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INTERACTION BETWEEN NATIONAL GOVERNMENTS AND ICANN WHILE ADMINISTERING THE INTERNET

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Abstract

Purpose *– to review and analyze problematic issues related with the ICANN's (Internet Corporation for Assigned Names and Numbers) role in the Internet administration and the interaction between national governing institutions.*

Design/methodology/approach *– based on the comparison and systematic analysis of scientific literature, the authors discuss problematic issues related with the Internet governance model, where the ICANN takes the biggest part in the Internet administration. Its current legal status is causing controversies among different stakeholders, so the analytical approach towards the issue may help to facilitate the reach of the compromise in this area.*

Findings *– the authors accentuate problematic phenomena, which are related with the Internet government structure. The current international legal state of the ICANN is highlighted in the article as well as the factors which influence the ICANNs struggle for independence.*

Research limitations/implications *– the international legal status of the ICANN is a hard topic, where many interests from different parties collide. Because of that, it is impossible to convey the objective and impartial analysis of the problem. Different attitudes, political*

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interest and even political views may influence the understanding of the issue. That is why the authors present their subjective opinion and suggest one of the possible Internet governance narratives as a basis for further discussion.

Practical implications *– the authors accentuate main sources of international friction between other state governing institutions and the ICANN. If the Internet administration structure will is left at the same status, there may be more upcoming hazards. The insights and recommendations in this article may be used as a basis for further problem analysis.*

Value *– the article emphasizes current Internet governance problems and the role of the ICANN, while trying to moderate the interests of different parties. The expansion of the Internet allows implementing new service and business models. As a political tool, it is also attracting attention from different groups of interests and oversteps the boundaries of widely accepted values, such as freedom of speech, accessibility of information or economic interests. This question has a clear geopolitical context, for that reason, decision related with the future of the ICANN and the Internet governance should be solved responsibly. The authors give their insights about the topic by determining the main presumptions for the transformation of the ICANN's legal status and by analyzing positive and negative sides of such hypothetical outcome.*

Keywords**:** *ICANN, Internet Governance, IANA, TLD, ITU, GAC.*

Research type: *general review, viewpoint.*

1. Introduction

The last two decades were crucial for various technological revolutions that built up the age of Information Society. Perhaps, the Internet is one of the famous and crucial inventions, which resulted from such revolution. Unlike the other major phenomenon, its global and cross-border performance was shaped neither by national nor international legislation. Moreover, the constant increase of the importance of the Web in everyday activities and its influence to the economic, public, political and cultural areas make many persons to become aware of the Internet and its governance.

Indeed, the majority of the *Governments of the Industrial World* did not show the interest in the shaping of the Internet at its very beginning (except the U.S.). They were also unwelcomed by the cyber society. But time has changed and apparently governmental support and influence inevitably becomes more essential for Internet expansion, governance and ICANN's policies.

However, advisory capacity leaves not enough space for governments to make an impact to decision-making process and governments aim to internationalize or change the Internet governance, thus expanding their own power. The growing controversy is also surrounded by international pressure for the U.S. Government to abandon the control over the ICANN.

Formally, GAC is the only direct mean by which governments (except the U.S.) can influence ICANN's decision-making process. Even if the ICANN considers itself as a corporation acting independently from governmental supervision, the increase of governmental influence in decision-making processes is obvious. Governments use their powers trying to affect core Internet governance resources managed by the ICANN and find many different manners to do so. This can negatively affect the whole process, but the results sometimes can turn around and result into the opposite effect.

2. The conception of Internet governance

2.1. Contemporary boundaries of the Internet and its concept

The Internet is a global network of autonomous computer networks which connect millions of users around the world. What once was an experimental countermeasure against the nuclear threat now is a powerful system, which transformed the way of working, communicating and exchanging information. The International Telecommunication Union (ITU) claims that the count of individuals using the Internet per 100 inhabitants globally reached the average of 32,5 in 2011 and 68,4 per 100 inhabitants in Europe at the same time (International Telecommunication Union, 2011). A United Nations report released in 2011 declared Internet access a human right, highlighting it as a medium for exercising right to freedom and expression. The question should the Internet be considered as a fundamental human right is still open and creates debates among the scientists and technology developers (Cerf, 2012). Despite that, the Internet changed the way of living for more than 2 billion people worldwide. All of these networks, combined from billions of users and devices, reflect the changes in the society and empower new ways of communication, information exchange or entertainment.

