

2007

The Future of Internet Governance

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Recommended Citation

Tim Wu & David A. Gross, *The Future of Internet Governance*, 101 AM. SOC'Y INT'L L. PROC. 201 (2007).
Available at: https://scholarship.law.columbia.edu/faculty_scholarship/1477

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THE FUTURE OF INTERNET GOVERNANCE

The panel was convened at 2:45 p.m., on Thursday, March 29, by its moderator, Tim Wu of Columbia University School of Law, who introduced the panelists: Esther Dyson of the Internet Corporation for Assigned Names and Numbers (ICANN); Michael Froomkin of the University of Miami School of Law; David A. Gross of the U.S. Department of State; and Miriam Sapiro of Summit Strategies International.*

TIM WU:[†]

The issues surrounding Internet naming and Internet governance have been controversial since the mid-1990s. But public attention was drawn to Internet governance in the early 2000s when Europe and other countries declared themselves unhappy with how Internet governance was working, how the domain names were being assigned, and other issues. David, can you summarize what was happening in the early 2000s that created controversy in this area?

DAVID GROSS:[‡]

In 1998 there was a proposal for a UN world summit on the information society. The concept was how to use new information and communications technology to help the world, particularly to support the developing world. And as you can well imagine in the late 1990s, there was a lot of enthusiasm for this idea. Although there was a little misgiving, everyone by and large was on board. The U.S. government had some misgivings about it, as we generally do with most UN summits, but we also came on board. It was such a popular idea that they decided to hold it not in one place at one time but, rather, in two places at two times, but they could not decide where to do it. So it was held in Geneva in 2003 and then in Tunisia (a place that is always interesting when you are talking about Internet-related issues) in 2005. For those of you who are not familiar with a UN summit, all the fun and games happen before the summit, not at the summit. Summits are sort of parties, and all of the negotiations happen ahead of time in what are called preparatory meetings, where the world gathers, or at least diplomats from the world gather. One thing that was done differently, something that was unique, was that the private sector, non-governmental organizations (NGOs), and private companies were invited in some fashion to participate. This was done because the Internet, of course, was being driven forward by the private sector. But governments and, in particular, many diplomats are uncomfortable with this, and so the first big fight was on the summit's rules of the game.

That is important because Internet governance and the ultimate resolution of these things was driven by those who were able to participate and how they were able to participate as much as by the substance. And many countries as you can imagine (I will not name names, but you know who they are), did not want the private sector involved. They did not want organizations like the Internet Corporation for Assigned Names and Numbers (ICANN), the Internet Society, or commercial companies to be involved. They just wanted it to be a traditional summit amongst foreign ministry types who are usually the last to get the memo

* Ms. Sapiro did not submit remarks for the *Proceedings*.

† Professor of Law, Columbia Law School.

‡ Ambassador, U.S. Department of State.

about what the subject's technical aspects are really about. Of course, what happens at that point is that everyone falls back on what summits generally are all about—rights and discussions about rights. As a relative newcomer to this situation, I was very interested to see that when the discussion is about rights, those who scream loudest for rights are generally those who give the least amount of rights to their own people. I found it all a somewhat surreal experience initially.

To really answer the question more precisely, there were certain parts of the developing world—particularly those who do not allow their people to speak freely on the Internet and try to take the Internet away from the private sector and also arguably try to take away the role that the U.S. government plays—that wanted to empower an international organization to undertake this role, either by changing ICANN itself into an international organization or by subsuming the role that ICANN plays into an existing international organization such as the International Telecommunication Union or the United Nations or some other organization. In our view, the purpose of these efforts was to create a veto, an effective veto, by those governments who are not very happy with the rapid and innovative changes on the Internet, both economically and also with regard to speech, by threatening a veto. Let us just use one country, China. By threatening to veto, China could then try to restrict the allocation of domain names, the new top-level domain names, or some of the underlying architecture of the Internet.

