International Journal of Legal Information
the Official Journal of the International Association of Law Libraries

Volume 37
Issue 3 *Winter 2009*

Article 9

8-1-2010

Internet Governance: A Developing Nation's Call for Administrative Legal Reform

Surya Mani Tripathi
Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology, tripathismani@rediffmail.com

Anshu Pratap Singh
Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology, anshupratapsingh@yahoo.com

Dipa Dube
Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology, dipadube@rgsoipl.iitkgp.ernet.in

Internet Governance: A Developing Nation's Call for Administrative Legal Reform*

SURYA MANI TRIPATHI**, ANSHU PRATAP SINGH***, AND DIPA DUBE****

Cyberspace presents something new for those who think about regulation and freedom. It demands a new understanding of how regulation works and what regulates life there. It compels us to look beyond the traditional lawyer's scope-beyond laws, regulations, and norms. It requires an account of a newly salient regulator [- Computer Code]…… In real space we recognize how laws regulate – through constitutions, statutes and other legal codes. In cyberspace we must recognize how code regulates how the software and hardware that make cyberspace what it is regulate cyberspace as it is…..Code is law.[1]

Abstract

The internet has emerged as a reservoir of information and has pushed the world to evolve into a global village. Increased communication across political, social and economic barriers has created a virtual society of its own. This networked society poses considerable challenges for Internet Governance. The ***Internet Corporation for Assigned Names and Numbers*** **(**ICANN) is the institution responsible for the internet management. ICANN

---

* The present paper is modified version of a paper presented at the International Conference of Jurists on Terrorism, Rule of Law & Human Rights, December 2008, held at New Delhi, India; organized by International Council of Jurists, All India Bar Association and Indian Council of Jurists, India.

** tripathismani@rediffmail.com, Law (LL.B.) student at Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology (IIT) Kharagpur, West Bengal-721302, India; Corresponding author.

*** anshupratapsingh@yahoo.com, Law (LL.B.) student at Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology (IIT) Kharagpur, West Bengal-721302, India.

**** dipadube@rgsoipl.iitkgp.ernet.in, Assistant Professor of Law at Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology (IIT) Kharagpur, West Bengal-721302, India.

[1] See, Lessig, Lawrence, (1999), *The Code of Cyberspace* at http://www.-lessig.org/content/standard/0,1902,7802,00.html (last visited on 10 Sept 2009).

has been at the center of the debates over global governance of the internet. Key concerns raised in these debates involve the legitimacy of institutions as well as the participation of developed and developing nations in Internet governance.

Introduction

The "World Wide Web" has expanded the scope of the phrase "*The Law is a Seamless Web*"[2] and the extraordinary transformation of communications networks into a seamless global web of digital information exchanges. It has resulted in the globalization of financial markets,[3] creating the demand for a new understanding of legal regulations.[4] The Internet has fostered new ways of communication, working across borders, and sharing information and files in dynamic ways. As the Internet grows and becomes more pervasive, there appears to be growing concern for a more organized and accountable system[5]. To maximize the social, economic and environmental benefits of the Information Society, governments need to create a trustworthy, transparent and non-discriminatory legal, regulatory and policy environment. This need for a regulatory mechanism has given rise to the concept of *Internet covernance*.

The current Internet governance process is mostly conducted outside the established structures for international co-operation and thus it can be argued that the Internet could also widen the gap between rich and poor, north and south, further marginalising the developing world. Unlike other UN organizations, providing a member-based regulatory environment that guarantees fair representation for all UN member countries, some important components of the Internet are today managed by one non profit, US-based private corporation - ICANN. Other components such as cybercrime, e-commerce, taxation, and Internet pollution are not regulated at all, leaving developing countries in a position of clear technological and economic disadvantage.

---

[2] See, Frederic William Maitland, (1898), *A Prologue to a History of English Law, 14* L.QUARTERLY REV. *13* in Ethan Katsh, (1993), *38* VILL. L. REV. *403,*

[3] Christopher T. Marsden, (2001), *Cyberlaw.....Global Information Society*, L. REV. OF MICH. ST. UNIV.

