The Hot New Field of Cyberlaw
Is Just Hokum, Skeptics Argue

Law involving the online world is hot right now. Law schools trying to stay current have courses in it, which tend to be popular with a generation of law students reared on Wired magazine and Napster. Experts in so-called cybervlaw typically have technology-friendly legal views, and are thus frequent guests at the tech world's many conferences. They're also quoted all the time in media accounts of online legal disputes.

There are, though, a much less well-known but equally determined group of legal experts -- let's call them the 'cyberskeptics' -- who are deeply troubled by just about everything about this trend. The skeptics start by questioning the very existence of cyberspace, which they say is no more real than a 'phone space' involving all the people on the telephone at a given time. They go on to argue that everything happening
COMMENTARIES
THE LAW OF THE HORSE:
WHAT CYBERLAW MIGHT TEACH

Lawrence Lessig

INTRODUCTION
A few years ago, at a conference on the “Law of Cyberpace” held at the University of Chicago, Judge Frank Easterbrook told the assembled lawyers, a room packed with “cyberlaw” doctors (and nurses), that there was no such thing as a “law of cyberpace.” But if there were a law, it would just mislead rather than clarify, and that legal academics (shameful) should just stand aside as judges and lawyers and technologists worked through the quandaries that this speeded-up technology would present. "Go linear," Judge Easterbrook’s wisdom indicates. As is often the case when my then-colleague speaks, the intervention...
domain names, ICANN, and Internet governance

Jon Zittrain
ilaw 2002
Monday, July 1, 2002
a network

<table>
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<tr>
<th>UCLA</th>
<th>terminal</th>
<th>Request connection</th>
<th>over link 25</th>
<th>SRI</th>
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<tr>
<td>HOST: UCLA</td>
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<td></td>
<td></td>
<td>HOST: SRI</td>
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</tbody>
</table>

a namespace

THE LIST
“Well, it started out with twelve people in a room.”

“So we decided we needed to split off a smaller advisory group and then a larger ... [one], and the advisory group has changed its name four times. It’s a deliberate strategy. If you want to hire a committee such that people don’t find you and ask if they can join, the one thing you can do is rename it every two years so they can’t find you. So we used to call it the Internet Configuration Control Board. We made that term up to make it sound as uninteresting and boring as possible so we could go meet in private without anybody noticing us. Then we called it the Internet Advisory Board, and then we had to change that because the government passed the Sunshine Law.”
New and improved DNS (1984)

SLDs (Second-level domains)

TLDs (Top-level domains)

Jon Postel
IANA
1993

the job gets too hard

Problems

• NSI is a cash cow. Other entrepreneurs want a piece of the action.
• Corporate America, World discover “cybersquatting.”
• Expand the namespace?

.per

.xxx

.arte

.web
Solution

• Jon thinks hard, adds the names
• Jon thinks hard, does an RFC, adds the names
• Jon convenes a committee
The IAHC

The DNS is an international resource and the IAHC will at all times operate with that perspective. The IAHC specification effort will address legal, administrative, technical and operational concerns, with particular attention to the questions of fairness and functional stability. The IAHC will attempt to define procedures which are as simple, fair and direct as possible, resolving the minimum required issues. In order to provide timely results, the IAHC will focus initially on the issues of highest priority.

GOALS AND MILESTONES

Nov 11, 96  Publish IAHC charter & press release
            Solicit near-term ITLD policy & procedure proposals

Dec 19, 96  IAHC selected proposal available for public review

Jan 1, 97   Last day to submit reviews of proposal

Jan 15, 97  Near-term ITLD Policies & Procedures published
            Implementation group formed for reviews and awards

Feb 10, 97  Deadline for applications according to new policies and procedures

Mar 1, 97   Initial awards according to new policies and procedures
The gTLD-MoU

gTLD-MoU - 28. Februar 1997

FESTLEGUNG EINES MEMORANDUMS OF UNDERSTANDING ÜBER DEN GENERISCHEN TOP-LEVEL-DOMAINNAMENSRAUM DES INTERNET-DOMAINNAMENSYSTEMS (gTLD-MoU)

Die Internet-Gemeinschaft (1997), in der Erwägung,
daß das Internet-Domainnamensystem (DNS) für Suchmaschinen im Internet durch Aufteilung zwischen Namen, die der menschlichen Merkfähigkeit angepaßt sind, und den dazugehörigen darunterliegenden IP-Adressen a constitutional crisis
On July 1, 1997, as part of the Clinton Administration's Framework for Global Electronic Commerce, the President directed the Secretary of Commerce to privatize the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.

Accordingly, on July 2, 1997, the Department of Commerce issued a Request for Comments (RFC) on DNS administration. The RFC solicited public input on issues relating to the overall framework of the DNS administration.
What is the International Forum for the White Paper?

