

## **Internet Governance or Internet Control?**

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### **Abstract**

Controlling the Internet has for a long time been the privilege of academics in the USA. However, with the evolution of the Internet as the world communication medium of the 21<sup>st</sup> century and the world-wide-web providing the infrastructure for business and public services in the digital era, the stakes have risen dramatically. The value of the Internet is nowadays considered extremely important in a number of key areas of public life ranging from business, law, local and central government to international politics. Various proposals as to who should be responsible for controlling or even policing the Internet have been considered and debated upon over the past few years. The issue has been raised at an unprecedented level with governments of the most powerful countries on the planet locked in serious and longstanding diplomatic negotiations as to which of the super powers should be in control. Yet the less powerful and smaller nations have repeatedly called for the establishment of an international organization to guarantee independent control of the Internet. This paper considers the above two proposals and attempts to answer the following questions: a) Do single countries deserve the right of having absolute control and acting as the sole guardian of the ultimate communication medium? b) Would an international organization be the answer? If so, how independent can it be and how much security can it offer to the smaller nations and the individual user? The study of each case is performed on the basis of what criteria would apply in terms of legal framework adopted, transparency of procedures and degree of acceptance of the controlling body on a world wide basis. The ultimate question raised is: can the guardian be trusted and if so how widespread this trust would be? The results of the first internet governance forum meeting in Athens in 2006 and the aims of the second due in Rio de Janeiro in November 2007 are also discussed.

**Keywords:** Internet Governance, Internet Control, Security.

### **Introduction**

Countries all over the world have over the recent years acquired the additional security requirements of protecting their citizens and territory from crimes committed through the use of ICT and in particular using the Internet as main platform.

As a result, more and more legislation is introduced on a daily basis, more criminals arrested and prosecuted, but the number of complaints and calls for help and protection by citizens is growing. Furthermore, in the aftermath of the September 2001 terrorist

attacks on the U.S.A., it was revealed that terrorist groups have used the Internet as an effective means of communication in planning such evil acts. As a result more legislation has been introduced that gave governments unprecedented powers in terms of monitoring communications. As a matter of fact the Internet is constantly monitored (legally or illegally) and increasingly, since the 11<sup>th</sup> of September 2001, which makes the 10<sup>th</sup> of September 2001 the last day of freedom in cyberspace (Julien, 2004). In 2005 the need for controlling the Internet officially and more specifically who and how would do it, have been the subject of intense negotiations. The concept of a single country versus an international organization has been strongly debated. In November 2005 the international congress for information society that met in Tunis issued a declaration requesting the UN Secretary General to establish an international organization that would be responsible for the control of the Internet (Civil Society, 2005). The next step towards an attempt to establish a legitimate and internationally acceptable framework for controlling the Internet has been planned to take place in Athens in November 2006. Whatever the result of such efforts, the pros and cons of such a case are still the subject of debate amongst interested parties and form the basis for strong fears amongst user groups as to the end of e-democracy. This paper attempts an incisive look at the facts allowing the reader to form their own opinion as to the wisdom of the need for and the outcome of controlling the Internet.

### *Controlling the Internet – The Case up to 2005*

In the early years of Internet development, the prevailing view was that government should stay out of Internet governance. It was expected and for a long time so it happened, that market forces and self regulation would suffice to create order and enforce standards of behaviour.

In more recent years though there is a widespread feeling that reliance on markets and self-policing has failed to address adequately the important interests of Internet users such as privacy protection, security, and access to diverse content (Baird, 2002).

Many organisations as well as large sections of the Internet users' community feel that it is time to accept this emerging reality and recognise the need for a significant role for government on key Internet policy issues.

However, there is an equal need for Internet governance structures to introduce improved openness and accountability. Non-traditional bodies (such as the Internet Corporation for Assigned Names and Numbers [ICANN], the World Wide Web Consortium, or TRUSTe) that engage in Internet regulation and oversight have arisen in recent years, but their decision making processes are too often both inaccessible and unaccountable to those most affected.

Achieving transparency and accountability is nowadays in any institution's self

interest. Establishing clearly the scope of authority of a governance organization and the rationale for its actions increases its effectiveness and bolsters its credibility.