Not surprisingly, we were very upset by that concept. We won the first round in 2003, largely by pointing out that nobody had agreed on the definition for the term “Internet governance.” So, when in doubt, send it to a committee to define it, so that is what we did. In 2003 heads of states from most of the world's nations gathered together and decided to send this issue to a committee. And so we sent the issue to the committee, which then went off to form a group of experts to be appointed by the UN. They came back in late 2005, and came up with something, which I thought was fairly silly on a number of points although there were some very excellent points regarding other areas. Of course, it was completely ignored by the diplomats who then negotiated all over again. They were very tense negotiations—lots of late nights in many of these “prep-coms.” Ultimately, the result was extraordinarily positive, which was the decision not to change what we had already established. Instead, we would create a forum for discussion of Internet-related issues and Internet governance, where parties could go and have discussions about these things, but that would be in a non-binding fashion.

I will quickly add one last thing that is often overlooked, in this discussion. I think the good news is that with all of the focus on Internet governance, the United States, together with very close allies, was able to get paragraph 4 into the Tunis Declaration. This enshrines the freedom of expression over the Internet. In 2003, when we had tried to address this head on, we ended up restating paragraphs 19 and 20 of the Universal Declaration of Human Rights. Bottom line, no change after the world summit. A lot of work, no change.

PROFESSOR WU:

Esther, is there anything that you would like to add to that?

ESTHER DYSON*

The saving grace of ICANN, as far as I am concerned, is that it is widely considered to be illegitimate, and therefore it has very little power. If it were considered legitimate, and

* Founding Chairman, Internet Corporation for Assigned Names and Numbers (ICANN).

could actually do a lot with impunity, it would be a very dangerous organization. But it is pretty hamstrung and nothing much actually happens, which is good.

Nonetheless, I was founding chairman of this organization, and I think we made two huge mistakes. The first was not to be open. This was actually before I showed up, even in how the thing was created and how the initial board was selected. But then we held our board meetings in private for the first year or two, which completely destroyed any affection we might have had among the people who were supposed to be the people on behalf of whom we were developing policies. That created a very unhappy relationship between ICANN itself and the Internet community. It was exacerbated by the fact that we were trying to privatize Network Solutions, which owned the “dot com,” “dot net,” and “dot org” registries. They behaved extremely badly, which made things worse because the United States wanted to pretend that we were not created by the United States and that it had not given us funding. We had very little in the way of the budget so we had to “tax the Internet.”

The second big thing we did wrong was to impose way too strict and precisely defined contracts. Even now, the terms on which registries and registrars can compete are extremely limited; they have to offer pretty much the same services for the same prices, with restrictions on almost anything creative—including stronger security, privacy services, and the like. The only way they can compete is on the basis of sleazy marketing practices.

But I think that there are many more interesting things to talk about concerning Internet governance than ICANN. For example, what can be done to improve security on the Internet? The answer is not by ICANN getting into the security regulation business, but by better treaties and understandings of liability that would encourage the use of security practices—primarily by consumers and companies, but most likely implemented by ISPs who would be liable for the actions of their customers if they did not properly manage their customer’s security or something like that. Those are the things that I would like to talk about.

PROFESSOR WU:

Do you want to jump in, Michael?

MICHAEL FROMKIN:*

I just want to say two things. The first thing is that if Esther had been saying these things when ICANN was founded, we would not have founded ICANN Watch. We would have just quoted everything Esther just said.

The second thing is that I wish I were as confident that ICANN is not dangerous. Nobody has been tortured, nobody has been killed: in the grand scheme of things it is really not that bad. But the budget has grown a lot, and ICANN has gotten rich, and a lot of people have gotten rich in dealing with ICANN.

PROFESSOR WU:

I want to ask all of you whether you think the current system is in fact stable—whether the partnership between ICANN, a California non-profit, and the United States government that exists basically on behalf of the rest of the world—is something that can continue for the foreseeable future, or whether you think its going to run into serious challenges.

* Professor of Law, University of Miami Law School.

Ms. DYSON:

I think that your description misses the fact that the ICANN board, whatever its faults, is international. Part of the huge amount of money ICANN spends is in fact spent to be more international, including traveling around the world to hold their meetings. This is a huge expense, and it makes the point that being international is not free, just as being open is not free. ICANN, unfortunately, does a much better job of being international than of being open.

But I think it is stable in a way that an airplane is going through heavy weather. Now, airplanes do not generally crash in heavy weather: they crash when they are landing or taking off. ICANN is very definitely in flight; it is moving up and down a fair amount, but I think it is stable. It is like nuclear deterrence: People are scared to mess with it. There is a wonderful poem by Hillaire Belloc that says, "Hold tightly to the hand of Nurse, for fear of finding something worse."