[4] See, Krisch, Nico and Benedict Kingsbury, (2006), *Introduction: Global Governanc .....Legal Order*, 17 EUR. J.L OF INT.L L. 1–13; see also Calabrese A., (1999) *Communication and the end of sovereignty?* 4 INFO - THE J.L OF POL., REG. AND STR. FOR TELECOM., 313-326.

[5] See, Marc Galanter, (1985), *The Legal Malaise: Or, Justice Observed*, 19 L. SOC. REV. 537- 545.

Internet governance is a major, unresolved, global issue. In these discussions, the role of developing countries in formulating public policy for Internet governance is of prime importance. Further, the Internet is expanding very fast and continuing on the current track, it might have an adverse impact on the future prospects of developing countries to harness the potential of the Internet. Thus, it is important to establish a legitimate and multi-national forum to guarantee fair representation of all member countries in the Internet governance process.

The present paper is a modest attempt by the authors to highlight the present scenario with regard to Internet governance at the global level. Though technology has come to be accepted as indispensable and of immense public utility, the need to regulate its operation within a global administrative legal framework has been a major challenge. In addition, another crucial area this paper addresses is the relative position of developing countries in the race towards Internet Supremacy. Has the developing world resigned to the power of developed nations? How do the developing countries retain full sovereignty in the realm of Internet governance?

Internet Governance

The Internet, sometimes called simply "the Net," is a shared global computing network - a network of networks in which users at any one computer can, if they have permission, get information. In other words, the Internet is the publicly accessible global packet switched network of networks.[6] It is based on standards, including: Internet Protocol (IP), Simple Mail Transfer Protocol (SMTP), and the Domain Name System (DNS), which enables global communications between all connected computing devices. It provides the platform for web services and the World Wide Web.

Governance is a concept that has been used in a relatively wide variety of ways.[7] In general terms, governance refers to the rules, processes, procedures, and specific actions that impact the way in which power is exercised on a specific area of concern. Governance responds to the "who"

[6] Tang Zicai, Liang Xiongjian, (2005), *Global Internet Governance: Perspectives and Analysis*, China Communications. at http://www.chinacic.org.cn/english-/digital%20library/200502/5.pdf (last visited on 12 Sept 2009).

[7] In effect, governance has been used in the context of: the minimal state; Corporate Governance; the new public management; good governance. See R.A.W. Rhodes, (1996), "*The new governance: governing without government*", 44 POLITICAL STUDIES 4.

question, or, who has the authority to make decisions with respect to a specific set of issues or problems, and therefore, who takes the responsibility for the issue area; that is, who has the mandate?[8]

Governance describes the mechanisms an organization uses to ensure that its constituents follow its established processes and policies. It is the primary means of maintaining oversight and accountability in a loosely coupled organizational structure. A proper governance strategy implements a system to monitor and record what is going on, takes steps to ensure compliance with agreed-upon policies, and provides for corrective action in cases where the rules have been ignored or misconstrued.

Currently, there is no single definition of "Internet Governance," as there are many professional perspectives on Internet Governance. Telecommunication specialists see Internet Governance through the eye of technical infrastructure; computer specialists focus on the development of various standards, languages and applications; communication specialists emphasize the facilitation of communication; human rights activists view Internet Governance from the perspective of the freedom of expression, privacy, and other basic human rights; lawyers and jurists concentrate on jurisdiction and dispute resolution; politicians usually focus on issues related to their electorates, such as computer education and Internet security, and the use and misuse of internet services; and diplomats are mainly concerned with the process and protection of national interests. Thus, it can be said that an Internet Governance regime is very complex because it involves many issues, actors, mechanisms, procedures, instruments, and management of internet infrastructure.[9]

A working definition of Internet Governance (IG) was given by the World Summit on the Information Society (2003).[10] That definition states that IG is the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules,

---

[8] Governance, in other words, is a more encompassing phenomenon than government. It embraces governmental institutions, but it also subsumes informal, non-governmental mechanisms whereby those persons and organizations within its purview move ahead, satisfy their needs, and fulfil their wants. See Rosenau, James and Ernst-Otto Czempiel (eds.) (1992), GOVERNANCE WITHOUT GOVERNMENT: ORDER AND CHANGE IN WORLD POLITICS. Cambridge: Cambridge University Press.

[9] Such as the Domain Name System, IP numbers, and root servers.