Baird (2002) argues that to achieve an Internet that reflects a commitment to public good as well as to commercial interests, more pluralistic models for Internet governance would have to be created. These would be models in which governments, industry, and non-profit organizations will be involved in crafting policy while balancing each other and working together in transparent processes that earn the public's trust.

Furthermore the question of who actually regulates and manages the Internet infrastructure is of particular importance if we consider that the technical development of the Internet might not be a 'neutral' development but could involve the building in of regulatory norms into the technology.

### *The Case of the ICANN*

Looking at the current situation of the technical management of the Internet, it is far from clear which sector(s) and actor(s) have authority in these respects and therefore are deciding upon the Internet infrastructure and on what merit are they doing so. In the case of ICANN, this non-transparent situation is publicly known and an important reason in itself for many to watch this organisation, with its far-reaching powers of Internet regulation, closely (Lips and Koops, 2005).

Created as an international non-profit corporation in which many companies, governments, technical organisations, scientific organisations and user organisations are involved in a public-private partnership, ICANN remains subject to a 1998 Memorandum of Understanding with the US Department of Commerce in which a test period has been settled for the transition of the domain name system.

Originally targeted for a two-year period, this test period has been renewed several times since 2000.

The ICANN is a regulatory agency. ICANN exercises such regulatory powers as accrediting registrars, setting base prices for domain names, evaluating the social utility of new TLDs, protecting trademarks, and punishing wrong-doers. Within the context of Internet Governance recognition of ICANN as a regulator simplifies ICANN reform, because principles of good governance for regulatory agencies are well known.

A regulatory agency should be guided by rules that strictly limit opportunities for capricious and arbitrary action. The wealth and power of participants in regulatory processes should not determine their influence. A regulatory agency should have a clear mandate and good internal procedures.

Now, the rule of law has been lacking in ICANN's practices. Rules for decision-making are frequently amended, often disregarded, and not reliably enforced. More powerful governments have more influence than less powerful governments, and more

powerful private interests have more influence than their less powerful counterparts WSIS can guide ICANN toward good regulatory practice. Good regulatory practice includes the following elements (Klein, 2005):

- **Political Authorization:** A legitimate political authority (presumably an international body) should formalize the delegation of regulatory powers to ICANN.
- **Legislative Mandate:** That same political authority should delimit ICANN's mandate by codifying it in an international legal instrument.
- **Internal Processes:** ICANN's system of stakeholder representation and decision-making should be reviewed for fairness and efficiency. Internal procedures should be clearly specified in a legal instrument, most likely its corporate charter and bylaws.
- **Judicial Review:** Mechanisms should be created by which ICANN's regulatory decisions can be appealed to higher authority. Any appellate body should have the power to enforce its decisions.
- **Political Oversight:** The legitimate political authority described above should periodically review ICANN's actions and mandate. Political oversight should itself be highly constrained in order to insulate ICANN from political pressures.

The above changes would be beneficial for all interested parties. Efficient economies are built on sound institutions. The replacement of ICANN's informal and politicized procedures with well-ordered rules and enforcement mechanisms should greatly contribute to the stability of the Internet and the efficiency of ICANN's activities.

### *A New Demanding Networked World - But How Safe is it?*

In seeking the reasons as to why there is a need to or why is there some much at stake in controlling the Internet, one should consider what the Internet offers to users:

- **Increased interaction between participants**

Compared to traditional mass media (newspapers, TV or radio) ICT contains the possibility of interactivity between sender and receiver of a message. Rather than the "one-to-all" principle of traditional media, the Internet creates an "all-to-all" communication environment. Typical examples are debate fora and chats. Hence there is opportunity for uncontrolled communication as it is perceived and enjoyed by the general public nowadays.

With the Internet it is possible to access for example the homepages of political organisations or participate in virtual political debates around-the-clock. Also, territorial boundaries become less important as it is possible to access information and engage in dialogue on a global scale. This in turn promotes a global state of e-democracy.

