

CHAPTER 4

MAKING GOVERNANCE INSTITUTIONS MORE ACCOUNTABLE

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Our qualitative, one-on-one interviews with Internet experts brought out a number of insights about how to achieve more accountability over those involved in the Internet’s governance. In particular, these experts suggest the need to remedy what they see as a triple deficit in some of the existing Internet governance arrangements: a lack of democratic accountability; a lack of expertise in the government and non-profit sector; and a lack of speed and agility to match the pace of technological change.

REMEDYING A TRIPLE DEFICIT

The Internet experts we interviewed start from the perspective that institutions involved in the governance of the Internet need to be strengthened. In our survey, the experts split evenly on the question of whether existing institutions are safeguarding the public interest when it comes to the development of the Internet. Nearly half, 49 percent, say these institutions are doing an excellent or good job, but nearly as many, 47 percent say they are doing an only fair or poor job. The share that give the current institutions a “poor” rating is more than twice as high as those who give them an “excellent” rating – 13 percent, compared to only 5 percent.

Across the in-depth interviews we conducted with them, the Internet experts focus on several problems with existing institutions involved with governing the Internet, such as the Internet Corporation for Assigned Names and Numbers (ICANN) and the World Wide Web Consortium (W3C). (See Sidebar, “ICANN and W3C – Little Known, with Worries about Accountability”). They point, in particular, to three “deficits” that tend to afflict these institutions: a democracy deficit, an expertise deficit, and an agility deficit.

The democracy deficit. One of the chief complaints that Internet experts have with many of the non-governmental institutions involved in governing the Internet – either industry coalitions or non-profit organizations – is that they are not democratically accountable. There are some exceptions; for example, by a 52-14 percent margin, the experts say that W3C “does a pretty good job of providing a forum for all public voices” (as opposed to, it is “too dominated by industry and private interests”). Yet more of their comments focus on the public’s inability to place democratic checks on such institutions.

I think the public interest is not being reflected right now in decision making. That needs to come through. [Technology Policy Expert]

Well, ICANN, W3C, all the organizations can go so far. But at some point, they need to make contact with somebody who represents the public. [Government Official]

The “democracy deficit” points to the need for institutions involved in Internet governance to have stronger linkages to the public interest. The recent addition of at large, public representatives to the board of ICANN is an attempt to address this deficit¹. Another may be providing some form of government review of standards adopted by bodies such as W3C.

¹ The NAIS (NGO and Academic ICANN Study), supported by the Markle Foundation and designed to review the At Large Election, indicates indeed that the 2000 election was widely seen as the first step towards public participation and representation in ICANN despite technological and geo-political challenges to its process. See <http://www.naisproject.org>.

What I would like to see is a real representative task force... something that had government representatives, industry representatives, real public advocates, not a token.

Regulation Expert

The expertise deficit. A second problem that experts cite is the difficulty of many existing institutions, especially public sector bodies and non-profits, to keep pace with the expertise the private sector brings to bear in developing the technology of the Internet. Many of the experts see the private sector as being able to afford so many more engineers, programmers, and other specialists that it simply leaves the public and non-profit sectors in the dust. One Internet expert complains about “government by anecdote” – a tendency of the government to make rules based on scattered complaints and information, rather than on a sound technological basis.

One big problem with the regulatory process and the way they split down now is that to deal with the Internet, you have to have a set of talents. You have to understand the technology. You have to understand the law. You have to understand economics. And you have to understand national policy and business, everything. There is no [regulatory] organization that has those. [Government Official]

The public interest really needs some better funding resources to get technical expertise. Because these issues are highly complex and changing every day... [Industry has] six engineers on their side and hundreds of people who can come in and get out many detailed reasons about why they can't accomplish an objective. And then you have a public's advocate, who generally has a suspicion that an engineer working for a company who is opposed to a policy is probably going to come up with a technical reason why that policy is not do-able. You're at a huge disadvantage. [Media and the Internet Expert]

As these comments suggest, there may be an opportunity for government and foundations to place more emphasis on funding the capacity for greater technological expertise within the public and non-profit sectors. It may even be in the self-interest of the private sector to support such efforts.

