

**INTERNET GOVERNANCE CONFERENCE OF THE BERTELSMANN
FOUNDATION**

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by

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A possible model for Internet regulation is the „Internet Corporation for Assigned Names and Numbers“, abbr. ICANN. This non-profit-organization, located in California, is not only responsible for assigning Internet domain names, but also for IP address space allocation, without which no PC could be identified on the Internet. Moreover, ICANN will manage the „A-Root-Server“, the so-called technical and administrative „heart“ of the whole Internet, to which all Internet Providers will be linked worldwide. Until October 2000, all Internet users have an opportunity to determine 5 of 19 ICANN directors through worldwide elections. However, this fundamental decision, which is part of the founding process of the organization, has not been getting much attention in Europe. It is the goal of the project „Democratic Internet“ of the Bertelsmann Foundation to bring attention to this important process. As part of its activities in this context, the Bertelsmann Foundation hosted the conference „Internet Governance“ in cooperation with the German Ministry of Education and Research in Guetersloh/Germany on June 15th, 2000.

In her opening speech, *Dr. Ingrid Hamm*, Head of the Media Division of the Bertelsmann Foundation, stressed the extraordinary social and economic importance of the Internet in today's society. She made the point that the Internet will only remain useful for everybody as long as its stable functionality can be guaranteed. She called the founding of ICANN, which is supposed to secure this stability by passing regulation that takes into account the interests of Internet users and at the same time shall be democratically legitimated as global governance, a thrilling experiment.

Michael Leibrandt from the German Ministry of Economy and Technology and member of the German government's representative in the ICANN Governmental Advisory Committee (GAC) pointed out in his statement „*ICANN, Democracy and the Internet*“, that ICANN is a novelty from a political point of view. For the first time, the responsibility for an important infrastructure of the future is seen primarily in the hands of a private organization. Mr. Leibrandt viewed the development of an international self-governing body for Internet Governance as a positive step since it is his belief that because of the technical diversity and speed of develop-

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ment of the Internet this organization would probably better be suited to making decisions for the benefit of the Internet Community than a governmental organization. However, Mr. Leibrandt criticized the composition of the election and nomination committees, which he described as incomprehensible. Also, he found fault with the fact that a lot of information about ICANN is only publicized in English, since this could stop many potential electors from participating in the elections, while it should be the goal that all potential electors in Germany and Europe should be informed about the meaning of the elections, so that these electors could be mobilized accordingly. From the point of view of the German government, a candidate for the ICANN Board of Directors should be knowledgeable and should also take into account the interests of the „small Internet citizen“, such as consumer protection issues. Also, the candidate should not come out of one of ICANN's Supporting Organizations.

In his opening statement to the panel „Why ICANN elections?“, *Dr. Marcel Machill*, Project leader Media policy of the Bertelsmann Foundation, stressed the peculiarity that ICANN, in contrast to other international organizations such as UNO or WTO, is trying to achieve direct democratic legitimization through worldwide elections and through involving Internet users in ICANN's sub-organizations. Mr. Machill pointed out that there is a contradiction between worldwide elections on the one hand and the fact that ICANN is headquartered in California and therefore subject to US laws. Thus, while ICANN would be aiming at fulfilling a global task, it would still be under US supervision and it would be doubtful if ICANN would really have the authority to pass independent decisions.

Andrew McLaughlin, CFO and Senior Advisor for Policy, ICANN, directed attention to the fact that, contrary to much that has been written in the European press, ICANN is not a government, and it does not have coercive power. According to Mr. McLaughlin, ICANN performs an important function for the Internet, but a narrowly-defined and limited one and thus, the ICANN structure is organized to fulfil that limited mandate, but only that limited mandate. Mr. McLaughlin said that, although ICANN is not interested in expanding its own areas of responsibility, the ICANN experiment may provide some useful lessons for future international policymaking ventures in other areas. Because of the subject matter of ICANN's task, Mr. McLaughlin viewed it as important that the elected board members do have a very good technical understanding.

Prof. Dr. Herbert Burkert, University of St. Gallen, described the difficulties ICANN has with democratic structures as being independent from the manner of implementation of these structures. He stated that ICANN, because of its current legal structure, is not prepared to be the blueprint for a democratic form of global governance of the Internet. However, Germany could learn from ICANN that decisions about the distribution of important infrastructures and scarce resources have to be open for a non-discriminatory participation of those who are immediately exposed to the effects of how the infrastructure is put together and to the scarcity of the resources.

Alan Davidson, Staff Counsel at the Center for Democracy and Technology in Washington D.C., USA, approached the issue with his statement “ICANN's Elections: Governing the Internet's Caretakers”. According to Mr. Davidson, ICANN will increasingly be making “technical”

policy choices that have broad impacts on the public. He stated that ICANN and its brethren are not governments or policy-makers, nor are they equipped to be. But as the Internet becomes an increasingly important part of life, we would need to find new ways to represent the public's interests in these groups. Mr. Davidson said that democratic elections may be one such way to guarantee "the consent of the governed" and to ensure that individual rights and interests are protected in the management of the Internet. Mr. Davidson described these as also being a check on ICANN's authority, a way for internet users to ensure that ICANN does not extend its powers beyond its narrow technical mandate.

