

Some Issues of Internet Governance

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Internet Governance Issues

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I have submitted three contributions, these may be found on the workshop's web site.

Those papers make specific suggestions regarding specific structures of internet governance.

There is no way to fit those papers into a few minute presentation.

So I am going to spend a few minutes here to highlight some of the points that intrigue me.

Point of Departure - #1

- ◆ The internet is rapidly becoming a utility.
 - People and entities are basing economic plans, products and services, and, increasingly, matters involving health and safety on the internet.
 - Many users consider predictability, stability, and assurances of adequate service to be of paramount value.
 - » Innovation becomes a secondary value.
 - Where does this leave the End-to-End principle?

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People and institutions are have begun to depend on the net not merely for information but also for important services.

The day is not far off when people will start to entrust matters concerning their personal health and safety to the internet.

The net of today is good, but is it good enough to support things like fire alarms, security systems, or medical procedures? Compared to the telephone network the internet is lacking in this regard.

Users of the net, unlike developers, value predictability and stability above flexibility and innovation.

Predicable and stable operation necessarily requires the establishment of minimal levels of service to support those applications used by users.

This means that from the user's perspective, the net is a total system, not a collection of ISPs and carriers.

This also means that the End-to-End principle may come to mean not merely that packets flow, but also that they flow with a degree of reliability and dispatch sufficient to support those applications.

Point of Departure - #2

- ◆ National governments are finding that the internet makes it increasingly difficult to protect their interests, their citizens, and their cultural values.
 - New institutions need to be formed.
 - How should these institutions be shaped and controlled?
 - » It is time to re-apply the works of 18th Century writers regarding the structure and limitations of such institutions.

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The internet is new, but the problems of governance it presents are not.

The issue is power.

In particular the issue is how power can be vested into responsive and accountable institutions without creating a risk that those institutions will abuse those powers.

In this regard I believe that we ought to go into our libraries and dust off the works of our 18th century predecessors.

New institutions of internet governance ought to incorporate elements found in modern governments:

These include:

Defined powers and duties.

Separation of powers (In other words, the power to act is divided.)

Etc.

We need to be honest about the nature of the tasks we assign to governance bodies. ICANN routinely claims that the UDRP, which is nothing more than a supranational extension of trademark law, is a matter of “technical coordination”. That claim is as believable as would be a claim that domain names should be withheld from those who act in restraint of trade or who sell unhealthful products such as cigarettes.

What Is “the internet”?

- ◆ *The internet is the open system that carries IP packets from source IP addresses to destination IP addresses.*
 - DNS, the World Wide Web, E-Mail, etc are all applications layered on top of “the internet”.

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If we are going to govern the internet, I think it makes sense to try to describe what the internet is.

I have chosen to narrowly define the internet as a system that carries packets without vexation from sources to destinations. (I believe that this is similar to the way that the ICC defined the internet yesterday.)

I have separated the base internet from layered-on applications because it is my belief that this helps us understand exactly what parts of the internet are in need of oversight and how that oversight may be best structured.

There are other definition of the internet – for example various pieces of legislation in the United States contain such definitions. Those definitions are too inclusive and give us little guidance on the question of constructing institutions of internet governance.

Specific Topics For Oversight

- ◆ IP address allocation
- ◆ Inter-carrier/inter-ISP traffic exchange
- ◆ Operation of the upper layers of the DNS hierarchy
- ◆ Management of the DNS root zone file

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Yesterday there was some mild debate whether there are actually matters on the internet that require oversight.

Here is an incomplete list of some areas that I believe are appropriate for oversight.

IP address allocation is performed today in a partial policy vacuum – there are few complaints because those who are outside the system recognize its ramifications. For example, policies that conserve address allocations have the effect of encouraging the use of NATs which, in turn, has the effect of impeding the deployment of VOIP.

Inter-ISP traffic exchange may need oversight in order to create an assurance (but not a guarantee) that certain minimal service standards are available to all users of the net. Absent these assurances, some services, such as VOIP, may not be able to evolve beyond toy or “second line” grades of service.

Anyone who has built a business knows that it is necessary to obtain firm and reliable guarantees from suppliers. This is no less true when those suppliers are those who provide DNS root server services.

Pitfalls

- ◆ “Consensus” and “Stakeholder” are concepts that lead to immobility, manipulation, and exclusion.
- ◆ “Public Private Partnership” is often a vehicle for the exercise of *ultra vires* government powers by non-accountable private actors.

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If there is anything we have learned from ICANN it is that it is very easy for a vaguely defined regulatory body to become a tool for skilled interests.

Primary element of that problem in ICANN arise from the use of the concepts of “consensus” and “stakeholder”.

In ICANN we have seen “consensus” claimed when none in fact existed. The UDRP is an example of one such policy.

The IETF, because of its homogeneity can work by consensus. Bodies of internet governance, because they deal with much more diffuse and contentious issues do not have that luxury.

Internet governance requires that issues be stated with precision and clarity and that support and opposition be measured with counted votes.

Similarly, the concept of “stakeholder” causes the power of some participants to be multiplied and the power of other participants to be erased. In addition, the assignment of participants to one or more pre-defined categories hardens the apparent differences between points of view and thus hinders the formation of compromises or issue-based coalitions.

For example, a century ago women were considered to have no stake in society – they were considered to be represented via their husbands.

Finally, governance is the exercise of power. Modern governments have constrained powers. The concept of “public private partnership” invites the expansion of government powers as well as placing the exercise of those powers beyond the normal mechanisms of limitation and accountability found in modern systems of governance.

The First Law of the Internet

- ◆ Every person shall be free to use the Internet in any way that is privately beneficial without being publicly detrimental.
 - The burden of demonstrating public detriment shall be on those who wish to prevent the private use.
 - » Such a demonstration shall require clear and convincing evidence of public detriment.
 - The public detriment must be of such degree and extent as to justify the suppression of the private activity.

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So far I have been concerned with the structure of institutions of internet governance.

Here I am suggesting a particular policy for those institutions to adopt as a first approximation of the balance to be struck between public and private interests.

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