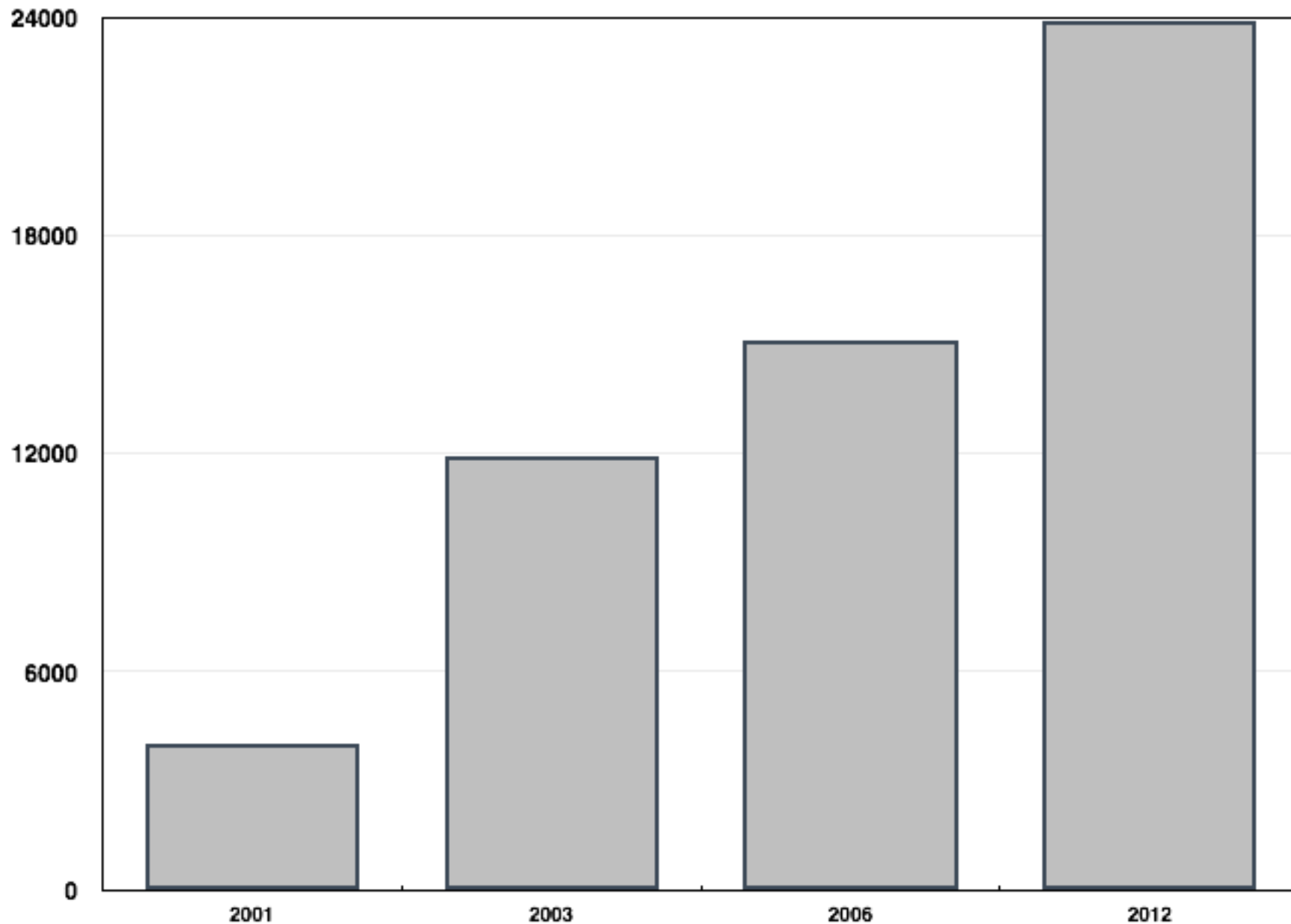
### ICANN Contractual Network

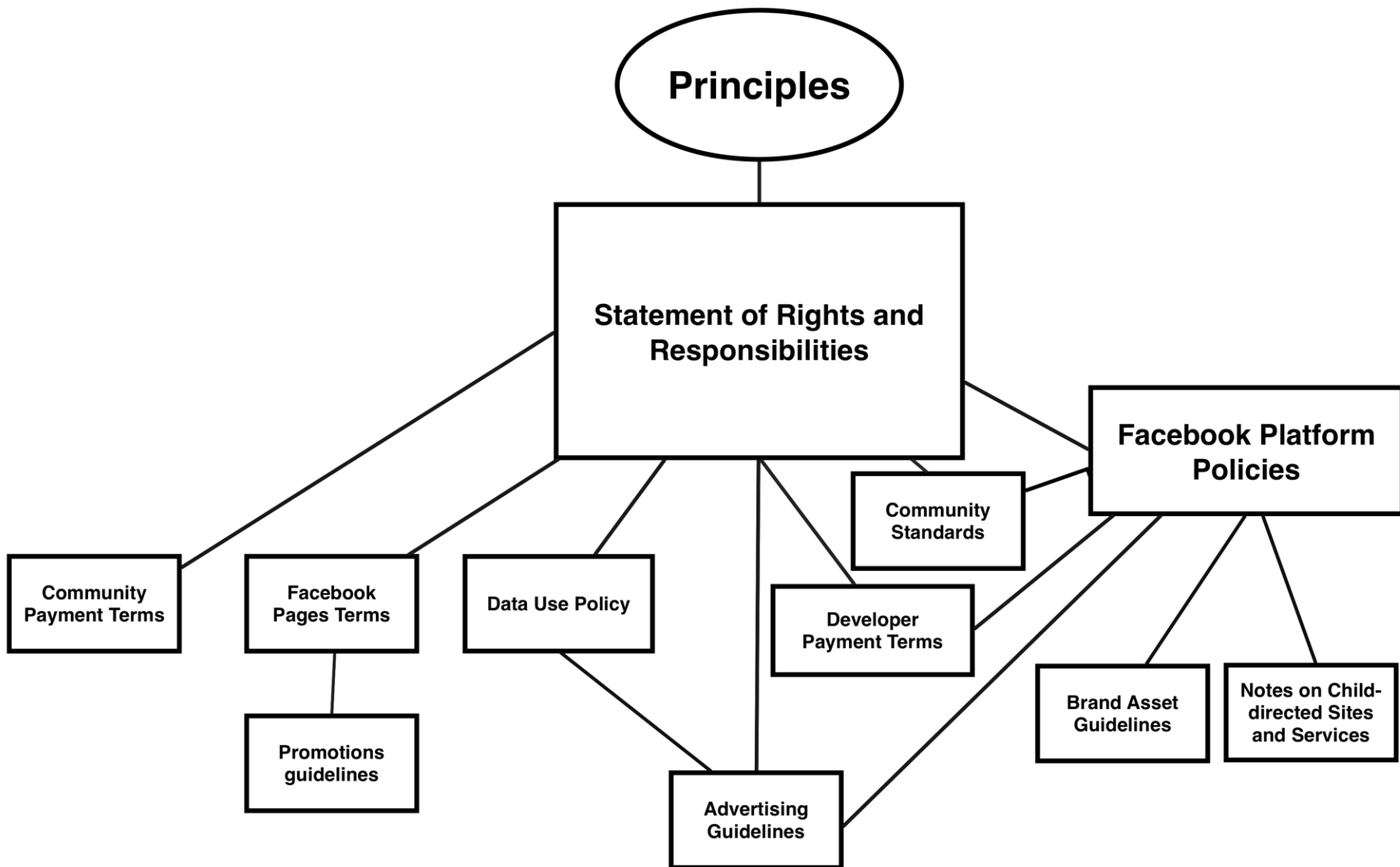




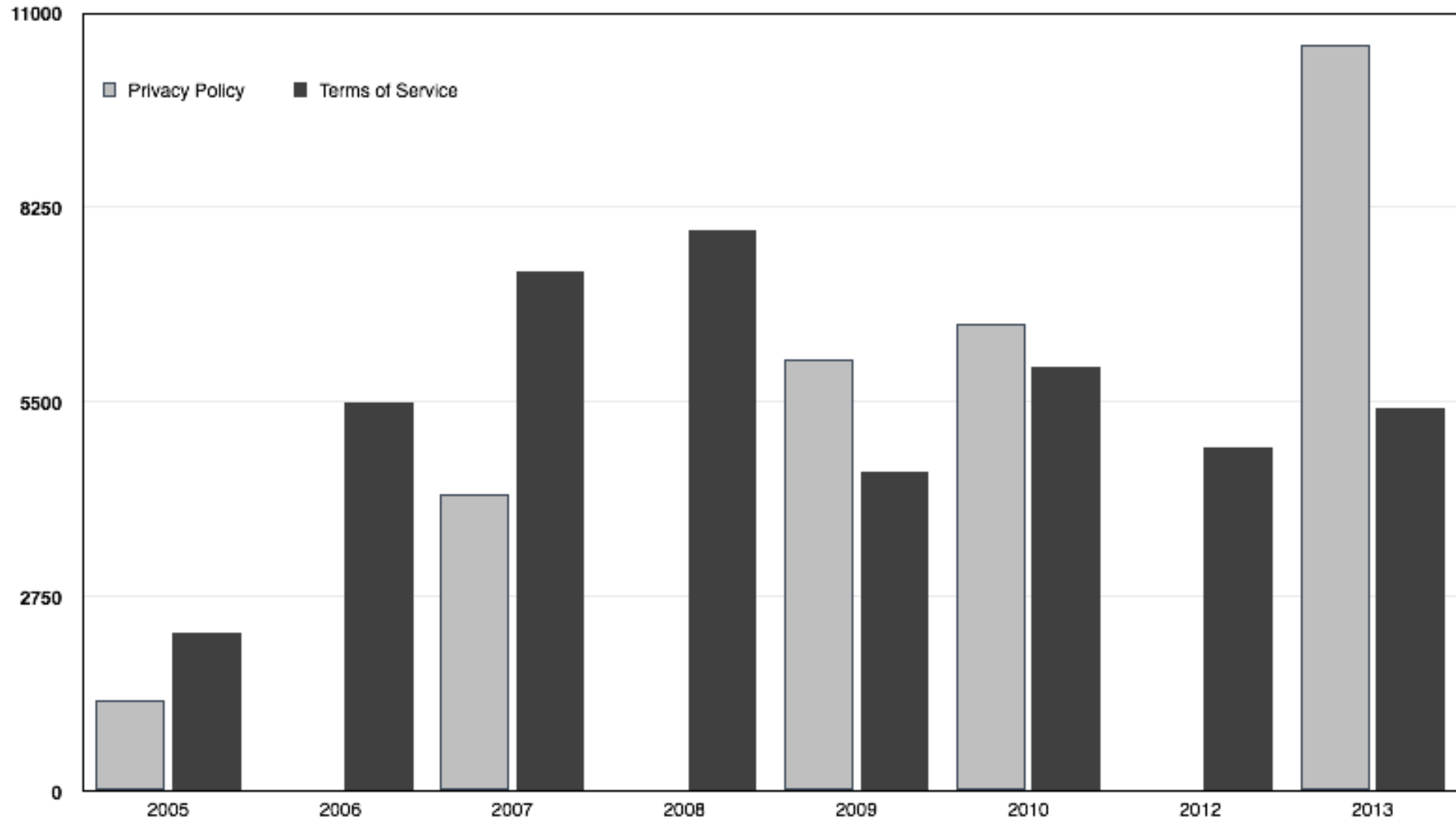