[10] See WSIS (World Summit on the Information Society) Executive Secretariat (Ed.) "*Tunis Agenda for the Information Society*." Document WSIS05/TUNIS/DOC-/6(Rev.1)-E. Geneva, ITU, 2005.

decision-making procedures, and programs that shape the evolution and use of the Internet. It was adopted by the WSIS governments in the Tunis Agenda[11]. The definition recognizes the need for a participatory, multi-stakeholder approach.

From the discussion above it is clear that IG is a type of international governance. It is an important component of a growing global administrative space in which laws are executed through complicated manoeuvres mixing of public elements with private, domestic institution with international, soft law with hard, and legal rules with non-binding rules.[12]

Evolution of Internet Governance

The growth and development of the internet is characterised by its unique governance. Initially, the internet started as a government project in the late 1960s.[13] In 1986, the Internet Engineering Task Force (IETF) was established. The IETF managed the further development of the Internet through a cooperative, consensus-based, decision-making process, involving a wide variety of individuals. There was no central government, no central planning, and no grand design. However, in 1994 the US National Science Foundation decided to involve the private sector by subcontracting the management of the Domain Name System (DNS) to Network Solutions Incorporated (NSI). This was not well received by the Internet community,[14]

---

[11] Tunis Agenda for The Information Society (2005) at http://www.itu.int-/wsis/docs2/tunis/off/6rev1.html (last visited on 8 Sept 2009); see also Tunis Agenda for the Information Society (2005) at http://www.ngocongo.org-/ngomeet/WSIS/TunisAgenda.htm (last visited on 8 Sept 2009).

[12] See Krisch, Nico and Benedict Kingsbury, (2006), *Introduction: Global Governance and Global Administrative Law in the International Legal Order.* 17 EUR. J. INT. L. 1, 1–13.

[13] The US government sponsored the development of the Defence Advanced Research Projects Agency (DARPANet), a resilient communication facility designed to survive a nuclear attack.

[14] Regulatory interference by the USA was not welcomed by many of the Internet Community. The extent of opposition is clear from the following statement of Jon Perry Barlow.

Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather. We have no elected government, nor are we likely to have one, so I address you with no greater authority than that with which liberty itself always speaks.....You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear..... Your legal concepts of property,

and a "DNS War" started. This DNS War brought other players into the picture: the business sector, international organisations, and even nation states. It ended in 1998 with the establishment of a new organisation, the Internet Company for Assigned Names and Numbers (ICANN) [15]. Since 1998 and the establishment of ICANN, debate on IG has been characterised by the more intensive involvement of national governments, mainly through the UN framework, as it is alleged that the present Internet management system is an informal, custom-led arrangement, based on private authority and centered in the US government.

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. It is a private-public partnership, it proclaims dedication to preserving the operational stability of the Internet; to promoting competition; to achieving broad representation of global Internet communities; and to developing policies appropriate to its mission. [16] ICANN is treated as a departure from previous technical organizations, and is an experiment in how a technical policy can be privatized and handed to a corporation.

Administrative Legal Principles in Internet Governance

---

expression, identity, movement, and context do not apply to us. They are all based on matter, and there is no matter here. See, Barlow , John Perry, *A Declaration of the Independence of Cyberspace* (1996), at http://homes.eff.org/~barlow/Declaration-Final.html

See also, Kurbalija, Jovan. "*Internet Governance and International Law*" in Drake, William J. (Ed.) (2005), *Reforming Internet Governance: Perspectives for the Working Group on Internet Governance*. New York: United Nations Information and Communication Technologies Task Force.

[15] ICANN is incorporated under the laws of the State of California as a non-profit and public benefits corporation. ICANN is free to conduct its business as it sees fit. Because ICANN controls a technical bottleneck (the domain name and IP address systems), it has attained the level of international governor of online contents.

[16] Under its Memorandum of Understanding with the Department of Commerce, ICANN has responsibilities for the policies and regulations of the Internet domain name and IP address infrastructure. See the Memorandum of Understanding (MOU) between ICANN and the U.S. Department of Commerce, in effect since Nov. 25, 1998. at http://www.icann.org/general/icann-mou-25nov98.

The Internet is treated as a "global public good,"[17] thus requiring administrative legal control. The principles in IG need to be established for two reasons: first, to promote principled global cooperation; second, to ensure checks and balances of power in IG.