Even though the Internet is the engine of the new global economy, no one owns the Internet at a full scale. Moreover, prehistory of the Internet dates back to the times, when Advanced Research Projects Agency's Wide Area Network (hereinafter – ARPANET) was launched by the U.S. Department of Defence in 1960s for collaboration in military research among business and government laboratories. Ultimately, the ARPANET grew up beyond everyone's expectations and acquired the name of the Internet, and emerged from the U.S. federal government, which funded its research and development creating remote interactive computing (Christou, Simpson, 2007). Basically, the Internet is a global system of interconnected computer networks that use the standard Internet protocol suite and it is very complex. The Internet enables computers or servers that are attached to the net to communicate with one another, creating a platform on which software applications can run. In the broad sense, the Internet is a complex entity that includes the hardware and software technical infrastructure, the applications and the content that is communicated or generated using those applications (Bygrave, Bing, 2009).

Although the Internet was built in free and self-regulated nature, as such it has no centralized governance in either technological implementation or policies for access and

further usage. It finally leads to the point that depending on the technological, economic and organizational and other circumstances, defining the Internet can be very simple or very complex. It is like an organic phenomenon that grows, evolves and adapts to the changing technological developments, social/public demands and economic conditions.

2.2. The definition of Internet governance

The Internet is a unique technology with its possibilities, governance model and evolution. Factually, the U.S. Government found itself with *de facto* and most of the control of the Internet governance. Since the U.S. companies and scientific institutions made a biggest contribution towards the existence of the Internet, it turned out that governance issues were stacked on the shoulders of U.S. institutions. In 1998, the U.S. Government's Department of Commerce (hereinafter – DOC) recognized newly established non-profit organization, called Internet Corporation for Assigned Names and Numbers (hereinafter – ICANN) as its partner. This action situated that the White House handed over the DNS control to the ICANN. The significance of the Internet has increased a lot in the last 15 years. At the moment, no one owns the Internet. However, the current governance model is tricky and may allow some interested parties to use leverages in order to affect the future and freedom of the Internet.

As with any regime, definitions constitute the boundaries that determine what falls within or outside the subject matter. Such definitions in this analysis attempt to reflect and not describe the scope, to which they apply. However, clear and comprehensive definitions toward the certainty benefit to the objectives of this paper. It is also noticeable that the definition of Internet governance has really changed over the time, as the characteristics of its scope evolves while technology develops.

The term 'Internet governance', while lacking the definition, rather vague and partly confusing, stands mainly for the global technical management of the core resources of the Internet: domain names, IP addresses, Internet protocols and the root server system (Kleinwächter, 2004). While the concept of the Internet governance was narrow and largely technical in scope until 2000, the Internet has evolved into the world's greatest resource, with seemingly limitless applications in user and commercial use. In 2005, WSIS defined the Internet governance as "*the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet."*

In essence, like the Internet, the Internet governance is a very complex and complicated facility. It currently covers many different issues related to Internet content, processes, systems, human rights, institutions, etc., but in the context of this analysis, the main focus is given to the boundaries of processes, systems and institutions, which are closely related to issues like TCP/IP, the Domain Name System and IP numbers (Bygrave, Bing, 2009). Sometimes, the boundaries between both narrow and broader definitions are not so visible, although the paper goes through the scope and content of the Internet governance reflecting the narrow rather than broad concept of it, mostly related to the functions currently carried by the ICANN. Moreover, it is important to