AMBASSADOR GROSS:

That has always been ICANN's best argument for its existence. I think I see three things which threaten that stability. The first is that there are some new technologies being talked about which could affect the technological assumptions on which ICANN is based. Some countries, particularly China, are looking at setting systems of regulating their internal domain name system (DNS), which, if replicated, could upset what we call now the stability. It might not, but I think that some people want to prioritize traffic.

Ms. DYSON:

But it is not actually the technology. China could make the decision now with no new technology to really cut itself off. It would really hurt China even more than it would hurt the rest of the world, but they have enough people that they might just think they should do it.

PROFESSOR FROMKIN:

The other thing is that there is some talk about redesigning the Internet from scratch to achieve some ends, whether it be to achieve security or prioritizing traffic for movies and so on, which could use the DNS we have. Or this could be an excuse to flip the switch and do something radically different, and there is real money behind these efforts because of the movie delivery aspect. So it is really quite a serious thing, especially in the last six months. There is a lot more hard work going in to try to figure out what that would look like. They are not talking to me at least, and I am not sure that they are talking to themselves about the DNS part of the problem yet. So we do not know what they are going to do, but that is something that could be destabilizing.

The second is the Ambassador's subject, which is that there are a lot of countries out there which, for reasons of pride or policy, are just not comfortable with the United States having a preemptive role. And that is a source of great instability when combined with the third thing, which is that many people in the ICANN structure really like UDI. They want ICANN to be separate because that locks in their victories and takes them out of accountability mechanisms that at least exist theoretically now.

PROFESSOR WU:

What do you mean by UDI?

PROFESSOR FROMKIN:

Unilateral Declaration of Independence. They want ICANN not to be tied to the regular stewardship of any particular country. They disagree among themselves about what the best alternative is, and the Ambassador deals with this every day, so he can speak to this better than I can.

Ms. DYSON:

May I just say one thing more? Something which has always been a check on ICANN is that it is not illegal to run an alternate DNS. People tried to do that, but they did not succeed in the marketplace. They were mostly crackpots—but not all. You can still do that, and it is still not against the law to create an alternative. So the issue is not so much technology. It is simply: do you have something compelling to offer? I am sure we will see some of those, whether it is a country or a TV network or My Space. It will have its own internal namespace inside. If that thing grows very large, it could get interesting.

PROFESSOR WU:

Why do you think we do not see any serious alternatives?

Ms. DYSON:

Because the DNS is actually pretty convenient. The problem is that the open Internet now is getting really scuzzy. I think the first thing you are likely to see is some kind of virtual private network (VPN) or a secure financial network. Certainly the U.S. government has its own black networks behind the Internet either completely behind it or running over it in the dark. There is more and more of that, but you are not seeing it when you are on the DNS, except you might see some black matter somewhere.

PROFESSOR WU:

Coming back to you, Ambassador Gross. There are people out there who say that this is crazy: we have the international global resources, the Internet, the medium of the future, and, lo and behold, there is one country running it for the rest of the world. How can it possibly be a lasting system to have the United States essentially running a global resource for the entire world, and what possible legitimacy does the United States have in this area? Why not give the authority to the United Nations? Why not give it to the International Telecommunication Union (ITU)?

AMBASSADOR GROSS:

Let me respond to that in a couple of ways. First, there is clearly anxiety, and very understandable anxiety about the role of the U.S. government, with regard to ICANN and other media issues. It is a very legitimate source of anxiety. If I were a government official of another country, I think I too would be very anxious about that. And I think that everyone recognizes the origins and the history and so forth. But one of the things that became very interesting to me is that (and this not was intuitively obvious as when I first started looking at these issues) is that there are, no doubt, large numbers of countries—of which I put many in Europe, virtually all of Africa, and many in Asia—which would say that, unless an

international treaty-based organization, like the United Nations, ITU, or something else, is in charge, then there is a serious question about its legitimacy.