The agility deficit. A final and related problem is the difficulty that government, in particular, has in acting fast enough to keep pace with the dizzying pace of technological changes online. The problem here is partly one of expertise, but it also stems from many of the very aspects that give the government democratic legitimacy – checks and balances and requirements for public comment and other aspects of procedural due process. Many of the experts we interviewed cite the federal government's case against Microsoft as Exhibit A: by the time the case is resolved, they say the Internet likely will have moved beyond many of the issues at the heart of the case.

As we noted earlier, many experts who have reservations about involving the government in Internet rule-making say it may be appropriate at some point in the future, but not now when the Internet is in its “youth,” and changing so quickly. The comments from our interviews with Internet experts make clear that they are eager to find ways that the government's involvement can be timely and agile.

By the time Congress gets around to noticing the phenomenon that needs to be addressed [on the Internet], the phenomenon has probably passed or mutated. It's like a virus, I think it can mutate faster than we can develop. [Internet Corporation Senior Executive]

It would be nice, from a policy perspective, to have a little bit more lead-time on technology developments as they come down the pike. The answer to that is: lots of luck. But in the policy arena, for example, the speed with which this all comes down the pike creates regulatory problems... It means developing a regulatory approach that is nimble enough to deal with the pace of change. [Government Official]

These comments suggest that to the extent government institutions take on regulatory responsibilities for on-line issues they may need to create mechanisms for action that can move at (nearly) the same speed as the Internet. For example, these institutions may require particularly lean and expert staffing, expedited rule-making procedures or public-private cooperation.

Finally, many experts say that current institutions often fall short because they lack the same global scope that the Internet itself possesses. We noted in Chapter Three that the public appears to be ambivalent about expanding the scope of Internet rules to a global scale and involving foreign and international entities. The experts show little of this ambivalence. These are individuals who tend to be familiar with ICANN, and other international forums for addressing the Internet, yet they also tend to feel that more is needed.

The other profound issue is that we have to figure out a way to make policy in an entirely global environment... The environment that you're dealing with is not U.S., it is borderless. [Government Official]

The Internet is a global system, so I think that we need some international organization to oversee certain specific areas of the Internet such as the architecture, protocols, such as privacy. [Technology Policy Expert]

ICANN AND W3C – LITTLE KNOWN, WITH WORRIES ABOUT ACCOUNTABILITY

At a time when the public is looking for new institutions that can help shape how the Internet operates – especially institutions that mix the public, private, and non-profit sectors – most people are surprised to learn that some such institutions already exist. Generally, the public (and many experts) have never heard of the Internet Corporation for Assigned Names and Numbers (ICANN)*, or the World Wide Web Consortium (W3C)*. As they learn about these groups, the public tends to be supportive of the roles they are designed to play, but worried about whether such institutions will be accountable to the public interest.

Not surprisingly, both ICANN and W3C are virtually unknown to the public. In our focus groups with both Internet users and Internet non-users, not a single person was familiar with ICANN, and not one mentioned W3C.

More surprisingly, even with Internet experts these institutions are relatively unknown as well. In the survey of Internet and computer experts, only six in ten (63 percent) can identify W3C and only half (49 percent) can identify ICANN. Even among the in-depth, one-on-one interviews of highly ranked Internet insiders, a few of those interviewed said they had little if any awareness of the existence of ICANN. One Internet corporation senior executive noted, “I don’t know very much about ICANN”; another, a medical Internet site owner asked, “What is ICANN again?”

Among the experts who have heard of these two groups, the reviews are fairly positive. In our in-depth interviews, several of the experts say that that ICANN and W3C are either doing a good job, or trying their best in what is inherently a pioneering effort. One Internet policy academic, for example, calls ICANN a “noble experiment.”

Ultimately, W3C emerges with the better reviews. In the expert survey, those who could identify W3C give it an average of 74 degrees, on a 0 to 100 degree scale (with 0 indicating a very cold feeling and 100 indicating a very warm feeling). ICANN’s rating is still positive, but 10 degrees cooler, at 64.