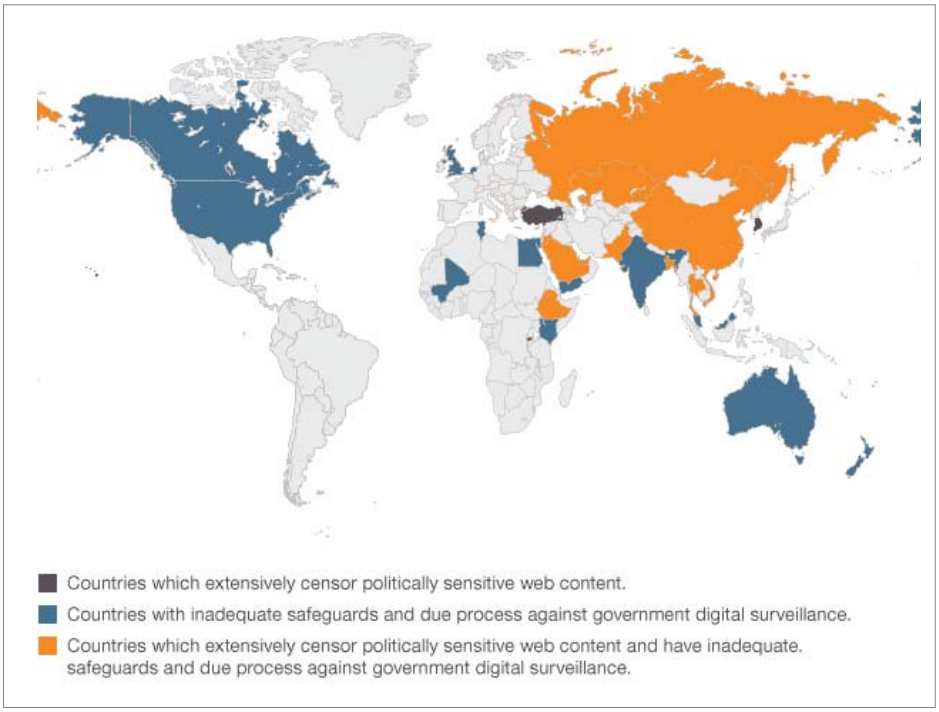
analyze the Internet governance model in the broader contexts, which are influenced by political, social and economic tendencies in the world. These factors set the standards for the geopolitical game, where interested parties try to secure their interests and to affect Internet governance policies.

2.3. The Internet governance in the context of social and political trends

The Internet was not intended to become the network as it is today. The U.S. launched its predecessor as an experimental project in order to secure communication channels if critical situations emerged. This network evolved into something unique and influential. For more than 20 years, the Internet has been a symbol of freedom of speech and self-expression and it also empowered new business models, political and social trends. Having power leverage on such technology would allow any country to increase its international status and influence. However, this does not come without consequences. For a long time before the U.S. promoted itself as one of the fortresses of fundamental human rights, the liberal approach to the need for regulation and constrain making has been also reflected by the number of amendments to the U.S. Constitution. Nevertheless, things started to change after terrorists attacked the U.S. on September 11, 2001. Having some indirect power to control core Internet resources, the U.S. has applied implemented secret intelligence based surveillance policy through the Internet. Tracking algorithms allow capturing and analyzing billions of digital records. According to the Department of Justice (2006), this was inevitable in order to ensure the national security interests of the U.S. However, these interests do not always comply with the letter of law, according to the former Federal Judge Vaughn Richard Walker (Savage, Risen, 2010). Brown and Korff (2009) noted that the limits of surveillance are expanding. The target of such activity is not only related with just criminal, but also with more generally deviant behavior. It is a dangerous trend, which attains critical acclaims from the scientists and public figures alike. The British inventor of the World Wide Web – Tim Berners-Lee – stated that "*the tide of surveillance and censorship threatens democracy*" (BBC, 2013). The scientist does not approve the idea of a completely free Internet, which would operate without the restrictions or regulations. However, the balance of security issues and the freedom of the Internet is an object of the debates. The example of the secret documents, which were leaked by the U.S. National Security Agency (NSA) contractor Edward Snowden, illustrates the weakness of the surveillance institutions to secure the balance of information flows cumulated by one person.

The founder of Wikipedia – Jimmy Wales – supports Snowden and strongly criticizes U.S. governmental officials for disproportionate measures, which are taken with the respect to national security. The opponents of Snowden's actions claim that he puts the U.S. agents in danger and compromises national security enforcement practices. However, Wales noted that "*He* [Snowden – edited by the authors] *is a person that has been very careful in the materials that he has leaked ... they have been in the abstract, he has never leaked anything that would put any particular agents at risk, and so forth. He has exposed what I believe to be criminal wrongdoing, lying to Congress and certainly a shock and an affront, in America, an affront to the fourth amendment.*" (The Guardian,

