Sharing ICANN Can Be Win-Win for the United States

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With the Internet's global reach and importance showing exponential growth, pressure on the United States to share control of the Internet Corporation of Assigned Names and Numbers (ICANN) is mounting. A number of experts believe that the question is simply how much the United States should give up and how soon. This essay argues that "giving up" can be a win-win solution; i.e., control sharing is not a zero-sum game. Nevertheless, the United States does need to be more vigilant in managing Internet uncertainty.

Importance of the Internet

Many governments feel that the Internet should be administered under a multilateral treaty similar to that governing the phone network. They cite two trends that diminish the importance of the state: (a) the information revolution empowers new forms of international actors (NGOs and activists), and (b) the global marketplace is decreasing the "state's economic pillar of power as companies increseasingly become global citizens and economic boundaries no longer correspond to political ones."[1] There are a few well-publicized exceptions to the latter trend, namely Yahoo's failure to convince a French court that Yahoo.fr had the ultimate control over its content and could defy French law by selling Nazi memorabilia. A second example is Google's decision to stop indexing certain Web sites, in effect censoring content, because of pressure from the Chinese government.[2] Nevertheless, states see the Internet, in general, as a medium for overcoming the global digital divide by facilitating economic and social development.

Besides the global importance of the World Wide Web, digital devices communicate with each other through unique Internet protocol (IP) addresses. Lopsided country allocation of IPs—Stanford University is reported to have been allocated more IPv4's than China—can have tremendous impact on economic development.

ICANN

ICANN's regulatory and supervisory activities constitute global public policy of a type usually exercised only by governmental (or intergovernmental) entities. But the group's name and organizational chart make it easy to miss the breadth of ICANN's role.[3] For example, trademark issues are neither part of the corporate name nor a separate division under ICANN's organizational structure.

The United States controls ICANN through the document that created the body, the 1998 memorandum of understanding (MoU) between the new organization and the U.S. Department of Commerce. ICANN's birth was marked by a clash of perspectives. The United States, in its view, was giving up power when it created ICANN. Other countries

didn't buy that notion. The government didn't control ICANN, but the U.S. private sector did, so authority still rested within American borders.[4]

Klein and Mueller explain how ICANN's control of the root (the top of the domain name hierarchy and the Internet address space) is being used to control the Internet itself in such key areas as trademark and copyright protection, surveillance of users, content regulation, and regulation of the supply of new domain name extensions. Moreover, ICANN's powers are open-ended: the entities it regulates must commit to implementing any further policies that the organization adopts.[5]

Decentralization

When designing bargaining strategies, we are not talking about a start-from-scratch redesign of ICANN. The future role of the United States depends on conditions now; historical developments and current endowments cannot be ignored in planning for the future. Thus, there has to be incentives for the United States to loosen control.

Despite the emergence of regional networks, there is little danger of splitting the root.[6] Moreover, centralizing the three addressing functions (domain names, IP, and root servers) was not a technical necessity but a deliberate design decision.[7] The United States needs international cooperation for the following reasons:

1. Policing of traffic flows and infrastructure is critical for global information flow.
2. Cooperation is needed to facilitate maintenance of critical global infrastructure.
3. Although there is a bias in favor of U.S. laws, harmonization of legal codes and enforcement reduces cost to all parties involved.

Control of ICANN is only one of the cards on the table of international relationships. Before agreeing to give up any control, the United States needs to classify its control into three categories:

1. Must have: These are critical components related to national security. Thus, they are not on the bargaining table.
2. Good to have: Components whose value to the United States is greater than their value to other countries. Thus, for the United States to give any of them up, it must receive from other countries a basket of guarantees and concessions of at least as much value, though these do not have to be related to ICANN. The basket can be comprised of hard and soft assets.
3. Nice to have: Those are roles whose individual value is worth less to the United States than to other countries; as such they are certainly not critical to the United States and can be used as bargaining chips. For example, a number of countries may see a good deal of symbolism and prestige in areas where we do not.

By prudently trading some of its "good to have" and "nice to have" assets, the United States can engineer a win-win situation.

Solutions

Giving up some control does not mean ICANN will be more responsive to the demands of its constituents. Activism is needed as a disciplinary instrument when interests diverge. There are a number of proposals for reform. Below, I outline a European proposal.

A paper by Mayer-Schönberger and Ziewitz suggests that a European internationalization proposal is viable. They point out that adoption has had to wait on matters of timing and some fuzzy details, as opposed to critical issues, but for tactical and historical reasons the United States should say yes to the proposal.[8] In setting policies, the proposal would be mandated to adhere to the fundamental principles of the Internet community. It could provide the basis for "instilling constitutionality, self-constraint, and liberalism into the Internet governance," the paper says. In addition, the study demonstrates that the European proposal could provide a number of advantages over a more unilateral solution.[9]

Sharing control does not mean that the United States faces less Internet risk. The country must vigilantly manage uncertainty by identifying potential crises and being ready to manage those that arise.[10] One hopes that the Katrina fiasco is not a good example of Internet uncertainty management!

References

[1] Myriam Dunn Cavelty, "National Security and the Internet: Distributed Security through Distributed Responsibility," p. 1.

[2] Jack Goldsmith and Tim Wu, *Who Controls the Internet?: Illusions of a Borderless World*.

[3] http://www.icann.org/en/structure/

[4] Kenneth Neil Cukier, "Who Will Control the Internet?" *Foreign Affairs* (Nov./Dec. 2005), p. 10.

[5] Hans Klein and Milton Mueller, "What to Do About ICANN: A Proposal for Structural Reform," (April 2005).

[6] See Milton Mueller, *Ruling the Root*, MIT Press, 2002. For analysis based on insights from economic theory on platform competition see Alex Tajirian, Splitting the Root Unlikely, DomainMart (November 15, 2005).

[7] V. Mayer-Schönberger and M. Ziewitz. "Jefferson Rebuffed: The United States and the Future of Internet Governance," *Columbia Science and Technology Law Review* 188 (2007), n. 22.

[8] Ibid, p. 207.

[9] Ibid, pp. 203–204.

[10] Manuel Sutter, "A Generic National Framework for Critical Information Infrastructure Protection (CIIP)," ITU (August 2007).