

introduction

global democracy and the ICANN elections Hans Klein

We live in interesting times! Over the past decade the internet has swept the globe to emerge as the global information infrastructure of the twenty-first century. The diffusion of the technology has been breathtaking, with millions of new hosts connecting every year and new uses emerging seemingly daily. For future historians, however, perhaps the most significant development of recent years will have been in the internet's institutions rather than in its technology or applications.

In 1998 a new institution for the global governance of the internet was born. The Internet Corporation for Assigned Names and Numbers (ICANN) was incorporated as a private, non-profit corporation to administer the internet's core resources, most notably domain names and IP (Internet Protocol) addresses. The US government entrusted ICANN with day-to-day control over these resources and reduced its own role to that of an overseer armed with veto power. ICANN began to regulate important aspects of the internet, most notably intellectual property and competition policy. ICANN promulgated global regulations to protect trademarks in domain names and began selecting among companies to operate new domain name registries like *.info* and *.biz*. Although such early regulations

have had limited impact on users, ICANN has the potential to evolve into much more. Many observers see it as a nascent general-purpose policy-making institution for the internet.

Once ICANN's significance is recognized, numerous questions follow. Who is ICANN? To whom is it accountable? What perspectives does it incorporate? What interests does it represent? And, above all, what makes its decisions legitimate?

It is questions like these that this special issue of *info* addresses. The articles here examine ICANN in terms of big issues of governance, legitimacy and democracy. The questions raised by ICANN's creation lie at the core of political science and have been the object of inquiry and reflection for literally thousands of years. The decisions being made today are far-reaching and their full implications are not always well understood, so the time is ripe to illuminate them with insights from the accumulated knowledge of political theory.

Each author in this collection explains the significance of ICANN and offers policy recommendations. The articles are ordered from the more general to the more specific,

Hans Klein is Assistant Professor at the School of Public Policy, Georgia Institute of Technology, Atlanta, GA 30332-0345, USA (Tel: +1 404 894 2258, fax: +1 404 894 0535; email: hans.klein@pubpolicy.gatech.edu) and Chair, Computer Professionals for Social Responsibility (CPSR)

Support for this project came from the Georgia Tech Center for Business Education and Research, the European Union Center of the University System of Georgia, the Open Society Institute, and Computer Professionals for Social Responsibility.

starting with an overview of the history of communications governance and finishing with an account of ICANN's 2001 elections in the Asia-Pacific region.

Wolfgang Kleinwächter explains ICANN in terms of the evolution of institutions for supranational and global communication governance. Kleinwächter notes that global communication requires global governance and that global governance has historically been *intergovernmental* in nature. From the 1819 Carlsbad Treaty regulating the cross-border transportation of printed materials up to the 1980s debate over a New World Information Order based on the principle of information sovereignty, supranational communication governance has been the policy domain of nation states. In the 1990s, however, new players began to participate. The first to join were corporations, who championed business-government partnerships in policy-making. An example of this has been the Global Business Dialogue on electronic Commerce (GBDe). More recently, civil society groups have joined the process. Non-state, non-profit voluntary associations have increasingly advocated an agenda that complements states' national interests and firms' shareholder interests. Civil society groups have championed human rights and civil liberties, while working to balance state and corporate control of communications. The result is a 'new trilateralism' of governments, business, and civil society. ICANN may be a precedent-setting example of this new approach.

Civil society receives more focused attention in the work of Stephen McDowell and Philip Steinberg. They note that US policymakers in creating ICANN presupposed the existence of a transnational civil society of non-state actors, 'the internet community'. The internet community was to self-organize to create a new institution for non-state governance of the internet's core technical resources. McDowell and Steinberg examine this presupposition with four analytical models of communication governance. Two models seem to have informed US policy leading to ICANN: the neo-liberal model and the libertarian model. These contain optimistic assumptions about the desirability of private governance as well as the feasibility of spontaneous stakeholder self-organization into effective bodies. A more critical perspective is offered by the other models: public interest and political economy. The former reminds us that effective representation of some stakeholder groups, most notably public interest groups, is by no

means assured and that therefore public policies for privatization must ensure that all relevant groups can participate in debate and deliberation. The political economy model focuses attention on the most powerful institutions in society, most notably governments and corporations, and examines how systems of communications governance can reinforce existing constellations of power.

