

Rolf H. Weber

Shaping Internet Governance: Regulatory Challenges

in collaboration with
Mirina Grosz and Romana Weber

Contents

Pre	face.			III
Bib	liogr	aphy	7	XIII
Ma	teria	ls		XXIX
Abl	revi	ation	ns	xxxv
I.	Int	rodu	oction	1
	A.	Per	ceptions of Governance	1
		1.	Cyberspace and Governance	1
		2.	Governance and Internet's Legal Framework	3
		3.	Mapping of Governance Issues	7
	В.	Per	ceptions of Information Society	9
	C.	Re	gulatory Approaches	10
		1.	International Agreements and Cooperation	11
			1.1 Forms, Strengths and Weaknesses of International Law	11
			a) Introduction	11
			b) International Conventions	13
			c) Customary Rules	14
			d) General Legal Principles	15
			1.2 Future Prospects	16
		2.	Self-Regulation	17
			2.1 Background	17
			2.2 Forms and Legal Quality of Self-Regulation	18
			a) Forms of Self-Regulation	18
			b) Legal Quality of Self-Regulation	20
			2.3 Strengths and Weaknesses of Self-Regulation	21
			a) Strengths of Self-Regulation	21
		•	b) Weaknesses of Self-Regulation	21
		3.	Concluding Remarks	23
II.	His	tori	cal Developments	25
	A.	Fre	om McBride to WSIS	25
	B.	Fre	om ICANN to WSIS	28
		1.	First Steps towards the Internet's Institutionalization	28
		2.	Internet Corporation for Assigned Names and Numbers	
			(ICANN)	20

		3.	World Summit on the Information Society and Internet Governance Forum
			3.1 First Phase: Geneva 2003
			3.2 Working Group on Internet Governance (WGIG)
			3.3 Second Phase: Tunis 2005
			3.4 IGF Meetings
			3.4 IOI Meetings
III.	Or	gani	zational Framework in Internet Governance
	A.	Ov	erview
	B.	Pol	licy and Technology Organizations
		1.	International Telecommunication Union
		2.	Internet Engineering Task Force and Internet Architecture Board
		3.	Internet Society
		4.	World Wide Web Consortium
	C.	Int	ternet Corporation for Assigned Names and Numbers
		1.	Basic Framework and Development
		2.	Membership and Financing.
		3.	Organizational Structure
			3.1 Board of Directors
			a) Composition
			b) Meetings
			c) Duties
			d) Committees
			3.2 Officers
			3.3 Ombudsman
			3.4 Advisory Mechanisms
			a) Advisorory Committees
			b) External Expert Advice
			c) Technical Supporting Group
			3.5 Supporting Organizations
		4.	Discussions about the Role of ICANN
			4.1 ICANN's Significance for the Governance of the Internet
			4.2 Points of International Criticism
			a) Public Policy Set by a Private Entity
			b) US Influence
			c) Democratic Legitimacy
			4.3 Possible Adaptations
		5	Outlook

-		overnance Forum
E.	Eu	ropean Dialogue on Internet Governance
v. Pl	niloso	phical and Sociological Environment
A.	. Ph	ilosophical Concepts of a Social Contract for
	the	e Internet Community
	1.	Introduction
	2.	Philosophical Concept of the Social Contract
		2.1 Form of Integration
		2.2 Necessity of Overall Approval
	3.	Adaptability of the Social Contract Concept
		3.1 Inclusion of Civil Society in All Areas
		a) Bottom-up Approach
		b) Realization of an Open Society
		3.2 No Authority of one Individual through the Creation of
		a Social Contract
		3.3 Application of the General Will (Volonté Générale)
		a) Derived from Everyone Welfers
	4.	b) Aimed at Everyone's Welfare Enshrinement of Fundamental Rights
	4.	4.1 Right to Freedom
		a) Continuing Freedom for Everyone
		b) Socialization and Right to Freedom
		4.2 Equity and Equality
		4.3 Fairness
	5.	Outlook
В.		ulti-Stakeholderism in Internet Governance
	1.	Introduction
	2.	Architectural and Constitutional Principles
	3.	Theories of Global Rulemaking
		3.1 Processes of International Regime Formation
		3.2 Creation of Government Networks
	4.	Milestones for Multi-Stakeholderism in Internet Governance
		4.1 Improvement of ICANN's Democratic Legitimacy
		4.2 Need for Better Transparency and Accountability
		4.3 Creation of an International Internet Governance Body
		a) Appropriateness and Framework
		h) Governing Structures within a New Entity

A.	Introduction		
В.	Legitimacy		
	1.	Introduction	
	2.	Present Problems with Legitimacy	
		2.1 Criticism on Internet Governance Organizations' Legitimacy.	
		2.2 Adherence to Democracy as a Remedy?	
	3.	Linking Legitimacy and Democracy?	
		3.1 Attempts towards framing Legitimacy	
		3.2 Perceptions of Democracy	
		3.3 Assessment	
	4.	New Approaches	
		4.1 Conceptual Shifts in addressing Democracy and Legitimacy in International Governance	
		4.2 Framing the Stakeholders	
		4.3 Legitimacy through Fair Processes of Consensus-Making	
		4.4 Architectural Principles	
	5.	Outlook	
C.	Tra	nsparency	
	1.	Introduction	
	2.	Assessing Guiding Principles of Transparency	
	3.	Addressing Transparency in Other Markets	
		3.1 Transparency in the WTO Framework	
		3.2 Transparency in the IMF/World Bank Framework	
		3.3 Transparency in the EU Framework	
	4.	Enhancing Transparency for the Future of Internet Governance	
		4.1 Tackling Controversies over ICANN	
		4.2 Further Developments	
	5.	Outlook	
D.	Acc	countability	
	1.	Introduction	
	2.	Notion and Importance of Accountability	
	3.	Accountability in Internet Governance at Present	
		3.1 Accountability in ICANN's Documentation	
		3.2 Relevant Accountability Types	
	4.	Evaluation of Accountability Elements	
		4.1 Organization Level Aspects	
		4.2 Project Level Aspects	
		4.3 Policy Level Aspects	