I think that is interesting because if you were to walk down the street and ask 100 Americans what they think about this, I would say about 99% would look at you as if you were crazy. Why an international organization makes what I do legitimate or illegitimate is a strange view for Americans, who, I think, are less concerned about that issue. We have to recognize that for the rest of the world, that is an important role for international organizations and that is what animated part of the discussion at the world summit. In discussions with government officials, almost all of them would say that having a role for the ITU or the United Nations or some other international organization, or changing ICANN into some treaty-based organization, would be a source of legitimacy. However, the other extreme that they are most fearful of is having no government play a role regarding the Internet. And I think this is what animates a lot of the concern.

The other side of ICANN is that the only thing that scares governments more than their own government not having some sort of control is if no government has control over something that affects their peoples' lives. And one of the examples I use is the Brazilians. In their interventions, for example, Brazil raised a legitimate and serious issue. Their question was: "We, the Brazilian government, rely tremendously on the Internet. We basically use it for tax purposes; we use it for our government services. When and if the Internet goes down, if we have some catastrophic event, are our citizens going to look to us, the Brasília government, to be responsible for fixing this problem, and to whom do we go? Do we go to some international organization? We know how to go to the United Nations. Or, on the other extreme, do we go to some California non-profit company and say 'What's up? What are we supposed to do?'"

That is not a role that very many governments are comfortable with. Which means that if they could not win the argument to go all the way to a multilateral organization, virtually every country is comfortable with having at least one government, namely the U.S. government, having a role. They know how to come to us; they know how to deal with us, even if they do not like us. To use an old analogy: they have a number to call, and they know that someone is going to answer that call and try to deal with those issues. And in fact the irony is that countries are in fact more comfortable with the U.S. government involvement than with no government involvement.

Ms. DYSON:

I just want to raise another irony: Governments are actually a very small part of the world, even though they putatively control most of it. But in fact the real constituency of ICANN is the users, all around the world, many of whom are treated shabbily by their own governments. You go to these international meetings, and you see people who tend to be the cousins of important ministers living very nicely in expensive hotels in Geneva, spending days on useless meetings. They are not doing any real harm, but they are sucking resources out of the treasuries of those countries. That is why I find a lot of this obsession with ICANN offensive: Not because anyone's doing anything evil, but because they are wasting not just money but talent that could be better applied.

PROFESSOR FROMKIN:

ICANN published a consultive paper sometime within the last 48 hours, which raises officially for the first time, an idea that has been muttered for about a year or more—that

ICANN's identity should be changed to what they call a private, international organization based in the United States, which I took to mean something like the International Olympic Committee. I was just wondering if you are saying that is a non-starter for many governments.

AMBASSADOR GROSS:

I have not studied that, but if it is, as you say, a way in which governments do not play a role, including the U.S. government and the like, I think that would be a very unsatisfactory. In fact, I will say that one of the most interesting pieces for me, from a legal perspective on this (and it shows you how uncomfortable governments are), is there has been this constant search within ICANN to figure out what is the role for governments. What is the appropriate role in this sort of unusual structure? So far, that has been defined as something called the GAC, which is the Government Advisory Committee, for whom the roles are defined but not, and I think everyone would agree, in a way that makes people comfortable. And governments are extraordinarily uncomfortable. I think the French are leaders, at least in my conversations, of pointing out the irony here because governments are very used to having private NGOs or companies that give advice to governments and governments decide what to do. Governments are extraordinarily uncomfortable—in fact, they are completely perplexed by the situation of giving non-binding advice to some private entity, because this is just something that government officials do not normally do.

PROFESSOR FROOMKIN:

It looks awfully binding from out here when they give it.

AMBASSADOR GROSS:

That is part of the tension. I think it is fair to say that ICANN does not really know how to deal with that. And therein lie some of the problems. One other issue that Professor Froomkin raises: we were driven, from a policy perspective, to say that the current system of the Internet is not the only option. We are convinced that there will be something down the road, just like the Internet has in many respects replaced the telephone in ways that fifty years ago we did not know about. We suspect that fifty years from now DNS or something else like that will be different. Now we want to make sure that there is a free opportunity. And part of the cost of having ICANN or any other organization become that international organization that governments then control, is highly undesirable because governments by nature are extraordinarily conservative. Then they will enshrine the current system and the current set of relationships in ways that have impact and that make it extraordinarily hard for the next best thing to come along and do something.