- **Easier and more equal access to the public sphere**

Compared to traditional mass media the possibilities for 'ordinary people' to reach a

large audience have been significantly enlarged with Internet technology. It is relatively easy and cheap to create a homepage, and in this way share ones ideas with other people without the censorship of (state-owned or commercial) TV, radio and newspapers. Also, virtual communication is more egalitarian than face-to-face communication as participants do not have to reveal for example their gender, age, ethnicity or social position.

- **Easier access to and control over large amounts of information**

Compared to paper based information, ICT makes it much easier to find, store and organize huge amounts of information, thus potentially giving the user of such information greater knowledge and oversight capacity than before.

- **Decentralisation of control with information**

In contrast to traditional mass media where the control of information is in the hands of state owned or commercial TV-companies or multinational media networks, ICT gives the individual citizen and all types of organisations the possibility of becoming their own editor and publisher, potentially able to reach a global audience. This last capability though has been perceived, and often proved so, as a major source of danger if left unsupervised and utilised by ill willed people (Hoff and Bjerke, 2005).

Fears of misuse though cannot prevent progress, should not stop openness and sharing of information. International bodies and governments are concerned but at the same time need to work together to ensure progress is uninterrupted and e-democracy continues to evolve on the basis of equal access to information and transparency to access and control.

Any network requires some centralized control in order to function. The global phone system, for example, is administered by the world's oldest international treaty organization, the International Telecommunication Union, founded in 1865 and now a part of the UN family. The Internet is different. It is coordinated by a private-sector non-profit organization called the Internet Corporation for Assigned Names and Numbers (ICANN), which was set up by the United States in 1998 to take over the activities performed for 30 years, amazingly, by a single professor in California.

The controversy over who controls the Internet has simmered in insular technology-policy circles for years and more recently has crept into formal diplomatic talks. Many governments feel that, like the phone network, the Internet should be administered under a multilateral treaty. ICANN, in their view, is an instrument of American hegemony over cyberspace: its private-sector approach favours the United States, Washington retains oversight authority, and its Governmental Advisory Committee, composed of delegates from other nations, has no real powers.

This discontent finally boiled over at the UN's World Summit on the Information Society, the first phase of which was held in Geneva in December 2003 (the second

phase took place in November 2005 in Tunis). Brazil and South Africa have criticized the current arrangement, and China has called for the creation of a new international treaty organization. France wants an intergovernmental approach, but one fundamentally based on democratic values. This would involve only elite nations that would warranty the application and safeguarding of democratic values. Cuba and Syria have taken advantage of the controversy to poke a finger in Washington's eye, and even Zimbabwe's tyrant, Robert Mugabe, has weighed in, calling the existing system of Internet governance a form of neo-colonialism.

How did such a welcomed technology become the source of such discord is still a wonder. Everyone understands that the Internet is crucial for the functioning of modern economies, societies, and even governments, and everyone has an interest in seeing that it is secure and reliable. But at the same time, many governments are bothered that such a vital resource exists outside their control and, even worse that it is under the thumb of an already dominant United States. Washington's answer to these concerns released at the end of June 2005, announcing that the United States plans to retain control of the Internet indefinitely was not what the rest of the world was expecting. This was received across the world with just the anger one would expect, setting the stage for further controversy (Cukier, 2005).

As a result of the emerging controversy, the world summit on the information society in Geneva 2003 issued the following statement towards improving Internet access across the globe and establishing an international accord as to the future of controlling the Internet (world summit on information society, 2003).

“We are firmly convinced that we are collectively entering a new era of enormous potential, that of the Information Society and expanded human communication. In this emerging society, information and knowledge can be produced, exchanged, shared and communicated through all the networks of the world. All individuals can soon, if we take the necessary actions, together build a new Information Society based on shared knowledge and founded on global solidarity and a better mutual understanding between peoples and nations. We trust that these measures will open the way to the future development of a true knowledge society.”

### ***Why Do We Need to Safeguard It?***

Parties concerned as to the safety of access and the ability of organizations to truly safeguard the Internet have often questioned the need for control. In contrast proponents of the need for established and recognised control mechanisms founded on worldwide acceptance argue along the following issues:

A large section of the developed world's economy is nowadays dependent on transactions carried out through the world-wide-web. The ability of ill-willed people

and organizations to infiltrate and corrupt such transactions might affect the whole socio-economical structure of the developed world. At the same time large sectors of the developing world's economies are continuously developing along these lines and are becoming increasingly dependent on the existence and availability of uninterrupted, transparent and trustworthy availability of the Internet (The Economist Technology Quarterly, 2006; The Financial Times, 2005).