Jörg Tauss, member of the German federal parliament, stated that the practical experience with the ICANN elections might be transferred to other fields, such as possible future elections of state legislatures through the Internet. Mr. Tauss viewed the election of ICANN directors as a chance to test democratic participation on the Internet.

Christopher Wilkinson, Advisor, DG Information Society European Community and EU Representative to the Internet (ICANN) Governmental Advisory Committee (GAC), noted that many other areas of Internet-related politics, such as data protection and intellectual property laws are not within the scope of authority of ICANN. He raised the question who should represent the interests in these areas and in which structure this should take place.

In the ensuing discussion it was stated that the question of responsibility in these areas is indeed unsolved. However, there was agreement that there should not be a „Super-ICANN“, which would be authorized to also regulate these areas. A participant mentioned the creation of several organizations similar to ICANN as a potential solution. There was no consensus concerning the question if ICANN should remain headquartered in California. While Mr. Wilkinson viewed this as being problematic and Mr. Leibrandt also thought that ICANN could well move away from California at some point, Mr. Burkert noted that being registered in California performs a somewhat symbolic function considering California's special importance with regards to the Internet. Mr. Laughlin stressed the importance of having continuity and was therefore in favor of not moving ICANN.

In her opening statement to the second panel „*The reform of the DNS – how to fairly administer a global resource?*“, *Dr. Jeannette Hofmann* from the Center of Science for Social Studies, Task Force Technology, Labor, Environment, Berlin, called attention to the fact that today's domain name system performs functions for which it was originally not conceived. According to Ms. Hofmann, while the domain names were historically created as a mere memory aid to save the user the work of memorizing long combinations of numbers, nowadays users view the DNS as something like an address register or yellow pages. In addition to this, the domain names registered under .com have become a lucrative „business address“ resulting in scarcity of „good“ domain names under .com.

Sabine Dolderer, Managing Director, DENIC eG (the German authority for assigning domain names), made clear that it is her view that it does not make sense to see domain names as a way of organizing the Internet. Due to the boom of domain registrations in all top level domains (TLDs), the navigation using names, with the exception of trademark names, would become increasingly difficult. Regulation of country domains would not work, so that it had partially

already been given up. Ms. Dolderer did not see the introduction of new top level domains as a feasible way to overcome the shortage of character strings suitable as domain names. Therefore, only a stronger specialization of search engines, increased use of vertical portals and ultimately new technical solutions could help to diminish or solve problems regarding Internet domain names.

Michael Schneider, Director of Regulation and Self-Regulation EuroLSPA, also doubted that new generic top level domains (gTLDs) could solve the perceived problem of a shortage of domain names since not only the number of imaginable strings is limited, but also the amount of terms standing for something or corresponding to trademarks. Furthermore, Mr. Schneider pointed out that the introduction of new gTLDs might even be contra-productive if their number is limited, because owners of famous trademarks could be forced to register their trademark name in all domains. He also said that it is very questionable if the dominance of the gTLD „.com“ can ever be overcome, raising the question if Internet users would really use the whole DNS or if they would only keep using the „.com“ domain names.

“A user perspective on DNS management” was presented by *Harald Alvestrand*, Senior Consultant of MaXware and Member of the Internet Architecture Board, Trondheim, Norway. He made the discussants aware that the system of “owning” names could potentially have the effect that there have to be lawsuits because of “cyberpiracy”. This aspect and the ensuing need to buy names could cause instability and according to Mr. Alvestrand, this means that the user loses in the end. The ideal DNS governance for him would be one that managed to get the DNS out of places where it does not belong, managed to get the system functioning efficiently at a technical level, and otherwise did no more than necessary.

Francis Gurry, Assistant Director General and Legal Counsel of the World Headquarters of WIPO, regarded the expansion of the DNS from the point of view of a “protector of intellectual property”. He emphasized that brands are becoming more and more important in distributed and virtual markets: 1 new domain were registered every 2 seconds and 1 new trademark application filed every 2 minutes. This is why he thinks it is not responsible to add new gTLDs without taking into account intellectual property interests to avoid wasteful diversion of resources and to avoid consumer deceptions and to encourage confidence in digital marketplace.

The “Deutsche Telekom“ favours, according to *Winfried Schüller*, Head of Product Marketing Global Internet Products, Deutsche Telekom AG, Bonn/Germany, a concept for a DNS reform which adds, step-by-step, 5-10 new gTLDs to the domain name system and which also creates guidelines for the technical administration, so that it can be assured that the Internet functions in a stable way. ICANN should only take care of the technical administration, but it should not have any regulatory authority.

The following discussion mainly did not deal with questions surrounding the DNS reform, but again mainly with the election of the at-large-members, especially the question, which factors could make ICANN, respectively the ICANN elections a failure. Problematic issues discussed included the questions how democratic an election can be when the electors do not know the candidates, how high the danger of manipulation is, who can be a candidate and who guarantees that these candidates are independent. However, despite these open issues, the dis-

cussion came to the conclusion that the experiment of trying to find regulatory structures for a global, virtual world is an exciting one and that ICANN is an organization worthy of being democratically legitimated.