PROFESSOR WU:

I want to get back to an issue that Esther raised. One of the original dreams of ICANN was that Internet governance might be an alternative to the United Nations and the ITU. Is there anything left of that Internet dream? Is there a way for a coordinating organization to represent people independent of government?

Ms. DYSON:

The best way to describe cynicism is as the disappointment of the idealist. A government has the challenge of having to govern everyone and be accountable to everyone. A private-sector organization can choose whom it wants to deal with. It can say: "You are too much of a trouble-maker; we don't want you in our store, in our organization, whatever." ICANN had an even more difficult problem because it was not really clear who was in its store. It kept foundering on the notion of representative democracy and voting. Of course, people who wanted to be influential could round up the digital troops. They may or may not have existed as physical bodies, and so there were some votes, but they were pretty messy.

PROFESSOR WU:

The elections?

Ms. DYSON:

Yes, the elections.

PROFESSOR WU:

For people who do not follow this, ICANN made an effort in its earlier days to have global elections. To have elections for the whole world, independent from any sort of government, so it was an experiment in global democracy.

Ms. DYSON:

Yes, it got about 100,000 votes as I recall. It was riddled with problems, and conspiracy theories abounded. These are great examples of governance on the Internet, but they are not governance by the Internet. That is, you can be arbitrary if you are not a sovereign government. You can have rules in a particular online community, and you can have rules for changing those rules that are not voted upon. If you do not like the rules, you can go somewhere else. There are great models for governance on the Internet, but they do not really apply to governance of the Internet. They could apply to ICANN, and you can argue they should apply to ICANN if there were credible alternatives. But precisely because there is no credible alternative to ICANN, ICANN has a duty to be more accountable and more procedure-ridden than might be appropriate. But I think it goes way too far in that direction. The best thing that could happen for ICANN would be some lightening up of its rules; that might improve things.

The other challenge is dealing with some of the mess on the commercial side of ICANN. I am not talking about people living off ICANN, but the whole domain name business, the association of easy-to-get domain names with criminals who run phishing websites and stuff like that have turned this thing into a cesspool.

PROFESSOR FROMKIN:

I would give a somewhat different answer because I think that there was more than one dream that was combined. One was the dream of a sort of spontaneous, self governance.

And we do see that for things that are purely on the Internet like the Internet Engineering Task Force (IETF). I wrote a paper arguing that it was as close to having an ideal discourse as you were ever going to see in real life. These were hothouse conditions where you had people with similar interests—they had an economic interest in there being an answer, and it is not something that is easy to replicate outside. I would say that we also have some of the dream alive for the use of IT to help national politics. I refer to “You Tube” and blogs and the whole discourse that is happening here and in other countries, which is a very exciting development. That was never ICANN. ICANN very quickly became an economic fight over board votes. However, there was a different dream that has not yet been mentioned, which was the public/private cooperative dream that I sometimes call vulgar corporatism. It was a dream dreamt by people who were not really familiar with that history of attempts of corporatism and did not try to design around the problem and therefore fell into the known traps. I am very happy to say that if anything good came out of ICANN, we killed that.

PROFESSOR WU:

Do we need Internet governance at all? Is it possible to imagine an outcome where we just think back to the 1990s or 2000s and say, well, at one point, this was all thought to be necessary, but it turned out not to be. After all, we do not have anyone really in charge of the World Wide Web so do we really need someone in charge of Internet naming and numbering?

Ms. DYSON:

We need rules, yes. And, again, I think that the best system is where rule sets compete. Right now, we have a system where it is a single rule set and a single group of individuals in charge. Perhaps one of the things most unstable about ICANN now is the individuals who are there, because they are not immortal. They are going to have to change at some point, and it is way more personal, in some sense, than it ought to be. The original ideal of ICANN was a place where people would come together to argue about policies, which would be promulgated by consensus and then everyone would observe them. Those who did not observe them would be banished from the system. That actually is a pretty good idea. It is just really hard to implement.

PROFESSOR WU:

Does the focus on issues of naming and numbering exclude more important issues of Internet governance? Is there anything you come across that might fall into that description?