Most governments across the world have established or are in the process of establishing e-Government systems. These aim at improving governance and providing citizens across states and across the globe with improved services ensuring less corruption, safeguarding democratic values and promoting transparency and accountability to a government's actions. To enjoy such benefits though, citizens have to be free of worries relating to the safety of using the Internet for completing transactions. They also need be assured that the authorities cannot misuse the network, thus establishing a desired level of trust between governance and the governed (Oxendinea, Borgidab, Sullivana, and Jackson, 2003).

Concerns though do not stop at the level of practical use for commercial or citizen centered transactions.

There are a number of countries in the world where freedom of speech is still a desirable but often untenable. Democracy that will ensure freedom of speech and transparency of governance is still the object of conflicts across the globe and there are a number of governments that have been branded as enemies of the Internet as they tend to illegally monitor and filter the Internet in supporting their efforts to support freedom of speech. In November 2005, the independent organization "Reporters without Frontiers" revealed their list of the 15 worst abusers of Internet at country level branding them as the 15 enemies of the Internet (Reporters without Frontiers, 2005). Amongst those fifteen China appears a predominant force. However, China has been one of the major entities arguing the case for more official control of the Internet to protect citizens and control crime.

Those that have been accused of illegally filtering the Internet argue the case that they are doing so to protect their citizens from worst evils like child pornography or even the threat of terrorist acts. This last point has been quite frequently quoted as a means of justifying almost any illegal attempt to control the Net as the issue of sophisticated terrorism has been blended in the lives of citizens in both the developed and the developing world.

Thus the Chinese government has recently forced one of the major Internet companies (Google) to cooperate in the arrest and conviction of a blogger, ignoring any regard for freedom of speech, but defending its actions by claiming the need to protect and defend its internal stability and the safety of its citizens.

Thus in the name of increased safety and without any regard for basic human values the rights of innocent and trusting citizens may be abused and their personal secrets and possibly lives might be exposed and put to risk (Edelman, 2004).

### *Who Will Take Care of Internet Governance Though?*

During the WSIS in Tunis in 2005, the secretary general of the United Nations has announced the Internet Governance Forum (IGF) as a framework for studying, proposing and potentially establishing the system(s) that would allow for a unilaterally acceptable means of controlling the Internet.

#### *The Internet governance forum*

The Civil Society representing the interests of ordinary citizens remains sceptical though, despite their declaration of support to the concept of the IGF. In their statement titled “Much more could have been achieved” (Civil Society, 2005), they express their pleasure at the declaration of the creation of the IGF. However, they reiterate their concerns that the Forum must not be anchored in any existing specialized international organization, meaning that its legal form, finances, and professional staff should be independent. Furthermore, they reiterate their view that the forum should be more than a place for dialogue. To this they further recommend that it should also provide expert analysis, trend monitoring, and capacity building, including in close collaboration with external partners in the research community.

Whatever the concerns are as to the role, structure and aims of the Internet Governance Forum (IGF), Jensen (2005) argues that the special role of governments representing the complete population through democratic processes must be appreciated. Recognizing that there may well be differences in the way governments operate is only natural and mutual respect between different cultures and views is also a characteristic of democracy, and the understanding of the attitudes towards the government function in itself from other political cultures than the European, is a useful insight. The introduction of good governmental governance is imperative in all circumstances. In cases associated with Internet security and stability, with code of conduct in the usage and further international development, the need for intergovernmental oversight is a crucial point of the IGF to achieve its aims.