Renée Marlin-Bennett examines the ways in which ICANN can be said to 'govern'. Governance refers to the promulgation, implementation, and enforcement of rules and policies within a society. ICANN's governance of cyberspace is reflected in the promulgation of rules for trademark protection, its creation of new top-level domains, and the selection of firms to serve as name registries. Governance, however, needs legitimacy, and that most often derives from the consent of the governed achieved through democratic institutions. Marlin-Bennett surveys criteria for democratic governance and finds that ICANN falls short, most notably because of the privileged position accorded to commercial interests in the Supporting Organizations. She concludes with a list of options for achieving legitimacy. First, ICANN could drop all pretense of democratic governance and advertise itself as a self-regulating industry association. Second, ICANN's functions could be assumed by an international treaty organization like the International Telecommunication Union (ITU). Such an arrangement would give it the legitimacy of the member states. Finally, ICANN could fully embrace democracy, and its Board could be restructured to consist wholly of elected representatives of internet users. Of these three options, she sees the second as the most practical. The assertion of government control over ICANN would ensure the rule of law while affording some degree of individual representation through national governments.

Jonathan Weinberg examines in detail the question of ICANN's legitimacy. Weinberg summarizes the events leading to ICANN's creation and then analyses the various ways that ICANN can be said to govern. He concludes that ICANN makes public policy choices affecting internet users worldwide and that it does so in a top-down manner. To gain perspective on this situation he turns to the political philosophy of Aristotle. Aristotle's insights into good governance are pragmatic, seeking to balance expertise and interest. Weinberg concludes that it is easy to conclude that Ira Magaziner, the architect of the ICANN policy process, was fundamentally an Aristotelian: as designed, ICANN's Supporting Organizations give technical experts and business interests special access to the governing board, but its membership

structure gives representation to a broad base of users. User representation serves as an important check on elite and economic power and provides competing perspectives on what constitute good public policy. Weinberg endorses this system of mixed governance as a means for both legitimate and effective governance.

Hans Klein examines ICANN's year 2000 At-Large elections in light of ongoing debates over the feasibility of global democracy. Can global governance institutions – not just ICANN but also others like the World Trade Organization – achieve legitimacy through democracy? Even if we assume that democracy is desirable, a prior question arises: is it feasible beyond the nation state? In seeking answers to this question, scholars have focused on questions of political community: democracy presupposes a *demos*, and many argue that this is not feasible at the global level. Klein identifies four dimensions of political community: a membership, a communication community, institutions for interest aggregation, and a democratic culture. He then examines ICANN's election and finds evidence of all four dimensions of political community. While the ICANN elections do not 'prove' that global democracy is feasible, they strongly suggest that it is not infeasible. Global democracy may provide the means for legitimate global governance. ICANN can strengthen its democratic foundations by facilitating the formation of bottom-up associations to aggregate user interests and by performing more language translations of its processes.

The final contribution to this symposium is Myungkoo Kang's article on the ICANN election in the Asia-Pacific region. Of all the five regional elections, this one seemed the least successful. Nation-based competition undermined the intended supra-national character of the election, and the top-down orchestration of voter registration in Japan and China raised the specter of capture by special interests. Kang argues that these events are not evidence of a lack of democratic culture in the region but rather a lack of institutional development. Rules and norms necessary for the maintenance and operation of a democratic public sphere have not been adequately realized in the region, and this sets up barriers to public deliberation and choice.

In summary, the articles in this issue offer a variety of perspectives on ICANN and a range of recommendations for policymakers. All authors agree that ICANN is an important policy-making institution for which legitimacy remains problematic. Solutions may lie in greater assertion of governmental control over ICANN, in a renewed commitment to ICANN's current form of mixed elite and democratic representation, or in a greater investment in building up democracy

at the global level. Whatever choices are ultimately made, they are likely to have lasting consequences for global public policy for the internet.