Global Administrative Law is a synthesis of traditional administrative law and international law. It encompasses innovative systems of administrative procedures, review mechanisms, and principles that aim to promote accountability in decision-making across a great variety of emerging global regulatory administrative bodies.[18] The subjects of this global

---

[17] Raboy, Marc and Shtern, Jeremy, (2005), "*The Internet as a global public good: Towards a Canadian position on internet governance for WSIS phase II*". In Dugré, Pauline (ed). *Paving the Road to Tunis* – WSIS II. Paver la voie de Tunis-SMSI II. Ottawa: Canadian Commission for UNESCO.

[18] There are five major types of multi-stakeholder global administration:

1. The first type concerns administration by formal international organizations, such as the UN Security Council and its committees, the UNHCR, the WHO, the Financial Action Task Force, and the World Bank's "good governance" standards as conditions for financial aid.
2. The second type embraces administration by transnational networks and coordination, where formal structures are replaced by informal cooperation among state regulators, with or without a treaty framework. Although non-binding, these agreements can be very effective. Examples include the Basel Committee, which gathers heads of central banks without a treaty, and WTO law which requires "horizontal cooperation" by validating regulations of one member state in all others.
3. The third type is related to distributed administration conducted by national regulators under treaty, network, or other cooperative regimes, in which domestic regulators make decisions of global concern. An example is found in the exercise of extraterritorial regulatory jurisdiction. Such regulation is sometimes restrained by internationally established limitations.
4. The fourth type of global multistakeholder administration is slightly more complicated than the first three. Much variation exists in the nature of bodies that make up the fourth category, hybrid intergovernmental–private administration. An example is the Codex Alimentarius Commission, which adopts standards on food safety through NGO - governmental cooperation, and produces Sanitary and Phytosanitary Measures (SPS) Agreement standards recognized under WTO law. ICANN can also be considered under this category.
5. The fifth type is administration by private institutions with regulatory functions. An example is the International Standardization Organization (ISO) which has developed over 13,000 standards that harmonize product and process rules around the world.

administrative regime vary according to subject area, the objectives of regulation, and specifics of the particular problem. The global administrative space overlaps with but remains different from those governed by international law and domestic administrative law. Global administrative law recognizes accountability and legitimacy as necessary overarching principles[19].

There are conflicting ideas for a legal requirement of IG. One view is that existing laws can be applied to the Internet with only minor adjustments. As long as it involves communication between people, the Internet is no different from the telephone or the telegraph, and it can be regulated like other telecommunication devices. Furthermore, it has been argued that as there is no difference between regular commerce and e-commerce, thus there is no need for special legal treatment of e-commerce.

Another view is that the Internet is a fundamentally different thing from anything else. As such, it requires fundamentally different governance. It has been further argued that existing laws on jurisdiction, cybercrime, and contracts cannot be applied to the Internet and new laws must be created. IG demands the involvement of international law due to its global decentralized nature and a system of checks and balances among different governance entities. In domestic institutions, principles of accountability[20] and legitimacy[21] are important in the creation of such mechanisms. In the international context, the designs may differ considerably – because of involvement of multiple global authorities – but these same principles are equally important. Thus, we can say that IG bodies require a level of

[19] Kingsbury, Benedict, Nico Krisch and Richard Stewart, (2005), "*The Emergence of Global Administrative Law*" 68 LAW AND CONTEMPORARY PROBLEMS, 15-61.

[20] Accountability refers to the obligation to demonstrate and take responsibility for performance in light of agreed expectations, and answers the question: Who is responsible to whom and for what? See Fitzpatrick, Tom, (2000), *Horizontal Management: Trends in Governance and Accountability*. Canadian Centre for Management Development Ottawa: Treasury Board of Canada.

[21] Legitimacy differs with the concept of accountability as instead of referring to the identity of authorities and the relationships between them, legitimacy focuses on the nature of the particular social or political arrangement. Legal governance derives legitimacy from sovereignty, or the constitution of a state, while the legitimacy in private governance relies on consent.

legitimacy and accountability commensurate with their decision-making powers.[22]

Issues of concern to Internet users, such as the rules for financial transactions, Internet content control, unsolicited commercial email (spam), and data protection are outside the range of ICANN's mission of technical coordination. Instead, ICANN has a set of broad, private and largely "unchecked" powers in its technical management powers.