*ICANN was created in 1998 as a non-profit corporation and given responsibility for allocating Internet addresses, protocol parameters, and managing the domain name system and root server system – functions previously performed by U.S. Government. ICANN was designed to centralize many of the technical management functions that had previously taken place in an ad hoc, or simply haphazard manner. The Board of ICANN is composed of nineteen Directors: nine At-Large Directors, nine selected by ICANN’s three supporting organizations, and President/CEO (ex officio). Five of the current At-Large Directors were selected according to a vote of Internet users worldwide in October 2000.

*W3C is a non-profit organization created by industry leaders in 1994 to develop common protocols that promote the technical evolution of the Web. W3C is composed of more than 500 organizations from around the world, and operates under three principles: first, “Universal Access,” the notion that the Web should be accessible to all; second “Semantic Web,” seeking a set of rules that permit each user to make the best use of Web resources; third, “Web of Trust,” the notion that the Web’s development should proceed with careful consideration for the novel legal, commercial, and social issues raised by this technology. W3C has developed over twenty technical specifications for the Web’s infrastructure since its inception, including development of HTML, the computer language used to author universally viewable web content.

The public, too, tends to have some positive reactions to ICANN when it is described to them in our focus groups. One participant likens ICANN to a deputy in the Wild West – someone who can bring order to an untamed and sometimes dangerous environment. Another participant, in Atlanta, said ICANN sounds like “the post office of the Internet” and thus seemed potentially useful but thoroughly non-threatening.

Yet there are also misgivings about whether these institutions are really accountable to the public. In the expert survey, a 52-14 percent majority says that “The World Wide Web Consortium is doing a pretty good job of providing a forum for all public voices” (as opposed to, “. . . is too dominated by industry and private interests”). But they are nearly evenly split on ICANN, with 30 percent saying “ICANN considers the public interest when making its decisions and rules”, but with another 25 percent saying “the public’s interests are not adequately taken into account by ICANN.” (As the numbers suggest, a large share of experts in both cases do not know enough about the institutions to provide an answer.)

Several of the experts express their accountability concerns in blunt terms. Consider the following comments, when we ask Internet experts what institutions they would not trust to play a role in making rules for the Internet.

I would say, the top of my list is private industry. The second on my list is ICANN. . . Basically anybody with no accountability. [Media and the Internet Expert]

Well definitely not W3C. No, I don't trust anyone. As much as people express distrust of government, of that list, I trust government, Congress the most. All those [other organizations] that you read off tend to be, or has either the primary interest is the state from protecting the privacy of individuals or consumers or whomever they're trying to protect. Or it has built in instability such as the organization that creates the rules also enforces the rules. As in the case of ICANN. Or it simply doesn't understand how to be inclusive of the broad interests of society, which is like W3C. You don't need technocracy here. [Technology Company Senior Manager]

I don't trust ICANN. I don't trust W3C. [Technology Policy Expert]

Similarly, in focus groups of Internet users and Internet non-users, participants were asked to respond to a short description of ICANN. The statement read: “[ICANN] is a non-profit, private sector corporation formed by a broad coalition of the Internet’s business, technical, academic, and user communities to assume responsibility for Internet address allocation, domain names, system management, and system management functions previously performed under U.S. government supervision.” We asked whether this sounded like a group they would want developing rules for the Internet. Several said the description made them uneasy, and that they were suspicious of any

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*Internet Corporation
Senior Executive*

group governing the Internet with ties to private industry that might use its position for private gain.

I don't like the word "private sector" because to me, private sector, that means business. They could be doing other things than what they are saying. [Middle aged men, Atlanta, Internet users]

What's in it for them? I don't know. And there has to be something in it for them or they're not going to go through all this. [Senior men and women, Scottsdale, Internet users]

I'm concerned about their agenda. Even though this is a non-profit, I could see outside influences determining that the Internet businesses are on this commission, that they could be easily swayed. [Middle aged men, Scottsdale, Internet users]

These reactions suggest that efforts to improve the accountability of ICANN, W3C, and similar bodies – such as through inclusion of public representatives – should resonate well with the public, and even with experts in the field. Ultimately, both the public and the expert community seem to favor the idea of governance ideas originating with these kinds of expert bodies, but want their decisions to face some kind of review that ensures accountability to democratic actors and institutions.