The IFWP is an ad hoc coalition of professional, trade and educational associations representing a diversity of Internet stakeholder groups, including ISPs, content developers, trademark holders, networkers, intergovernmental groups, policy experts, end-users and others. This coalition has come together to sponsor a framework of coordinated international meetings, to be held around the world, at which stakeholders will discuss the transition to private sector management of the technical administration of Internet names and numbers as outlined in the policy "White Paper" recently released by the United States Government. These international meetings are open to all Internet stakeholders, who are encouraged to support this on-going process.
Problems - responses

- NSI is a cash cow. Other entrepreneurs want a piece of the action.
  - US DoC negotiates Rr/Ry distinction for .com, .net, .org;
  - baton passed, in slow motion, to ICANN to oversee agreements – and the root
- Corporate America, World discover “cybersquatting.”
  - the UDRP
- Expand the namespace?
  - more open ccTLDs; new gTLDs

"Governance"

- for .com, .net, .org
- baton passed, in slow motion, to ICANN to oversee agreements – and the root
- the UDRP
- Expand the namespace?
  - more open ccTLDs; new gTLDs

- .museum
- .kids
- .info
- .biz
- .name
- .web
"Governance"

ICANN Organizational Chart

ICANN Board of Directors (19 Members)

- President and CEO (1 Member)

Domain Name Supporting Organization (4 Directors)
- Business
- Non-Commercial
- ccTLD Registries
- gTLD Registries

Address Supporting Organization (2 Directors)
- ARIN
- RIPE
- NCC
- APRIC

Protocol Supporting Organization (2 Directors)
- IETF
- W3C
- ITU-T
- ETSI

At Large Membership
(Elected by ASNOs by December 2000)

Root Server System Advisory Committee
Governmental Advisory Committee
Membership Implementation Task Force
Budget Advisory Group

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questions

- what's really at stake here?
  - is what ICANN's charged with doing really "governance"?
  - do we need "internet governance" for anything?
- if ICANN governs us, how to govern ICANN?
  - if you think the whole thing is inherently and irrevocably ill-conceived, what alternatives do you suggest?
bottleneck consensus. It was also expected that such an entity could be established, and become functional, faster than a multinational governmental body.

It is now more than three years since the creation of ICANN, and there are some real accomplishments: the introduction of a competitive registrar market, the Uniform Dispute Resolution Policy, the creation of seven new global Top Level Domains. But despite this progress, all the original expectations of ICANN have not been realized. ICANN is still not fully organized, and it is certainly not yet capable of shouldering the entire responsibility of global DNS management and coordination. ICANN has also not shown that it can be effective, nimble, and quick to react to problems. ICANN is overburdened with process, and at the same time understaffed. For these and other more fundamental reasons, ICANN in its current form has not become the effective steward of the global Internet’s naming and address allocation systems as conceived by its founders. Perhaps even more importantly, the passage of time has not increased the confidence that it can meet its original expectations and hopes.

I have come to the conclusion that the original concept of a purely private sector body, based on consensus and consent, has been shown to be impractical. The fact that many of those critical to global coordination are still not willing to participate fully and effectively in the ICANN process is strong evidence of this fast. But I also am convinced that, for a resource as changeable and dynamic as the Internet, a traditional governmental approach as an alternative to ICANN remains a bad idea. The Internet needs effective, lightweight, and sensible global coordination in a few limited areas, allowing ample room for the innovation and change that makes this unique resource so useful and valuable.

ICANN Needs Significant Structural Reform

I have concluded that ICANN needs reform: deep, meaningful, structural reform, based on a

ICANN would also need to make its procedures more transparent and open to public discussion. We need a serious way of encouraging the Internet community to get involved and to promote public participation. 

One of the concerns of ICANN has been that Internet users are not included in the process of decision making. Lack of transparency and accountability of the organization might lead to a lack of understanding and support for its various decisions.

ICANN owns and operates the Domain Name System (DNS) and provides domain name registration services. The DNS is a hierarchical naming system for computers and other networked devices. ICANN is an independent private corporation, with a mission to ensure a secure and stable Internet. However, despite its independence, ICANN is not free of criticism for its lack of transparency and accountability.

According to ICANN, the proposed reforms would include making the Internet Supporting Organization (ISO) and the Technical Advisory Committee (TAC) public, while also establishing a domain name Supporting Organization (DNSO). The DNSO would be responsible for the technical management of the DNS, including the allocation of domain names and IP addresses. The DNSO would be elected by the Internet community.

In an effort to boost its funding, ICANN has proposed that the ICANN-accredited registrars and registrants would be required to pay ICANN a service fee, estimated at $0.15 per domain name. This fee would be used to fund the ICANN organization and its programs. However, this proposal has been met with criticism from the Internet community, who argue that it would create a barrier to entry for small and independent registrants.

In conclusion, the ICANN organization needs to be more transparent and accountable to the Internet community to gain their trust and support. The proposed reforms could be a step in the right direction, but they must be implemented in a way that ensures the participation of all stakeholders.