ICANN is governed by a board of 21members, including fifteen voting and six non-voting directors. The voting members include the CEO, six directors chosen by supporting organizations, and eight directors named by a nominating committee. The majority of the voting directors are chosen by the nominating committee, whose members are appointed by the "Supporting Organizations and other ICANN entities." The individual Nominating Committee members, however, are not accountable to their appointing constituencies (the Supporting Organizations and other ICANN entities), but are instead "accountable for adherence to the Bylaws[23] and for compliance with the rules and procedures established by the Nominating Committee." In effect, through electing the majority of the voting board members, the nominating committee could choose to pass decisions about its own operations and actions, raising questions about the accountability of the ICANN board to Internet users and about transparency of the entire structure.

When it was founded in 1998, ICANN considered its role to be a purely technical one: the management of online addresses and names that would contribute to the network's stability. The decisions made by the organization's board since then, however, have had consequences beyond the technical.

Thus we can infer that ICANN is with full regulatory and political powers, but without the fundamental checks and balances that provided public accountability. It is a dangerous situation for the public interest, and for the

---

[22] See, Klein, Hans, (2004), "*Legitimacy and Global Internet Governance*." Response Paper 3. Social Science Research Council (SSRC) Information Technology & International Cooperation Program. Research Network of ICT Governance and Transnational Civil Society. SSRC Website at www.ssrc.org-/programs/itic/publications/knowledge_report/memos/kleinmemo3.pdf (last visited on 18 Feb 2009).

[23] See, Bylaws for Internet Corporation for Assigned Names and Numbers at http://www.icann.org/en/general/bylaws.htm (last visited on 10 Sept 2009)., specially Article II and Article IV.

non-commercial voice in ICANN[24]. Many times it is also alleged that ICANN creates policies favoring certain segments of the Internet community[25]. It is a private corporation charged with a broad technical and policy mandate. Appeal to any decision is a fundamental principle in administrative law, but under the present IG system there is no procedure to challenge ICANN's decisions. Many times it is asked where can we appeal ICANN's actions? Further, ICANN is not accountable to the United Nations or any foreign government either – in short, it is answerable to no one. Thus, as with any other policymaking organization, it is clear that ICANN needs defined limits to its authority and powers. There is an urgent need to ensure checks and balances to safeguard the fundamental human rights, particularly freedom of expression and privacy.

Current Issues

Some questions related to IG need to be answered, like, is there any need to create a new organizations? Or, are current institutions in some combination sufficient for coping with the issues raised? What about developing country needs and development processes? Can one global institution alone adequately address most of the existing issues? Is there an "institution gap" that needs to be filled?

The first and most important challenge of the IG process is the integration of technology, law and policy aspects, as it is difficult to draw a clear distinction between them. Technological solutions to problems are not neutral. Ultimately, each technological solution promotes interests of specific groups to a certain extent and ultimately impacts social, political, and economic interests of other groups[26].

---

[24] Kleiman Kathryn, (2003), *Internet Governance: A View from the Trenches*, ACM's Internet Governance Project.

[25] In ICANN there was a double representation for commercial users and a single representation for non-commercial users. In the Domain Name Supporting Organization, the commercial community was given the Business Constituency and the Intellectual Property Constituency. The non-commercial community received the Non-commercial Domain Name Holders Constituency. Further, the commercial constituency was dominated by large multinational companies belonging to developed nations; in fact there was no representation from developing world. Traditionally North American representatives played the main leadership role in the ICANN's Constituencies.

[26] See also, Danny Butt (ed.), (2005), INTERNET GOVERNANCE: ASIA-PACIFIC PERSPECTIVES, Elsevier, New Delhi.

Another challenge is related to the public interest. Most of the technical infrastructure through which Internet traffic is channelled is owned by private and state companies. This raises a number of questions, such as what are the property rights on Internet backbones; can private companies be required to manage their private property – Internet backbones – in the public interest? Can the Internet, or parts of it, be considered a global public good?[27] Among legal academia there has been a lengthy debate over the principle of sovereignty and the Internet[28]. It is argued that the Internet has destroyed national borders and leads to an end of state sovereignty.[29]

The important issues related to IG can be summarised as a layered system[30]:

1. Content Layer
    - *Pollution control*[31] - to eliminate the damage (Economical and moral) caused by Internet "pollutants."
    - *Cybercrime*[32] - for effective control of crime there is an urgent need for international legal harmonization on a global network and national jurisdictions related to cybercrime.
    - *Intellectual Property Rights*[33] - to ensure the balance between fair use principle and IPR infringement.