### Length of IANA contracts (number of words)

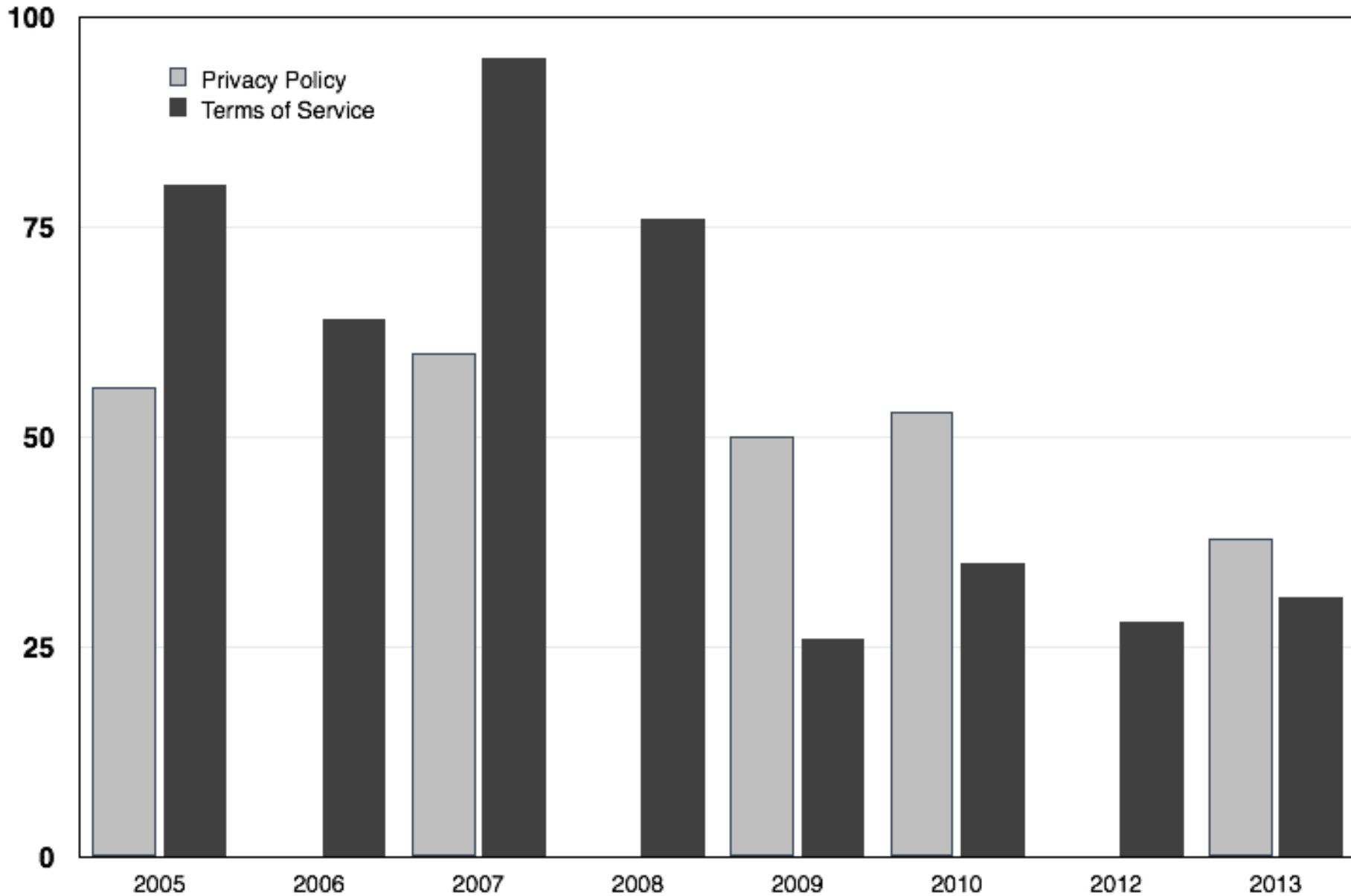




Facebook contracts - Words per text



### Facebook contracts - Average words per paragraph



## **Oliver Williamson (1998):**

- Through TCE lens, contracts are a means by which “economic actors look ahead, perceive potential hazards, and embed transactions in governance structures that have hazard-mitigating purpose and effect”