

PANEL ONE – Civil Society and Internet Governance

9:00-10:45 Session

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Supra-National Governance: The Vexing Problem of Legitimacy

Speaker: Professor Hans Klein, Georgia Institute of Technology (Atlanta, USA)

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The morning session was concluded by Mr. Hans Klein's talk on Supra-national Governance: The Vexing Problem of Legitimacy.

Since the Internet is a transnational system Mr. Klein emphasized the need for an increase in globalization. Examples of national policies, which include WTO, IMF, and NAFTA, make technical decisions, public policy decisions, and value-based decisions. In Seattle earlier, the issue was raised as to whether there was a legitimacy control over such policy decisions.

ICANN, which is a supranational institution, is comprised of private and non-government representatives. Even though it is a non-government institution, the government still has a say in the decisions. The board of directors makes the decisions; however, it is still ambiguous as to who is in control and who has the final say. There are concerns as to what gives them the creditability and the right to set the policy.

The directors of the Board include experts with over 20 years of experience in the field and intellectuals with PhD degrees in Computer Science. Initially it was thought that ICANN was more of a "technical coordination" with no policy role as such, but later they did actively participate in policy roles like intellectual property laws and pricing policies. However, these experts were employed and financially supported by big Internet supply industries, i.e. IBM, AOL, DeutscheTelecom. The so-called "neutral" experts were no longer neutral. The experts kept the interests of their companies at the back of their minds while forming any policy. This is a case of bad credibility and is under question. Since they had their companies' interests in mind, they behaved in a very political manner.

Market competition does not make it legitimate for such a Board to make decisions. Ideally, it is the market that should set the base prices. But this is not true because there is a monopoly in supplying domain names. ICANN sets the base prices and creates the markets. Ultimate authority for policy decisions lies with the US Government. The US Government is accountable to the citizens of United States and so it is basically the citizens who are responsible for the policy decisions. Therefore ICANN is often referred to as "AmerICANN".

Mr. Klein further goes on to point out the ambiguity between the controls of Department of Commerce (DoC) versus ICANN. He explains that at the time of any disputes or controversies both DoC and ICANN want to shrug off their responsibilities and keep referring the problem to each other.

Mr. Klein explains the stakeholder Self-Governance concept. This basically means that the stakeholders give membership to the board. This forms a balanced board of experts and users. Experts are from the Internet Supply industry whereas the users are the consumers. Originally the membership ratio was suggested to be 9:9, but it was never implemented. A secret initial Board was appointed, which created a lot of disturbance. As a result, the 9 expert members of the board were elected timely, who in turn ended up electing the other 9 members representing the user community. Therefore it so happened that these 9 users were against the very concept of user representation, which again brings up the issue of legitimacy. Later on, there was a change from board member ratio of 9:9 to 9:6 in favor of experts.

The need for a revision of by laws as to who gets access to the board of directors was required. The industry wanted to reduce the number of user representation and eliminate the principle of balance. This was a blatant violation of the principle of balance between users and experts. Some say that ICANN has captured the member organization and now makes its own rules with its own vested interests in mind.

In conclusion, Mr. Klein said that the current situation was not promising with respect to legitimacy issues but it has the potential to be a positive precedent for the governance in the future.

After Mr. Klein's very interesting and enlightening talk there were a couple of thoughts from the audience. Mr. Guedon was inquisitive to know why shouldn't an organization like the UN take control over these issues. Mr. Klein responds that there had been an attempt to have ITU (a UN entity) to take part in the policy-making decisions, but this did not materialize. He went on to clarify that ICANN is a new hybrid attempt at the governance and it should be treated as an experiment. If it were seen failing by stakeholders, it would be brushed aside.

Another interesting aspect that arose from the discussions was that there has been a change in view of ICANN since the Bush Government and the Clinton Government. Apart from the fact of ICANN being born during the Clinton era, the above legitimacy control issues also led to some disgruntles among the Bush government.

The philosophy of the republicans is based on trust not treaty. What the international community currently follows is that there must be some kind of trust to US government. However, it was Charles Costello from the panel argued that one cannot just rely on words and good will but perhaps some kind of contract should be signed to ensure that the US government will act in a responsible way.