---

[27] The Internet could evolve into a global commons where people all over the world are free to communicate and interact and to distribute and consume an endless variety of literature and media.

[28] See also, Wilske, Stephan and Schiller, Teresa, (1997-1998), *International Jurisdiction in Cyberspace: Which States May Regulate the Internet?* 50 FED. COMM. L.J. 117.

[29] See also, Calabrese A., (1999), *Communication and the end of sovereignty*? 1 INFO: THE JOURNAL OF POLICY, REGULATION AND STRATEGY FOR TELECOMMUNICATIONS 4,313-326.

[30] Mentioned by Benkler (2000) and discussed in Kapur, Akash, (2005), Internet Governance: A Primer. Elsevier: UNDP-APDIP.

[31] Pollution is the generalized term used to refer to a variety of harmful and illegal forms of content that clog (or pollute) the Internet. Although the best known examples of pollution are probably spam (unsolicited email) and viruses, the term also encompasses spyware, phishing attacks (in which an email or other message solicits and misuses sensitive information, e.g., bank account numbers), and pornography and other harmful content.

[32] Cybercrime is more negative form of pollution. Cybercrime encompasses a number of actions, notably financial fraud, online pornography, hacking, and security attacks such as the injection of viruses, worms and Trojan Horses, the conduct of denial of service attacks, and a variety of other damaging practices. In addition, terrorism that is facilitated by the Internet has emerged as a major concern in recent years.

2. Logical Layer
    - *Standards* - the same standards [Such as Transmission Control Protocol/Internet Protocol (TCP/IP); HyperText Mark-up Language (HTML) and the HyperText Transfer Protocol (HTTP)] should be maintain all over the world, and they can be easily updated to accommodate new technologies.
    - *Domain Name System*[34] - The coordination and management of the DNS.
    - *IP Allocation and Numbering* - to overcome the problem of shortage of IP[35] space.
3. Infrastructure Layer
    - *Interconnection* – Internet users must be interconnected with each other across international, national or local boundaries.
    - *Universal Access* - access for every citizen on an individual or household basis. For communities, this means ensuring that all citizens are within a reasonably easy reach of an access point.
    - *Next-Generation Pathways* – this would require governance to ensure that new pathways are deployed in a manner that is harmonious with pre-existing systems. Examples include the fact that some governments have resisted the use of Internet Phone technology for phone calls, fearing the resulting loss of revenue to incumbent telecom operators; many governments have yet to de-license the necessary spectrum for Wi-Fi networks, often citing security concerns.

The scope of IG is not limited to the issues mentioned above. To the contrary, it is *un*limited. IG also covers issues related to international trade,[36]

---

[33] IPRs are the legal rights granted by the state to exclude others for exploitation of protected work without prior consent.

[34] DNS allows users to use memorable alphanumeric names to identify network services such as the World Wide Web and email servers. It is a system that maps names (e.g., www.iitkgp.ac.in) to a string of four numbers separated by periods called IP addresses (e.g., 165.65.35.38). Examples of top-level domain names: .arpa, .com, .net, .org, .int, .edu, .gov and .mil.

[35] IP addresses are composed of sets of four numbers (ranging from 0 to 255) separated by periods – this is just a representation of a 32-bit number that expresses an IP address in Internet Protocol version 4 (IPv4). In fact, every device on the network requires a number, and numbering decisions for IP addresses as well as for other devices are critical to the smooth functioning of the Internet.

Internet resources,[37] development of technology, networks and services,[38] and issues related to application for equitable, sustainable global development.[39]

In the current IG process there is no scope to deal with important Internet related matters such as cyber-crime, cyber terrorism, cyber torts, Intellectual Property Rights, e-commerce, e-government, human rights and capacity building, and economic development. In most cases, the legal and judicial framework for filtering (or other restrictions) is ambiguous and open to interpretation. Also, the applicable laws are often applied in an ad-hoc fashion, with more subtle measures designed to promote self-restraint, or self-censorship, of both Internet service providers and content producers.

