Who Should Govern the Internet?

Failing to share control, the U.S. risks driving disaffected countries to establish their own competing, independent root servers, thus creating parallel Internets.

Sooner or later the U.S. will have to share oversight of Internet management with the rest of the world. Sooner would be better, however, since agitation for shared control is increasing. Failure to reach an agreement on multilateral oversight risks driving disaffected countries to create competing root servers, possibly making Internet addressing ambiguous and unreliable. The U.S. would be well advised to take the initiative and offer the world a compelling proposal for international oversight.

The U.N.-sponsored World Summit on the Information Society, held November 16, 2005 in Tunis, highlighted Internet governance as a contentious issue in world affairs. Although the meeting did not result in any change in U.S. oversight of the Internet Corporation for Assigned Names and Numbers (ICANN) and hence apparent control over crucial aspects of the network, the attendees did agree to establish the Internet Governance Forum (IGF) for discussing Internet-related issues. This result was hailed by attendees as a win-win outcome for all participating countries. The U.S. prevailed by retaining its exclusive supervision of ICANN, while the interests of independent-minded countries were formally recognized through the agreement to form the IGF, a body likely to examine control, as well as other issues, in the future.

The Internet was born and raised in the U.S. and until 1998 was managed by the Department of Commerce. ICANN, a private corporation, was given the management task in 1998, even as the Department of Commerce continued to play a supervisory role. As stated on its Web site (www.icann.org), ICANN "is an internationally organized, non-profit corporation that has responsibility for Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) Top-Level Domain name system management, and root server system management functions."

As the Internet's geographic coverage and usage have come to include most of the world, other countries have demanded the U.S. cede the control it exercises over ICANN to an international oversight body. Negotiations on this issue have been in process for years, while frustration with U.S. dominance has grown. The frustration level in some countries has been high enough to have triggered threats of creating parallel Internets if negotiations fail to achieve greater internationalization. Those

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favoring globalization hope the IGF will deal with all the broad policy issues concerning the Internet. It has been charged with making nonbinding recommendations to ICANN as part of its responsibility.

Alas, the agreement reached in Tunis is, at best, only a temporary solution that maintains the status quo. The dispute over governance is not likely to be resolved until the U.S. takes concrete steps to share oversight of ICANN with other countries.

ICANN controls a critical lever of power—the master root file—that can be used as an instrument of punishment to disrupt the operation of at least the ccTLDs [4]. For example, the ccTLD for Iraq was inoperable, stuck in a bureaucratic limbo at ICANN from 2002 to 2005, and the ccTLD for Libya (.ly) was inoperable for five days in 2004 due to a redelegation dispute. This power makes for an uneasy relationship among ICANN, national governments, and the administrators of ccTLD. While the administrators depend on the master root file controlled by ICANN to provide Internet presence, most countries have balked at signing contracts that would give ICANN policy authority over them, arguing that ICANN makes decisions that should be made by sovereign nation states.

Under the current arrangement, the U.S. has the power to disrupt the Internet infrastructure selectively. For example, ICANN recently delayed adoption of a new .xxx TLD for adult content due to pressure from U.S. government agencies. Yet the same disruptive potential of these technological mechanisms also makes it imperative that control not be handed over in a way that would allow rogue nations to hold the Internet infrastructure hostage [6]. Given the increasingly militant stance of some countries, U.S. intransigence on the governance issue could lead to creation of alternate root servers and multiple, parallel Internets and chaos [1].

ICANN can always respond by taking punitive action to deny stakeholders of parallel Internets access to its network, thus escalating the conflict, with suboptimal results for everyone. Hence, U.S. policymakers should reach out to the international community to develop an equitable, multilateral solution for the oversight mechanism in a way that minimizes these kinds of potential disruptions.

While issues concerning the management of technological mechanisms administered by ICANN involve significant policy implications, they are but a subset of the ones normally subsumed under Internet governance. Decisions made by ICANN, even within the narrow confines of its core mission, may impinge on national sovereignty [3]. Broader policy issues, such as intellectual property rights, fraud, spam, objectionable content (pornography and hate material), free speech, privacy, and multilingualism, as well as mechanisms for enforcing rules and regulations, are not formally within the purview of ICANN and must be addressed by the global community of nations. Governance agreements among participating countries, however imperfect, are needed to provide a framework for action and dispute resolution in situations involving discrepancies among the laws of these nations. The IGF has a mandate to look at these broader issues, along with

the role of ICANN and its oversight.

ICANN may very well be doing a good job of managing Internet resources on a day-to-day basis, but critics have questioned its legitimacy as an institution, arguing there are inherent contradictions between ICANN's status as a private corporation and its mandate in performing a public policy role [5]. While ICANN claims it strives to create policies "through a bottom-up, transparent process involving all necessary constituencies and stakeholders in the Internet Community" (www.icann.org), it has been criticized for poor accountability and lack of transparency in its decision making ever since its creation, even after major organizational changes in 2002 [3].

That reorganization resulted in the creation of the Government Advisory Committee (GAC), thus nominally increasing the influence of governments. While the GAC is mandated to act in an advisory capacity only and has no voting authority in ICANN decisions, ICANN is required to provide reasons for rejecting any advice the GAC offers. Unfortunately, the reorganization also resulted in a substantial decrease in the influence of individual Internet users whose interests are represented through the At-Large Advisory Committee (ALAC). Before the reorganization, nine of the 19 directors came from at-large members, based on a global election. Since the reorganization, the ALAC has been allowed to appoint one nonvoting representative to the board. Much criticism of the governance structure stems from these changes, inasmuch as the interests of consumers have been neglected in favor of the interests of corporations and governments.

The GAC has also been criticized for its lack of transparency and accountability and for its poor representation of developing countries [2]. Perhaps creation of the IGF will address some of these concerns and provide developing countries another forum for airing their views. Indeed, the IGF could play a significant role in the composition and functioning of the GAC. This might, in the near future, even lead to the IGF or the reconstituted GAC taking over the ICANN oversight role from the U.S.

This would enable ICANN to continue its present mission—but under the auspices of an international oversight body representing national governments lacking the authority to interfere in day-to-day operations.

If multilateral supervision of ICANN is blocked by the U.S., some countries may choose to establish their own independent root servers, thus creating a Balkanized Internet [1]. In the short run, this might not be especially problematic for the U.S., but longer term it is likely to impede efforts to reach agreements on the broader policy issues surrounding the use of the Internet. The challenge for U.S. policy-makers is to balance the need for effective administration against the legitimate aspirations of other countries. Like a wise parent, the U.S. should find a way to accommodate the independence of the Internet and recognize it as the mature creation it has become. ▣

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