The popular misconception that Internet governance mainly is about technical matters and therefore should be reserved for private sector and civil society and the users and the academia, is no longer accepted. The expectations are quite high in that stakeholders expect the intergovernmental structure of the IGF must ensure broad multi-stakeholder participation, and it must operate in a light, fast and flexible manner. It must ensure better coordination of existing organizations involved in Internet governance and

it must have a distinct development perspective. Inappropriate actions concerning control of content must be avoided. A leading role for private sector in the operation and technical evolution of Internet must be ensured. The new governance structure must address a broad spectre of issues including best practices of usage and code of conducts in order to reduce the burden of spam and similar threats (Jensen, 2005).

In order to ensure that the process works as efficiently as expected by the WSIS, it has been proposed that the IG Forum should establish a distributed secretariat aiming at:

- Encourage self-organized, primarily virtual multi-stakeholder discussion groups to identify and explore possible topics for consideration by the main Forum. These bottom-up efforts would apply to the Forum's Multi-stakeholder Advisory Group (MAG) for recognition and to get on the Forum's meeting agenda.

- Once the MAG accepts a topic, stakeholders would be encouraged to volunteer to provide substantive support in the issue area.

- The IG Forum Secretariat would review the proposals and make a recommendation to its Multi-stakeholder Advisory Group.

- The IGF Multi-stakeholder Advisory Group would decide which entity would serve as the substantive secretariat for that issue.

- The selected entity would participate in the Forum, presenting its issue paper and the results of any expert consultations held (Mathiason, Hofmann, Mueller, Mcknight, and Cogburn, 2006).

### *The first igf meeting - Athens, Greece 2006 and beyond*

To add to the above concerns the author adds his own arguments and queries:

Could we eventually trust a Non-Government organization to control the Internet; and if so, how independent can that be? The example of the United Nations themselves is not a very encouraging one as there have been many cases where the organization has been dominated or even controlled by one of the leading nations. NGOs have often proved powerless and inefficient in addressing major issues.

In a counterargument, can a single nation fulfil the role of the Internet Guardian?

Such criteria had to be discussed and decided upon at the first meeting of the Internet Governance Forum in Athens in 2006. This was expected to make some way towards suggesting or even deciding those. What legislation is the NGO to abide to or would the world accept the legislation of a single powerful nation?

Key issues of access, legislation and transparency were discussed in Athens during the meeting. The key outcomes of the meeting though were the mode of operation and the mode of communication across a multi-stakeholder and distributed organization such as the IGF. Discussion also focused on setting the key themes for the attention of the IGF in the future and addressing a framework of implementation of decisions and

directives to be issued by the IGF in the future.

According to the chair of the IGF, the inaugural Internet Governance Forum meeting in Athens, Greece, proved a great success and the IGF is looking forward to build upon this success in 2007 during the second IGF meeting in Rio de Janeiro from 12 to 15 November 2007 (IGF Secretariat, 2007).

Various stakeholders have been involved in the consultation process and have contributed themes. Some of the key topics are listed below (IGF, 2007; Council for Europe, 2007):

- Diversity
- Security
- Critical Internet resources
- The role of states
- Cybercrime
- Prevention of terrorism
- Protection of individuals and automatic processing of personal data
- Protection of children against sexual exploitation and sexual abuse
- Access for all

Most of the above issues might remain unanswered for quite some time. In the meantime the Internet will continue to live on. People will continue with their transactions and to the eyes of Internet romantics, market forces and citizen action might prevail and eventually drive away all those who want to impose evil into the most important resource of the 21<sup>st</sup> century.

### Conclusion

The Internet is well integrated in everyday working, personal and family lives. The more people work with it, the more there is an opportunity for someone to try to use it in way that is illegal and damaging. The need for proper, well-formulated and widely acceptable governance is required.

The question as to who will enforce it, how will that approach will work and what legal system is to be used have yet to be decided and agreed upon. Efforts are under way to begin a serious and methodical way of recording and coordinating different views and proposals. The criteria according to which any guardian will be selected and be functioning would have to be studied and decided upon. The debate is expected to last for a long time and while this takes place governments, businesses and citizen groups have to stay vigilant in protecting themselves and the network to ensure that they continue enjoying the benefits of using the Internet for a long time to come.

The inaugural meeting of the IGF, in Athens in 2006 was only the beginning and

the world would have to be patient and cooperative if there is ever going to be a consensus on governing the Internet under the clauses of equality, legality and efficiency.

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