2013). These few opinions and remarks from the people who revolutionized the Internet may be marginalized by the U.S. national security advocates, who justify the surveillance measures as a response to cyber-crime or terrorism. However, it is obvious that the U.S. influence towards technological development and freedom of Internet policies is huge. And the ICANN, which is responsible for the controlling the main parts of the Internet, is closely linked to the governmental institutions of this state. The issue of the Internet governance came to fore in 2003 and 2005 at the UN World Summit on Information Society (WSIS), and it took some time while the ICANN was able to move away from the federal institutions of the U.S. It looks like this hasn't been done without the strategic motives. First of all, the U.S. is experiencing the pressure from other countries and international bodies concerning the influence for the ICANN. The second and more important reason is that other countries, which are not too happy with the U.S. influence in the Internet supervision, are willing to create their own "Internets", which would work as alternatives for the existing one. Moreover, the U.S. would not be able to perform surveillance practices in these networks and its spread of the "soft power" would be reduced over time. The U.S. chooses to go into compromise while releasing some of the leashes from the ICANN. The prospective of "Internet freedom" serves a supporting role, especially knowing the fact that the U.S. is not the only country in the world, which applies questionable policies towards the freedom of the Internet. There are many other countries, which not only execute the surveillance measures, but also strictly censor the content of the Internet from the political or ideological point of view (Figure 1.).



Source: World Wide Web Foundation

Figure 1. Censorship and surveillance on the Internet

China is openly censoring the Internet content as well as applying surveillance policies against the political opponents. According to Lee, Liu and Li (2013), the Chinese government treats the Internet in its favor by "*leveraging the information flow to boost the economy while strictly eliminating some of the most important open and liberal characteristics underlying the Internet*". One of the notorious cases, which involved Chinese Internet surveillance structures and Google, is an example of how seriously the issue of Internet control is considered in China. At first, the Chinese censored the search results provided by Google.com. Later on, Google applied the self-censorship policies, which complied with the Chinese laws, thus entering their market. However, the cooperation did not go well and both sides exchanged critical comments concerning the censorship of search results. The final incident, which led Chinese governmental institutions and Google into open feud, was when the hackers attempted to access Gmail accounts of the human right activists. The attacks were originated in China and that was one of the reasons why Google retreated from the market in China. The other big player in the "Internet game" is the Russian Federation. On the 28th of July, 2013, Russian State Duma passed the Internet restriction bill[1]. It allows blacklisting the Internet sites that contain alleged child pornography, drug-related material, extremist material and other content illegal in Russia. The critics of this document claim that this law is just another attempt to restrict the freedom of speech and to censor the Internet content. Russian hackers are well known in the field of cyber-crimes. According to the Group iB report (2013), the Russia's cyber-crime market reached $1.9 billion in 2013. Moreover, the political regime of Russia is more likely to be recognized as authoritarian rather than democratic. According to the Freedom House International, the main elements of state governance model are selective capitalism and strong centralized government with the president on top (Orttung, 2013). When combining authoritarian state governance model with the well-developed black market of the cyber-crimes, it is obvious that the legal regulation framework may work in the favor of the censors rather than the advocates of the Internet freedom. These are only few countries, which try to bridle the Internet. There is also Iran, which is very active in blocking inconvenient sites (Ball, Murakami Wood, 2013), and lots of other states filtering information, collecting the intelligence, spying on the Internet users or misusing the technology in other ways. These "players" often have their own interests in the "game" that is called the "Internet governance". Some of these interests are related to their national policy making objectives in the context of influence gained, as well as economic, political power acquired. Since the number of people using the Internet dramatically rise, national authorities are seeking ways to control this source of communication. Political and social events, such as the Arab Spring, were supposed to be organized and managed by the help of the Internet. Mobile devices, "smart" gadgets and the Internet of things are several novel trends among many others, which provide the foundation for broadening Internet application spectrum. Therefore, technological

1 Федеральный закон № 139-ФЗ от 28 июля 2012 года О внесении изменений в Федеральный закон „О защите детей от информации, причиняющей вред их здоровью и развитию" и отдельные законодательные акты Российской Федерации по вопросу ограничения доступа к противоправной информации в сети Интернет.

development, social and cultural assimilation are only several examples that cause political interests to affect Internet governance decisions. However, these changes should be reconsidered with caution and proper respect to the global democratic values while securing the fundamental constituencies of significant human rights and freedoms.

3. ICANN as a key role player in the Internet governance

Internet expansion, particularly commercialization, meant domain names assumed increasing significance and value as global economic resources, since they provide a recognizable presence on the Internet for those possessing them. Consequently, control over the system of the allocation and management of domain names became an issue of global political economics (Christou, Simpson, 2007). As a result, in 1998 the ICANN was established as an international, not-for-profit organization under Californian law with responsibility for the global management of IP address space allocation and protocol parameter assignment, Internet DNS management and Internet root server system management (ibid). The legal basis of the original ICANN–U.S. relationship covered delegated blocks of functions through the so-called "IANA" contract (2003) and last agreement named "Affirmation and Commitments" (2009), which changed the previous ones. The Affirmation and Commitments agreement, among other reasons, was a response of the U.S. Government to constantly growing international pressure for the U.S. to abandon the control over the ICANN, as other governments feared the U.S. to keep a dominant role over the DNS. Such abandonment of control was mostly because of influential voices in the European Union and Japan, soon joined by others from every continent and region, began to push for the U.S. to divest itself of its controlling position or for the ICANN's role to be turned over to a more international body (Froomkin, 2011).

Some governments, mainly the U.S. and the European Union, supported by private industry, argued that the private ICANN with its narrowly defined technical mandate should continue to be the central organization in this field. Other governments, led by China and members of the 'G20 group', such as Brazil, South Africa and India, based their arguments on a broader definition. Their understanding of the 'Internet governance' included not only domain names and root servers, but also other internet-related issues, such as spam and illegal content. They wanted to move the whole Internet management system under the umbrella of an intergovernmental organization of the United Nations, notably the International Telecommunication Union (Kleinwächter, 2004).

During the WSIS process in Geneva, the ICANN supporters argued that the Internet governance was a technical question and could be better handled by a private corporation. The ITU supporters (ICANN's opponents) argued that the Internet governance was a political problem and fell under the national sovereignty of the governments of the UN Member States (ibid). Nevertheless, the technical part of the system is linked to the stability and security of the Internet, which is a circumstance for the proper functioning of the rest of the non-technical aspects.

Moreover, there is a range of organizations dealing with various aspects of Internet governance related issues today, but the ICANN operates under the contractual provisions with the U.S. Government having significant tasks to fulfill the IANA functions, which include the following: coordination of the assignment of technical protocol parameters, performance of administrative functions associated with root management (excluding authorizing modifications, additions, or deletions to the root zone file or associated information that constitute delegation or re-delegation of top level domains) and allocation of Internet Numbering Resources.

Indeed, the Internet governance conceptually connects the private sector, civil society, international organizations, governments and other stakeholders, and the ICANN has been successful so far to remain a cornerstone that links different interests, players, technological issues and policy under the same umbrella. However, economic or other interests of the industry players mean a lot, and especially powerful stakeholders, such as governments or governmental structures, try to shift the scope of the Interment governance and at the same time ICANN's, thus seeking to take over the significant or exclusive decision/policy-making issues. The core interest of the U.S. remains not to gain control, but to prevent any other party from gaining control.

3.1. Relations with governments and multilateral structures

States, particularly the great powers, remain the primary actors for handling the social and political externalities created by globalization and the Internet. As the primary actors, the great powers are the most consistently successful in achieving their preferences relative to other actors. Even on issues, in which there are large zones of agreement, such as the standardization of technical protocols, the great powers will manipulate private authority to achieve their desired ends (Dresner, 2004). As the story of China has already made clear, governmental control of the Internet is not always a happy prospect, for governments often rule unwisely and often clash one another in destructive ways (Goldsmith, Wu, 2006). It is hard to prospectively evaluate how the Internet could be shaped if national governments controlled the Internet, but it is obvious that governmental control and influence are sometimes expected to outweigh the public interest as a dominant principal of the Internet as such.

Key differences between EU and U.S. approaches to the regulation of the ICT also have become apparent at this juncture. While the EU had developed policies, which are distinct from that of other regions, including the U.S, comparably, self-regulation approach was applied in the U.S. and coordinated self-regulation principle was applied in Europe.

The example of TLD ".eu" clearly illustrates EU's ability to manipulate the influence over the ICANN. The ICANN made the decision to delegate ".eu", making an exception that, on the one hand, it reflected the influence of the EU to the ICANN, on the other hand, it might serve as a favor in advance for support against the DOC to gain ICANN awaited independence.

Even broader interest to participate and make an impact in the Internet governance processes was reflected by the United Nations (hereinafter – UN), when the UN in

2006 established the Internet Governance Forum (hereinafter – IGF), which purpose was to support the United Nations Secretary-General in carrying out the mandate from the World Summit on the Information Society (WSIS) with regard to convening a new forum for multi-stakeholder policy dialogue and making collaborative space, where all stakeholders can express their views and exchange ideas.

ITU, one of the WSIS sponsors, has been attempting to position itself more centrally in the process of further evolution of the Internet as part of its overall charter (Huston, 2005). The ITU is certainly one of the more venerable institutions in the communications sector, especially when the Internet has imposed significant changes to the telecommunication segment (cell phones, IP telephony, etc.).

All in all, maintaining the balance between various stakeholders, the ICANN remains an ongoing challenge, while the Internet governance has become politically and economically sensitive issue.

3.2. ICANN's multi-stakeholder model: A phenomenal way to stay the central player

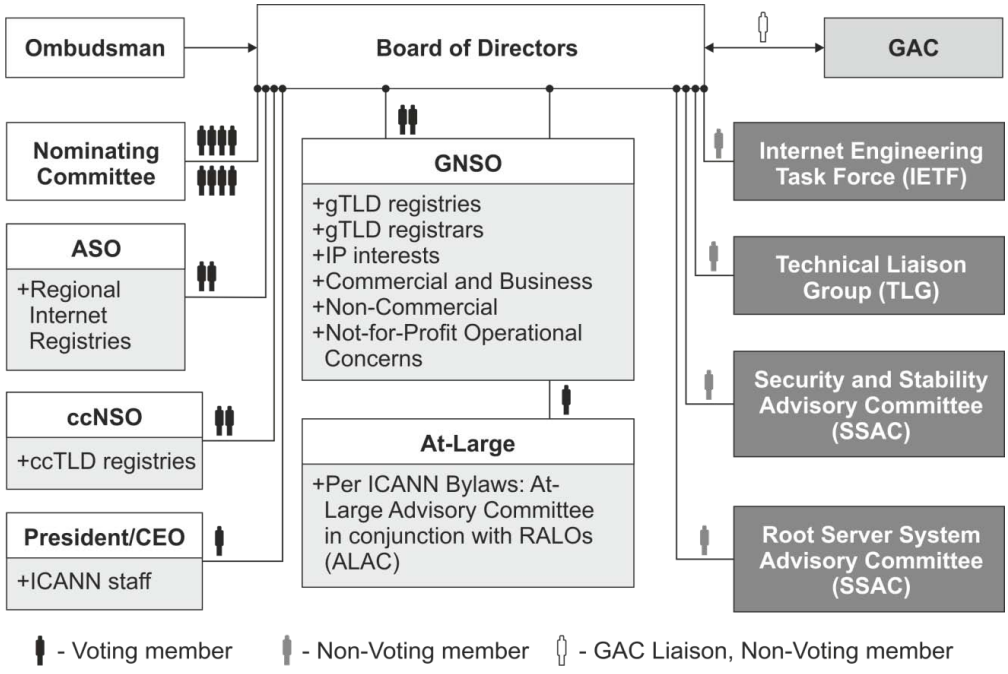
As the Internet's role and influence have significantly changed not only to the households' lives, but also to the global processes during the last two decades, modern rule-making processes have become dependent on the joint involvement of all stakeholders having the necessary expertise. In addition, the MoU[2] between the U.S. Government and the ICANN determined a bottom-up policy process that involved most of the stakeholders in the management of the DNS and IP addresses. Otherwise, large-scale and consensus based rule-making approach inevitably reflect the current state of play in the Internet governance.

The inclusion of societal stakeholders other than international organizations and nation states in the governance and legislation processes has become a hotly debated topic in the context of the Internet governance discussions (Weber, 2011). The ICANN is probably the flagship of the example of a multi-stakeholder model organization. Pursuant to the former ICANN CEO, Rod Beckstrom, "*the catalyst for the change of the Internet is the multi-stakeholder model*." (Internet Governance Forum, 2011). However, the multi-stakeholder model applied by the ICANN has its own limitations concerning the significance and decision making while forming the policy of the Internet governance in general. Figure 2 demonstrates the structure of the ICANN and the ratio of its voting and non-voting members. This structure weakly represents the interests of non-governmental institutions, which play an important role in the context of the Internet governance. On the other hand, this model is based on the agreement between the stakeholders of how the structure of the ICANN should be managed, so minor flaws are inevitable.