The Role of the Developing World in Internet Governance

The most contested question over global IG is who should be the *governor* for the international management of the Internet. It has been asserted by many countries that the US government in fact runs the Internet on behalf of all other countries. In this respect, the United States has played a custodial role. Even ICANN is seen by some as a private sector surrogate for the US government because it is licensed by the US government. Though the US government has handed over the management role of the IP Address allocation and Internet DNS root servers to ICANN, the US government still has ultimate authority over ICANN. All these facts show that the *de facto* governor of the Internet is the US government.

Another issue of concern for the developing world is the so-called "digital divide."[40] This gap in technological sophistication or access to

---

[36] Such as, E-commerce, Taxation, Revenue Sharing, Internet Exchange Points, Cyber-security and data protection, Internet & International Telecommunication Regulations.

[37] Examples include: Regional root servers, Management of country code Top Level Domains (ccTLDs) and generic Top Level Domains (gTLDs),Private vs. public legal instruments.

[38] Such as financing infrastructure, Mobile broadband, ubiquitous networks, Internet Protocol, Migration to IP-based networks, Universal access, Internet content regulation)

[39] For example, financing services and applications, National E-strategies, E-education, E-government, Network-based applications, Knowledge repositories, Consumer Protection.

[40] There are approximately 1 billion Internet users worldwide, mainly concentrated in the developed world. Whereas 62% of the UK population have internet access, this figure is as low as 3.6% for Africa. This disparity in access has

technology reflects the existing socioeconomic differences between and within countries. Developing countries, with their limited human and financial resources, find great difficulty in making their voices heard. They see various institutions dealing with the Internet as being dominated by the North and feel marginalized.[41] It has been asked many times, what is the role of the developing country?[42] Developing countries also argue that the US Government should share its authority over some of the Internet core resources with the rest of the world, as the Internet is a global good. Further, developing countries feel that the current system does not involve them enough, and this exclusion reflects a crisis of legitimacy, not merely in IG, but in global governance as a whole.[43] In fact, some developing countries have the skills and capacity to work on emerging issues, but they are handicapped as there is no opportunity to take part in policy framing and regulatory processes.

Currently, all domain names must be entered in standard ASCII (American Standard Code for Information Interchange) characters, which are designed to support the Latin alphabet. This means that diacritical marks, as well as Asian or other international characters, are not supported. Many developing countries feel that the exclusion of their languages from domain names limits Internet access. Users who are not familiar with English have a difficult time accessing English-language URLs; in addition, the lack of foreign script support makes it difficult for indigenous businesses and entities to be represented on the Internet.

---

been termed the 'Digital Divide'. See Postnote February 2007 Number 279 "Internet governance"at www.parliament.uk/parliamentaryoffices-/post/pubs2007.cfm

[41] Markus Kummer, (2007), *Internet Governance and the need for an inclusive multi-stakeholder dialogue*, NSF/OECD Workshop on Social & Economic Factors Shaping the Future of The Internet, Washington, 31 January 2007.

[42] It has been argued many times that developing countries are not adequately represented in most governance fora and. When they are represented, they often do not have adequate technical capacity or resources to participate on equal terms. Further ICANN has the potential to turn into the first world regulatory body. By beginning to associate top level domains with content usage, they are putting themselves into the position of being the *de facto* arbiter of online content.

[43] The concern of developing countries was discussed at UN Global Forum on Internet Governance. See, *Global Internet Governance System Is Working But Needs To Be More Inclusive, UN Forum On Internet Governance*, UN Press Release PI/1568, 26/03/2004 at http://www.un.org/News/Press/docs/2004-/pi1568.doc.htm (last visited on 20 Sept 2009).

The country code Top Level Domain (ccTLD) is a public good, both for people of the concerned country or economy and for global citizens who have various linkages to particular countries. The present IG system does not recognise the important role of governments in protecting the ccTLDs that refer to their countries or economies. This role must be strengthened in existing international treaties through a democratic, transparent, and inclusive process with full involvement of all stakeholders.