	5.	Approaches for Improving Accountability
		5.1 Extended Consultation of Civil Society
		5.2 Improved Inclusion of Civil Society
		5.3 Intergovernmental Supervision
		5.4 Market-Oriented Accountability
	6.	Outlook
E.	Par	rticipation
	1.	Introduction
		1.1 Desirability of Public Participation in the Internet
		1.2 Comparable Developments in Environmental Law
		a) Justification for Comparison
		b) Aarhus Convention—Background and Contents
	2.	Access to Information
		2.1 Modalities of Publication of Information
		2.2 Passive Authentication
		2.3 People Entitled to Be Informed
		2.4 Extent of the Obligation to Inform
		2.5 Exceptions to the Obligation to Inform
		2.6 Time Limit
		2.7 Language (Translating Efforts)
		2.8 Charges for Supplying Information
		2.9 Establishment of the Necessary Requirements for the
		Requested Information
	3.	Participation and Involvement of Civil Society
		3.1 Participation Procedures
		a) Overview
		b) Decision-Making Processes
		c) Development of Plans, Programs and Policies
		d) Preparation of Law, Rules and Legally Binding Norms
		3.2 Exceptions to the Right of Participation
		3.3 People Entitled to Participate
		3.4 Form of Participation
		3.5 Time Frame for Participation
		3.6 Taking Account of the Results of Public Participation
	4.	Recognition and Support of the Bodies Promoting Internet
		Governance
	5.	Access to Jurisdiction
	6.	Outlook

л.	Re	gulatory Issues					
	A.	Introduction					
	B.	Critical Resources and Access					
		1.	ernet Governance and Critical Resources	176			
			1.1	Notion of "Critical Resources"	177		
			1.2	Technical Occurrence of Critical Resources	178		
				a) Overview	178		
				b) Root Servers	179		
				c) Backbone Structures	180		
				d) Broadband Access	180		
				e) Internet System of Names and Numbers	181		
			1.3	Protection of Scarce Resources in International Law	181		
				a) Allocation of Water Resources	182		
				b) Avoidance of Technical Risks	183		
				c) Protection against Cyber-Attacks	183		
				d) Resolution of Interstate Conflicts	184		
				e) Prohibition of Child Labor	185		
				f) Access to Cultural Expressions	185		
				g) Preliminary Evaluation	186		
		2.	Tra	nsition from IPv4 to IPv6 in Particular	186		
			2.1	***************************************	186		
			2.2	Transition from IPv4 to IPv6	187		
			2.3	Technical Framework	189		
				a) Problem of Restricted Capacity	189		
				b) Technical Standards	190		
				c) Interoperability and Security	191		
			2.4	Specific Issues Regarding the Transition Period	193		
				a) Time Factor	193		
				b) Compatibility	194		
			2.5	_ · · · · · · · · · · · · · · · · · · ·	196		
				a) Allocation of "Critical Resources"	196		
				-	196		
				c) Administration of Scarce Resources	197		
					199		
			2.6	Outlook	202		
		3.			202		
					202		
			3.2	Net Neutrality	203		
				4 . 15 . 1	205		

C.	Protection of Civil Liberties and Humanization of Internet Governance					
	1.		ion and Functions of Human Rights			
	2.		sting Legal Framework for Human Rights			
			Global Level			
			Regional Level			
	3.		racteristics of Human Rights Protection			
			Contents of Human Rights			
			a) Dignity, Integrity and Equality			
			b) Freedom of Expression and Information			
			c) Privacy			
		3.2	Scope of Human Rights Application			
			Human Rights Transition from the Traditional to			
			the New Online World			
	4.		v Approaches for a Comprehensive Human Rights			
		Arc	hitecture			
		4.1	88			
			a) Context of the WSIS			
			b) Private Bodies			
		4.2	Perspectives for a Humanization of Internet Governance			
			a) General Developments			
			b) Specific Initiatives			
			c) Long-term Expectations			
D.	Security: Assuring Safety, Trust, and Reliability					
	1.	Safety				
			Security Threats			
			Regulatory Framework			
	2.	Tru	st and Reliability			
		2.1	Privacy			
			a) Meaning and Functions of Privacy			
			b) Regulatory Framework			
			c) Relation between Security and Privacy			
			d) Future Approaches			
		2.2	Data Security			
			a) General Guidelines			
			b) Cryptography			
			c) Electronic Signature			

Contents

E.	Bri	idging the Digital Divide	24
	1.	Introduction	24
	2.	Digital Divide Problematic	24
		2.1 Factual Situation	24
		2.2 Relevant Aspects of the Digital Divide	25
	3.	Financing Strategies	25
		3.1 Financing Needs	25
		3.2 Political Initiatives	25
		a) Monterrey Consensus	25
		b) World Summits on the Information Society	25
		3.3 Financial Mechanisms	25
		3.4 Financing Strategies' Legal Framework	26
	4.	Outlook	26
VII. Co	nclu	ding Obervations	26
Index			27: