Openness, Closedness and Internet Governance

Remarks at the Oxford Internet Institute Conference on Internet Governance for Development, August 31, 2006

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Good afternoon. First, my thanks to Bill Dutton of OII and John Palfrey of Harvard Law School's Berkman Center for Internet & Society, for organizing this year's event. Together, they have created a wonderful community where we can come together to exchange views, which is so essential on this polarizing topic.

The program obliges me to address the issue of "Internet Governance for Development." Yet in the same way as Jesuits answer questions with additional questions, journalists simply ignore the question and give answers to something else. (I am reminded of the famous incident when Henry Kissinger began a State Department press conference by looking around the room and thundered: "Who has the questions for the answers I want to give?!")

In this respect, I'd like to take the issue and look at it from a slightly different angle: the idea of "openness," which is one of the four themes of the Internet Governance Forum in Athens in November. To do this, I plan to cast my eyes on the past and the future, and use this to make three very obvious points about the present -- which I feel leads to a rather non-obvious conclusion about openness, closedness and Internet Governance.

The Past

So it is early September 1996. It's almost exactly one decade ago from today. And the good and great involved with Internet governance are all in a room together. (Interestingly, almost no one in the room today was there then, which is evocative of how the cast of characters changes on a regular basis.) Everyone has converged on Harvard -- not at the Berkman Center; it has yet to be established -- but at the Kennedy School's "Information Infrastructure Project."

The conference is entitled "The Coordination and Administration of the Internet" -- even then they knew to avoid the politically-charged label "governance." It is part of a series of workshops sponsored by the US National Science Foundation on what is referred to as the "privatization and internationalization" of the Internet. So the issues we confront today are not so new: they were identified and debated long ago.

At the conference are all the key players: people from the IETF, IANA, ISOC, the NSF, even the ITU is there. CIX, the Commercial Internet Exchange, is there. NSI, now called VeriSign, is there. Of course Scott Bradner (who we'll hear from tomorrow) is there. The issues are controversial: who controls the Internet? And in the midst of the discussions, who should walk in unannounced, but the so-called "DNS Terrorist." His name is Eugene Kashpureff, and he is a techie that has begun selling registrations for his own top-level domains outside of Postel's DNS. He is the person putting the question of Internet governance front-and-center for all the people there, since his actions risk fracturing the universality of the Internet.

For the engineering community, then as now, the chief threat to the Internet is that it might lose its singular, unitary nature -- that its addressing system might splinter. That the central risk to the

net might come from a rogue engineer with a radical commercial idea may seem quaint today. But we now know from experience that you don't need a clever kid to change the nature of the net when you can have a multi-billion-dollar monopoly push the limits of the law, and force ICANN in its first years to adopt an assertive regulatory stance. And, because ICANN is legally required to act even-handedly, it would apply that heavy hand on to other registries and registrars, including country-code domain managers, forever changing the historic relationships of informal trust of Internet governance. And it might seem quaint today, when the bigger risk to the Internet seems to be less from business and more from governments, who seek greater control.

Nevertheless, the central concern one decade ago was that the Internet might break into many. And it fell upon on the great minds of Internet governance to find a way to fix the problem, much as it falls upon us today.

The Future

OK. So now today is August 31, 2016. It is exactly ten years ago from the second OII conference on Internet Governance. And we are in … not in Oxford! We are in China. Most of the delegates are speaking Chinese, so there are translation booths just like at UN meetings. What topics are we discussing? (How does it differ from a decade earlier, in 2006?) Who is there? (What new stakeholders are at the table in 2016 who weren't a part of the process ten years before, in 2006?)

And what does the network look like? Last year at this event, David Clark of MIT explained that he envisioned a world replete with billions of sensors. As he described it: kids would buy them like strips of stickers from gumball machines and stick 'em on streetlamps. In 2016, how has the network scaled to accommodate that world? It certainly hasn't done this by staying the same as it was in 2006!

And I pose the question: Is the fact that we're having a meeting on Internet governance in 2016 a good thing or a bad thing? That is, does it say something positive: that it is a sign of the health of our democratic tradition that we continue to come together to discuss timeless questions about how we order our world? Or, on the contrary, is having a meeting about Internet governance in 2016 rather pathetic, because it suggests that the problems we confronted in 2006 remain unresolved but need not have been?

An Irony

Looking at the past helps us remember that these issues have a long lineage. The value of history is that we may learn from it. At the same time, considering the future is critical, because it reminds us of where we are headed. It challenges us to work towards the world we want to live in tomorrow. And this places a responsibility on those of us trapped between past and future -- here in the present -- where it falls upon us to act.

Today there are calls for changes to the Internet on many levels. The reaction of the long-standing Internet leaders is interesting. Questions are raised about how the DNS is managed -- a potential change in the institutional framework of the net -- and the response is: "Don't do it!" Likewise, there is talk by telecom operators to dilute the end-to-end principle by charging customers based on traffic type -- a change in the economic model of the net -- and the response is: "Don't do it!"

It poses an irony: are the very revolutionaries that gave us the Internet now the conservatives? Some people embrace centralized controls like law and policy to ensure that the net stays as it is. Might this now be the force that prevents the Internet from evolving? Instead of the great danger

to the Internet being too many approaches, now is it having only one? The Internet succeed because it rejected "kings, presidents and voting" (in the celebrated anthem of the IETF); shall we save the Internet by inviting these things in?

Three Obvious Points

Today, a key question facing the Internet is the degree to which it can accept new developments -- in short, its openness. In this context, our look at the past and future seem to suggest three very obvious, basic points for the present. They are so exceedingly obvious that I am almost ashamed to say them. But I believe that there may be a value in reiterating that which we all know, but for that reason sometimes take for granted.

