Workshop 43 Report:
Legal Aspects of Governance of Critical Internet Resources

Wednesday, 3 December 2008
0930-1100

1. Organizers & Panelists

Organizers:

- Alfa-Redi
- American Bara Association, Section of Business Law, Internet Governance Task Force
- Council of Europe
- Global Internet Policy Initiative (GIPI)
- Internet Society – Bulgaria (ISOC-Bulgaria)
- Internet Society – Pacific Islands
- Moscow State University, Institute for Information Security
- Oxford Internet Institute
- World Bank Legal Department (WB)

Panelists:

- Amitabh Singh
- Erick Iriarte
- Moderator: George Sadowsky, GIPI

NB: Due to a variety of circumstances, including a number of delegations cancelling their attendance at Hyderabad due to events in Mumbai just prior to the IGF, difficulties reported by some speakers in timely obtaining visas and other extenuating circumstances, the original list of seven speakers, as noted below, was adjusted accordingly.

2. Background

This workshop was the third in a series of IGF workshops exploring various legal aspects of Internet Governance. As such, these workshops have been the only workshops specifically devoted to legal aspects of Internet governance. These legal aspects are an important part of building capacity of policy-makers, legislators and other constituent groups on a variety of matters included in Internet governance, enabling a broad spectrum of stakeholders to more meaningfully participate in debates about Internet governance at the national, regional and international levels. The organizers of the Workshop appreciate the consideration of and would like to thank the IGF Secretariat and the MAG for their support of this Workshop, and look forward, hopefully, to continued collaboration with the IGF on exploring these issues in future meetings of the IGF.

The purpose of the workshop was address the various functional attributes relating to the robustness and security of Critical Internet Resources and to assess how different legal and institutional governance models could be mapped to those CIR functions. While there is some literature dealing with the nature of different possible legal forms, the literature does not go the extra step of analyzing these legal, organizational forms vis-à-vis the functional attributes of CIR governance.

Accordingly, the purpose of the workshop was to provide as wide a perspective as possible regarding what the legal considerations would be for mapping different organizational structures to different CIR functions. The Workshop was aimed at (i) raising awareness of the relationship between the CIR functions and their corresponding legal/organizational responses, (ii) assessng whether the organizational forms that are addressed in the literature comprise a complete list of possible organization forms, and (iii) most importantly, analyzing the consequences (pros and cons) of these forms against those different CIR functional attributes.

The framework for analysis consisted of, first, identifying what the different CIR functions are. The WGIG report http://www.wgig.org/docs/WGIGREPORT.pdf and associated background report provided an overview. Then for each CIR function, the Workshop analyzed what the function is, how that function is exercised and by whom and what the emerging legal issues are in relation to that function. Finally, the Workshop explored what the "pros" and "cons" are likely to be of the current and proposed legal and organizational forms that are assigned to each CIR function.

The workshop featured two speakers. The first speaker was Mr. Amitabh Singhai, who is the founder and former President of the ISP Association of India as well as the founder, former CEO and Board member of NIXI, the national Internet Exchange of India. The second speaker was Mr. Erick Irarte or Alfa Redi, Four other speakers, Jan Malinowski (Council of Europe), Henry Judy (American Bar Association), John Jeffrey (ICANN) and Andrey Kulpin (Moscow State University) were unable to be present, as noted above.

4. Summary of Discussion

Following is a summary of the discussion raised by the speakers at the Workshop.

Mr. Singh, opened the discussion by referring to the terms of reference from the Working Group on Internet Governance, including the relatively wide definition of "Internet Governance" proposed by the Group:

Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet.

The speakers identified a set of policy issues identified by the WGIG:

- That Internet Governance includes more than Internet names and addresses, issues dealt with by the Internet Corporation for Assigned Names and Numbers (ICANN),
- That it also includes other significant public policy issues,
- That it includes critical Internet resources,
- That it includes security and safety of the Internet &
- That it includes developmental aspects and issues pertaining to the use of the Internet

The speakers then focused on the policy issues of direct relevance:

- Dealt mostly by the ICANN: Critical functions with direct bearing on the way Internet works -
- IP Address space allocation & Protocol Identifier assignment
- gTLD and ccTLD Name system & assignment management
- Root zone files & root server administration,
- Multilingualization (local language content, IDN – Nov 08 draft for fast track implementation of IDN ccTLD)
- IPv6 – issues of deployment
- Above - carried out through a broad based bottoms up, consensus driven consultation process from global community

Policy issues of public relevance were also identified:

- Internet Security; Cybercrime, Spam, hacking, phishing, DDOS, Identity thefts, spoofing…etc. (national, international laws and regulations, encryption, blocking best practices, guidelines)

- Intellectual Property Rights – domain name protection, conflicts arising out of data & content ownership, privacy therefore (increasing role of P2P in growth of Internet 2)

- Issues related to infringement, piracy & protection mechanisms thereof (e.g. WIPO, UDRP)

- Consumer status & rights in relation to e-commerce, cross border and domestic online trade, (differing national approaches on taxation treatments)

- Telecom issues viz. backbone deployment, interconnection costs

- Freedom of Expression (extent of censorship & control on online content)

- Capacity Building i.e., meaningful participation by individuals and SMEs, increasing connectivity, building IXPs, local content development.

      The discussion then moved on to management and oversight spanning the regional user communities, the various network information centers and ICANN. He discussed the ICANN institutional mechanism as it exists, and examined the need for alternative institutional mechanisms. He examined the four different models proposed by the WGIG and isolated some common features of all of the models. He extracted from each of these mechanisms some implicit points that were common to all of the proposed WGIG structures.

- Treatment of the technical resources of the Internet, and the Global economic, social, legal aspects arising out of Internet should be at par.

- The development and implementation of policies, standards & solutions to various Internet issues should be in a coordinated manner whereas the hallmark of success of Internet has been based on disruptive development of technology, protocols & applications.

- The hierarchical and predictable nature of telecommunications standards (developed over 100 years), governed by ITU can be transposed upon the Internet, which is a non-hierarchical, run on non-proprietary open protocols, borderless, distributed network of voluntary networks.

- New Structure would be a supreme authority over Internet, and the authority would be that of an International legal personality, an IGO, with a suitable host country agreement, exercising considerable international public law, executing global co-operation agreements, impacting international relations, with the involvement of majority of governments, and enjoying various privileges & immunities such as those granted under the Vienna Convention viz. ability to function without interference from local laws of host state, etc.

- Question: Does the internet, as we know it, needs to get altered so radically?

- Probability: Maintain status quo; consider Red Cross model of recognition by international community of states; recognition as International entity by the US Govt like ITU, INTELSAT, WIPO; of ICANN itself as it exists. There will be challenges even then!

     The Workshop then heard a summary of different legal influences on the administration of domain names in Latin America from Mr. Iriarte. He first reviewed the public, private and quasi-public (public/private) nature of domains in Latin America, and

then reviewed some of the national and regional legal frameworks governing the regulation of domains in Latin America, including, for example, application of UDRP processes in Chile, and Panama. In this context, the treatment of certain intellectual property aspects of domain names in both national and regional legal frameworks was also discussed.