

Lecture- 15



III. STATE REGULATION AND THE INTERNET

A different issue about sovereignty is raised by the possibilities of regulating the Net. It seems to me that if there is to be some kind of regulation it is going to be very different from what we have usually understood by this term. It is certainly the case that in many ways the Net escapes or overrides most conventional jurisdictions.

Here I would like to focus briefly on a fact that is too often left out of the discussion: there is a kind of central authority overseeing some of the crucial features of the Net having to do with addresses and numbers granting. This does not mean that regulation is ipso facto possible. It merely signals that the representation of the Net as escaping all authority is simply inadequate. The nature of this authority is not necessarily akin to regulatory authorities but it is a gate keeping system of sorts and raises the possibility of oversight capacities. Even though these oversight capacities would entail considerable innovation in our concepts about regulation, they signal that there are possibilities overlooked in a faulty characterization of the architecture of the Net.

This centrally managed function of the Internet involves the control and assignment of the numbers that computers need to locate an address. It therefore can instruct all the top “root servers” of the Net –the computers that execute address inquiries– and these will accept these instructions. This is, clearly, a power of sorts. For a long time it was not formalized, in good part because its origins lie in the first phase of the Internet. It is the power held by the group of computer scientists who invented the communication protocols and agreed on the standards that make the Net work today. They worked at debugging the systems over the last twenty years and did so not necessarily under contract by any agency in particular. It is a de-facto group which worked at making the Net workable since its beginnings. The particular function of assigning addresses is crucial and was for many years under the informal control of one particular scientist who named this function the “Internet Assigned Numbers Authority.”

In the summer of 1998, the Internet Corporation for Assigned Names and Numbers (ICANN), now the group assigned to oversee the Net's address system, was established. It represents a formalization of the earlier authority. It was basically started as a group of insiders with fairly loose and ineffective by-laws. By early 1999 it had implemented conflict-of-interest rules, opened up some board meetings, and worked towards developing a mechanism to elect board members in an effort to build in more accountability. It is today the subject of growing debate among various digital subcultures (e.g. see Nettime for summaries of the debates).

As the Net has grown and become more international there appears to be growing concern that a more organized and accountable system is necessary. This signals the presence of sectors with the will to strengthen and develop this central authority.

The US government's "Framework for Global Electronic Commerce," a blueprint for Internet governance, argues that because of the Internet's global reach and evolving technology, regulation should be kept to a minimum. It also suggests that in the few areas where rules are needed, such as privacy and taxation, policy should be made by quasigovernmental bodies such as the World Intellectual Property Organization (WIPO) or the OECD.

One of the issues with this type of proposal is the absence of transparency and the problems it brings with it. These become evident in one of the first big Net policy dilemmas: cybersquatting. (Private speculators seizing valuable corporate brand names on the Internet and selling them back, at an enormous price, to the firms carrying those names.) Net addresses are important for establishing an identity online. So companies want to establish a rule that they are entitled to any domain names using their trademarks. But the Net is used for more than e-commerce, so consumer advocates say this rule would unfairly restrict the rights of schools, museums, pol.

parties and other noncommercial Net users. However, in the deliberations that have taken place at WIPO, it is largely the large firms who are participating, in meetings that take place mostly behind doors. This privatizes the effort to design regulations for the Net.

While the purpose of these governing mechanisms is not about regulation as we have know it, their existence and, perhaps more importantly, the necessity of some such bodies, represents a significant operational opening for some sort of regulation/governance. This is often overlooked in many discussions about the Net and its freedoms.