From the discussion above, it can be easily inferred that under the governance of the US government, the voices of developing countries can be only of an advisory status, while the US government has a more authoritative role. The current structure of global IG is a unilateral structure, as it is not based on any international convention or treaty or agreement between the countries. This structure does not include all the major interested stakeholders, like governments of developing countries. The Internet has evolved into part of a critical global infrastructure, urgently demanding all the concerned governments of the developing world to assist in governing the Internet in a collective and coordinated manner.

Suggestions and Recommendations

Individual countries should be given the right to establish Internet border inspection stations. Such stations would be used to inspect only legally vetted inbound traffic, and block contraband, in a fashion analogous to the current system for inspection of people and goods that cross country borders in the physical world.[44]

The US government's "Framework for Global Electronic Commerce," a blueprint for IG, emphasizes that due to the Internet's global reach and fast evolving technology, regulation should be kept to the absolute minimum. It further suggests that in the few areas where rules are needed, such as privacy and taxation, policy should be made by international organizations such as the World Intellectual Property Organization or the OECD.

For harmonization of IG and better implementation of regulatory provisions, the proper participation of developing nations is of utmost

[44] See also, Upton, Oren K., (2003), *Asserting National Sovereignty in Cyberspace: The Case for Internet Border Inspection*, Master's thesis.

importance. There are three suggestions for involving developing nations in the global administrative law of IG.[45]

1. Developing countries are for the most part represented in intergovernmental organizations like ITU and WTO, but such organizations frequently pay scant attention to the connection between communications policy and development. Thus, the "missing link" between technology policy and development in many important decision-making bodies should be removed by greater participation.
2. Developing countries were generally underrepresented in non-traditional decision making venues, such as the standards-setting bodies, ICANN and other technical groups. Given the centrality of such groups to the management of the Internet, this represents a serious handicap to developing country participation in IG. So developing nations should be allowed equal and fair participation in the decision making process.
3. When it comes to governance decisions led by the market, developing countries have virtually no representation at all. This is an important shortcoming because many IG decisions are determined by market-driven processes that result in *de facto* standards. Developing country exclusion from such processes is, of course, a reflection of their more general exclusion from global markets, so there should be a mechanism to involve developing countries in real participation in the global technology market.

It seems safe to say that for the developing world, IG is not a question of technology *per se*, but of using technology in a manner that furthers the economic and social development goals of a country. Looking at the asymmetric role of the developing world in the existing mechanisms of – and their limited participation in key policy formulation of IG issues – concrete steps should be taken to promote a special and enhanced role for developing countries. The US should lose its exclusive role, leading to the shared responsibility for the oversight of critical Internet resources, especially as regards content and overall administration of the Root Server System.

---

[45] See, Maclean, Don et al. (2003), "*Louder Voices: Strengthening Developing Country Participation in International ICT Decision-Making*," Commonwealth Telecommunications Organization & Panos, London.

Conclusion

The Internet seems powerful because it has two important characteristics which no other mechanism possesses:

1. It is the biggest information resource in the entire world, and
2. it enables people to obtain an interactive mechanism to instantly communicate with each other.[46]

Compared to the traditional approaches of administrative law favouring centralization and an exclusive group of actors, the modern approach of administrative law advocates greater efficiency, additional flexibility, a higher level of precision and a more democratic alternative to the development of international regulation and law. In the context of IG, the new approach advocates for enough flexibility to allow uninterrupted evolution technology.

As administrative law extends in reach and expands into new areas, more and more public power is wielded by partnerships, networks and institutions, causing increasing concern about their legitimacy and accountability. The same is true with IG, and it requires honest players to regulate the abuse of technology without hampering the evolution of technology.

IG will remain a work in progress, with its final dispensation and shape unlikely to emerge in the immediate future. In the coming days, national governments may play a greater role in IG, although it is important that an impartial global player is necessary to communicate with individual nations. In addition, measures will have be taken to enhance participation of private players and the governments of developing countries. Generally, there should be an effort made to enhance the Internet's role as a tool for social and economic development and to enhance the scope of IG beyond mere technicalities. To that end, the convergence and acquiescence of developed and developing nations would be a desired goal.

[46] Ru Guangrong, (1998), *The Negative Impact of the Internet and Its Solutions*, 121 THE CHINESE DEFENCE SCIENCE AND TECHNOLOGY INFORMATION MONTHLY 5.