AMBASSADOR GROSS:

Yes, absolutely. The rules of the road, not just over DNS, but its availability and the way in which individuals relate to the Internet and are able to use it or not be able to use it—information flows become extremely important. We saw this very clearly before Congress last year, as there was proposed legislation about the appropriate role for U.S. companies in this space in dealing with governments in countries that do not allow their people to have free access to information and the like. I spend a lot of time, under Secretary Rice’s direction, with many colleagues working on what we call “Internet freedom,” which is related to

Internet governance. This issue is about what the U.S. government can be doing absent additional authority by Congress in this area: what tools do we have to promote this?

We have a number of very important tools that we are using more and more. For example, we do things in our annual State Department human rights reports, which are congressionally mandated. We now have specific sections that focus on Internet issues, which had not been true before. We now ask all of our posts, when they are providing input for all of the countries in the world, to help report on what is going on. What are the roles of government? What are the laws? What are the regulations on the free flow of information? And then we talk about it. Talking about it and reporting on it is obviously not enough, so we spend time advocating about this. I recognize that I am an extremist on this subject and, as Americans, we all are conscious of the First Amendment. Being an extremist and a bit of a subversive on these things is a very powerful tool for change, and we have got a very powerful story to tell.

Having said that, it is a very difficult story to tell effectively as an advocate. How do you get China to liberalize? How do you get countries in the Middle East to liberalize? How do you deal with issues such as cartoons of the Prophet Mohammed as they are transmitted over the Internet, creating riots that kill people? How do you deal with those classes of issues in ways that allow, and give comfort to, people who want to allow greater freedom on the Internet? Those are important questions and ones that we are actively discussing bilaterally, multilaterally, and otherwise. It is a long process for many countries. It is easier for others, but it is clearly an important calling and one that we are spending a lot of time on.

And lastly, and perhaps most importantly in terms of Internet governance, none of this stuff matters if people do not have access to it. So we are spending an increasing amount of time, and my colleagues' time, effort, and money on working with governments around the world trying to figure out ways in which we can expand the facilities over which the Internet, whether it is wireless, wire line, fiber optics, or satellite, so that people have access to it. The important corollary to all of these interesting academic and legal debates, which are hugely important, over Internet governance is that it is not much to do about anything unless we have a lot of people benefitting from it. I am thrilled to report, as many of you know, that there are now over two billion people who have access to wireless and wire line telephones, many of whom now have access to the Internet through that medium, and over one billion subscribers to the Internet itself. An extraordinary change that also underscores why governments take these issues of Internet governance so seriously.

PROFESSOR WU:

Michael, do you have any thoughts on this?

PROFESSOR FROMKIN:

I think we are building structures that may change, but there is also some chance that they may last. In that context, I think we all realize just how dangerous Internet governance can be. People want to solve the spam problem or maybe the porn problem—whatever they think the problem is, and legally and technically the power to do good is also the power to do great harm. And the idea of governance—the power to choose what will be valued and how that will be enforced is in the hands of a body that is not terribly legitimate, and which is not run in ways that any of us are terribly happy about—also produces the spectre of misuse of governance. This might be one of the reasons why people don't want to empower one

body to do some of the good things they might like to see done, because it is so easy to use those same powers to do very bad things which are very hard to undo. That is why I have proposed breaking ICANN up into pieces, partly because the more powers it has makes it more dangerous.

PROFESSOR WU:

Let us say, in the interest of controlling child pornography, ICANN undertakes measures to more closely control who gets a domain name.

PROFESSOR FROMKIN:

To make registrars enforcers.

PROFESSOR WU:

Right. That sounds like a good thing, so tell us what is wrong about that?

PROFESSOR FROMKIN:

Now we have institutionalized this idea that this odd body can make content-control decisions in ways that are not reviewable and not controllable, yet makes decisions that are enforceable and enlists other people to do things.

Ms. DYSON:

It makes the registrars into police.

PROFESSOR FROMKIN:

Right. Please do not get me wrong. I am happy to say that no one at ICANN has suggested that they are about to do that.

Ms. DYSON:

I want to go back to what David said and talk about how important it is to think first about people just getting access to the Internet. I do not think it is going to be done by the ITU. Is there anybody here from Kazakhstan? Well, we should talk because I was there in September and spent a fair amount of time talking with local NGOs. One problem there is that Internet access is extremely expensive. It is approximately \$350 a month. While I was there, it was revealed that the guy who runs Kazakh Telecom, which is half owned by the state and half owned by other interests, makes \$350,000 a month. Nobody was shocked by this, and they were not really talking about the amount. What they were talking about is, "Gosh, I wonder who in the government caused this information to be revealed?"