1. ICANN Is Not Internet Governance.
One of the most interesting things that occurred early on in the WSIS process was the realization in the West that when developing countries referred to "Internet governance," they didn't simply mean ICANN. Instead, they raised issues like access charges, the digital divide, open-source software and multi-lingual domain names. Although DNS management was a part of it, it wasn't the most important part. This forced America and Europe to change the way they thought about the issues, too.

For example, the documents from WSIS II, the Tunis Agenda and Tunis Commitment, together entail more than 160 points over 25 pages -- only a handful have to do with ICANN. For the Geneva summit, it is even more stark, with issues involving access to technology for handicapped people and women's rights -- every pocket-interest brought their agenda to the table. (In some ways, this breadth might be a drawback.)

What we learned was that "Internet governance" means different things to different people. That it is actually a codeword or shorthand for something else. The media is more guilty than anyone in that respect -- and I speak with the authority of being the worst offender. But frankly, it is incredibly difficult to explain what ICANN is in a 250-word article. So you end up relying on catch-phrases like "ICANN, the domain-name regulator" and countries want to "control the Internet": terrible simplifications.

The implication of the idea that "ICANN is not Internet governance" is that we need to think far broader about the nature of the issues than we generally do.

2. The Web Is Not the Internet.
And vice-versa; the Internet is not the World Wide Web. The two are often conflated. We spend so much time debating these issues, presuming that the network we currently have will be the same in the future. For instance, we focus on URLs for websites and email addresses, when these are simply tools, aids, facades -- and different things will likely crop up, if we are open to them. Often, the implicit assumption people bring to the Internet governance debate is that tomorrow will look exactly like today. Yet that is always wrong, especially in regards to technology.

For example, for the past 35 years, the Internet has comprised people behind machines communicating with other people behind machines. But this will change -- probably far sooner than we think -- and the majority of traffic will be generated by things talking to other things. David Clark's sensors, or devices that send our biomedical vital-signs to a clinic. What does IP addressing and naming mean in a world where a 100,000 parts on every airplane are online, reporting their status in real-time to each other, and to a monitoring center? Does today's

institutional framework fit this nicely, or will some changes be needed, even if we don't know what sort?

The implication that "the web is not the Internet" is that we cannot foresee the net's development, and that multiple approaches may be needed as the network evolves.

3. What You See Is What You See.
By this, I mean that everything is a matter of perspective. It's only "you" -- not others. And it's only what is "seen" -- not necessarily what is. This should have us want to understand Internet governance "from the other side," for so to speak. We're not used to thinking in this way. We're used to a world in which "What you see is what you get."

For example, if what you see is the English language all around you, then what you get is the ASCII character set for domain names. Or, if what you see are commercial relationships as the bedrock of society, then what you get are privately-owned top-level domains. Or, if government is the primary mechanism by which a country's civil life and economy are managed, then what you get is a policy of placing policymakers at the forefront of Internet governance.

Markus Kummer of the Internet Governance Forum's secretariat, and my co-panelist today, has often described the WSIS and WGIG as an "educational process" -- diplomatically without suggesting who is meant to be educating whom! And it falls in line with a view that with dialogue and greater information, differences can be overcome. But the uncomfortable truth is that perhaps they cannot be overcome -- that they are not differences due to lack of understanding, but simply differences that no amount of talk or information will settle. Indeed, the dispute may not be a problem to solve at all, but a reality to live with.

If "what you see is what you see," then the humbling implication is that it is only what *"you" "see"* -- and other perspectives should be able to co-exist.

A Non-Obvious Conclusion

These three very obvious points seem to suggest that how we accommodate our differences is the real challenge of Internet governance. Where in the past, the risk to the internet was that it might splinter, today it is that it may remain the same. This uniformity of the Internet -- be it for its institutional framework, or its economic model, or its technical architecture -- might become the single point of failure. The inelasticity may make the network brittle, inflexible to change and undermine its capacity for innovation.

This is peculiar, since the Internet's defining characteristic is change: we never step in the same network twice. So the dilemma is how to keep the Internet open to new evolution, while at the same time preserving the beneficial qualities of openness that this evolution might dilute. Trying to hold back changes -- through keeping policy-control over the DNS, or passing laws for network neutrality -- may do more harm than good. It freezes the current system in place, rather than supports the diversity and experimentation upon which the network has thrived.

I don't have a good answer for how to maintain the existing Internet while also supporting its maturation. But I have a bad answer: use trademark law. Specifically, create a formal definition of "the Internet" by identifying all the good traits it currently embodies that one wishes to preserve, and then require network operators to adhere to those principles if they wish to call what they offer "Internet" service.

I spell out this idea in greater detail in my position paper* for the conference, so I won't spend much more time on it, only to say that the disclosure requirement alone would likely act to keep the Internet's benefits, and if firms didn't adhere to "The Internet™," existing consumer-protection laws would likely suffice, rather than a trademark infringement action.

Intellectual property is usually noted for its exclusivity; here the closedness leads to openness, since it enables multiple approaches to the network to peacefully co-exist. It balances the needs for openness in regards to what the Internet is, with the interest in retaining what has made it work so far. Moreover, it does this with a market rather than regulatory approach. It is permissive rather than restrictive.

The Internet's power has been its diversity (another of the Internet Governance Forum's four themes). Yet maintaining the net's historic openness -- even if this means openness to change its openness -- seems to be the central challenge as Internet governance moves forward. Unless we can ensure it without deferring to "kings, presidents and voting," we may undermine the very spirit of innovation that we seek to enshrine.

Thank you.

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* Kenneth Neil Cukier. "The Internet™: A Solution for Openness Through Closedness." Internet Governance for Development Conference. Oxford Internet Institute, University of Oxford, 2006.

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