

## **Internet Governance: Legitimacy, Efficiency and Digital Divide**

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When I reflect on the personal impressions I have gained to date in the very dynamic World Summit of the Information Society (WSIS) process, I feel two souls in my chest. On the one hand, there is my role as a lawyer who studied law with the aim of protecting the rights of the individual against an often all-powerful state. On the other hand, there is my role as Chairman of Afilias Limited, the domain name registry which manages more than seven million virtual addresses and which thus, as a stakeholder from the private sector, also and not least has a vital economic interest in the results of this Summit.

The lawyer who has the protection of civil rights at heart should react with suspicion when there are calls to regulate apparently new circumstances in life through new legislation. Such a phenomenon is precisely evident at the World Summit. Concepts such as spam, intellectual property and competition (IPC) rights and cybercrime are debated under the definition of Internet governance, a term which the WGIG has deliberately defined very broadly. There are allegedly, some people claim, new problems which are crying out for regulation through new laws. Is spam, for example, really such a new phenomenon – at least from a regulatory point of view? Or is it not perhaps just a digital manifestation of advertising mailings sent to recipients by the traditional postal route without their consent? Fraud and pornography also existed before the advent of the Internet. True, the Internet makes a quite different level of distribution and penetration with unwanted advertising mailings possible than by traditional postal methods – be it for cost reasons alone. Furthermore, the Internet offers cyber-criminals quite new opportunities to pursue their criminal activities across state frontiers. But in a globalised world traditional manifestations such as people or drug trafficking cannot be restricted to the level of the individual state any longer either.

I hope these examples show that skepticism is in order when allegedly new situations produce calls for new laws. If such a critical perspective is lost, the danger exists that we fail to notice when subjects of international law abuse new manifestations of behaviour in breach of the rules connected with the Internet to legitimize the further restriction of civil rights.

As a representative of the private sector, I also see the danger that the criticism of the Internet Cooperation of Assigned Names and Numbers (ICANN) in its undertake of the development of policy for the operation of the Domain Name System, and for the allocation and assignment of Internet address space is unrelated to the actual matter and often serves to promote completely different national interests.

Even if the control of the root zone files through the National Telecommunication and Information Administration (NTIA) of the US Department of Commerce reminds us more of a myth than an actual position of power through its purely procedural and non-political character, it is easy to understand that such mere formal control is not acceptable to many states in this form. But instead of addressing this problem directly, the magic words spam, cybercrime and violation of IPC rights are used in this context to document the alleged failure of ICANN and to look for new, supranational regulation through the International Telecommunication Union (ITU) for example. What is overlooked here is the high level of efficiency and practicability of the names and number administration through ICANN, at least in comparison to other United Nations institutions. Instead, ICANN is assigned tasks which, by its own understanding of its role, it never wanted to or could take on.

That is not to say, of course, that everything is perfect. Without wishing to anticipate the results of the WGIG, private and public mechanisms are no doubt required to meet the actual new regulatory challenges which the Internet provides. But the legitimate search for such mechanisms should not obscure our view of the true objectives of the WSIS. As defined in the Declaration of Principles the aim of the WSIS is to build a people-centred, inclusive and development-oriented Information Society, where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life, premised on the purposes and principles of the Charter of the United Nations and respecting fully and upholding the Universal Declaration of Human Rights.

Therefore the primary objective must be to provide access for people, particularly in the third world, to the information and communications resources created by the Internet and not to regulate them. If, however, the regulators retain the upper hand, there is a risk that the second major revolution of mankind after the industrial revolution, the shift from an

industrial society in an information society will pass people especially in the third world by and the opportunity is missed to overcome the digital divide between the countries of the first and the third world.