Of course, Kazakh Telecom has a monopoly. When I was leaving, just by chance I flew out next to the Foreign Minister of Kazakhstan, the guy who tried to shut down Borat. Rather than engage him in a futile discussion on freedom of speech or anything like that, I said, "You know, it would really help your economy if you just lowered your charges by 50%."

It would probably more than double your revenue, and you would become even more profitable. You do not even need to create competition for Kazakh Telecom.” But of course there are a lot of people in the Kazakh establishment who are not particularly interested in providing access to lots of people more cheaply. That is one of the big problems. You go in there, and these people do not even want this to happen because they are making higher rents on the situation the way it is. And they do not want new channels for political speech.

QUESTIONS

QUESTIONER 1:

My name is James Apple, with the International Judicial Academy. My question is to the panel: What are the arguments against having something like the World Trade Organization where you have a set of protocols and dispute resolution and appellate body and a whole system of trade disputes? What is the argument for doing that for the Internet?

PROFESSOR WU:

Do you mean having the WTO itself assert more authority over the Internet? Because I think that is going to happen.

QUESTIONER 1:

No. That would be a possibility but the other would be to have a separate organization devoted to the Internet: the WIO, the World Internet Organization.

PROFESSOR FROMKIN:

I think that there are a huge number of problems with that. I will just mention two. One is that, as a philosophical matter, I am not ashamed to say that I do not want governments regulating my communication with you, and that would be an inevitable consequence of that structure, one which makes me exceedingly uncomfortable. The second is that the governance mechanisms of the WTO are insufficient for the regulation of communications.

PROFESSOR WU:

But the WTO does now (with the participation of various despotic governments) regulate your candy bar supplies or how you get your manufactured goods. You go to Wal-Mart and look at the goods, and those are strongly affected by the WTO. Does that bother you in the same way or is it a different issue?

PROFESSOR FROMKIN:

I think communications are special. I think that it is stronger for that category. I think that in the WTO, more reasonable people will disagree for the Internet, especially communications. When it touches politics and free speech and so on, I am less willing to concede that aspect of it. And the next problem is how you allocate decision-making power.

QUESTIONER 2:

My name is David Jeffrey. I am from the United Nations, very much in a personal capacity: long-time listener, first-time caller. This is my first attendance at this meeting, and I want

to thank you for taking my call. My question is: I find the topic of future international law a bit too daunting. What about present international law? What can we currently say about the role of international law, and, in your wildest dreams, what might it be called upon to do in the future?

PROFESSOR WU:

I would say the role of treaties right now, in the regulation of the Internet, is fairly minimal, though not non-existent. You can count on one hand the number of treaties that are relevant to the current affairs of the Internet. If this was an exam question—“Name all of the international laws that matter”—I guess I would point to the telecommunications agreements and, in particular, the ones that were assigned at the founding of the WTO.

PROFESSOR FROMKIN:

I think that framing the question in terms of treaties leaves out important sources. I am talking about classic international law, too. For example, the intellectual property area—there are a lot of things under the general umbrella of existing harmonizing rules for copyright and trademark. Anyway, there is an ongoing attempt by the World Intellectual Property Organization to insert itself as a maker of a unique, global legitimate trademark law for domain names. I would say that there are tons of it, just like anything else that is important. The fact is that we do not have treaties for it, for many of the reasons that you say in your book, Tim. I used to say I was an Internet lawyer, and it is very hard to say that with a straight face anymore because it is now a sub-field of everything else.

PROFESSOR WU:

That is true. It is also true that every time you click on a webpage of another country, it is also an export and import of service, and people have not fully thought that through, and no one has really litigated or tried out what happens when you start thinking of every incidence of Internet communications as a trade in service. But if I were to guess as to what area might develop as international regulations of the Internet, I would put my bet on the WTO.

That is all of our time. Thanks to everyone for attending and participating, and thanks to the American Society of International Law conference organizers for placing this panel on the agenda of the meeting.