Consensus based policy-making has been the encouragement to the faster evolution of the technology and its standards, the policy and the governance structures. This model is also based on the commonly recognized principles that international management of the

2 Memorandum of Understanding (MOU) between ICANN and the U.S. Department of Commerce, 25 November 1998.

Internet should be multilateral, transparent and democratic, with the full involvement of governments, civil society, the private sector and international organizations. Therefore, the concepts of private sector-led self-regulation versus governmental regulation are still at the center of discussions related to the future governance mechanisms for the Internet, its regulation and the management of its core resources (Weber, 2011). It was led mainly for the weak representation of public society (on behalf of public interests).



Source: made by the authors, according to ICANN's website

Figure 2. The structure of ICANN

All the mentioned reflect the dominating opinion that even the multi-stakeholder's model has its own weaknesses, it still remains the best way to manage global issues, such as the Internet governance, by applying commonly approved bottom-up decision making principle.

4. GAC's role and means of cooperation to the ICANN

The Declaration of the Independence of Cyberspace expressed by John Perry Barlow (1996) described a very clear objective to avoid influential (by governments) and legally constrained independence: "*Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future,*

I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather."

Perhaps, hiding behind the umbrella of this principal, the U.S. Government and the ICANN constructed its policy-making processes so that governments (except the U.S.) could remain aside from the decision-making activities. Nonetheless, the GAC's establishment was the compromise that gave it a policy foothold in ICANN's affairs, which it could attempt to exploit by other states. *The Governmental Advisory Committee (GAC) shall consider and provide advice on the activities of ICANN as they relate to concerns of governments, multinational governmental organizations and treaty organizations, and distinct economies as recognized in international fora, including matters where there may be an interaction between ICANN's policies and various laws and international agreements and public policy objectives.*[3] According to GAC's operating principles, neither the U.S. Government nor the ICANN have a remit to act unilaterally and the GAC should shift a balance between the interests and transparent policy-making.

ICANN's GAC began in 1998 as an advisory organ having authority to make the comments when considering decisions that substantially affect the operation of the Internet or third parties. In its position paper in 2000, the Commission showed its political skill by arguing that the ICANN Board has in practice been responsive to the advice of the GAC. There has been no difference of opinion, to date, that might have tested the willingness of the governments to accept a secondary role in this context. The European Commission also expressed its thoughts that the current self-regulatory structure requires active policy oversight, meaning much more influence than advice giving.

In 2002, new ICANN Bylaws expanded the GAC's powers considerably: in the event of a conflict between a GAC "comment" and the Board's decision, the Bylaws mandated negotiation towards mutual resolution. However, the Board maintained the power to take action notwithstanding conflicting advice, so long as its reasoning was included in the final decision (Froomkin, 2011).

Nevertheless, enhancing the GAC's power, the ICANN achieved its objectives. It made friends in foreign governments and created constituencies in the ministries that sent delegates to ICANN GAC meetings (ibid), while other countries were happy that the ICANN with more governmental influence was a better choice than a dominant role of the U.S.

Further extension of GAC's influence, powered by the Affirmation and Commitments agreement, made it obvious that for getting the independence, the ICANN pays the price to their main supporters, thus, governments get direct means to influence the Internet governance and support the ICANN in dealings with the U.S. Government. Nonetheless, the U.S. has not released the ICANN from its horizon and prevented any other party from gaining control.

Moreover, in 2010, the Accountability and Transparency Review Team (ATRT), one of the four Review Teams created by the ICANN to comply with the requirements set forth by the U.S. Department of Commerce (DOC) in the Affirmation of Commitments, submitted its Final Report to the ICANN Board with 27 recommendations, one of which

3 Governmental Advisory Committee Operating Principles. [Principle 1]

expressed concerns that there is a need to clarify what constitutes GAC public policy "advice" and the whole process that should be documented formally. The discussions of this term interpretation are still the subject matter.

Formally, the GAC is the only direct mean, by which governments (except the U.S.) can influence ICANN's decision-making process. Being one of the ICANN's organizational structure bodies, GAC's field of activities comprises basically provisions to *advice the* ICANN on the issues of public policies. Even if the ICANN considers itself as a corporation acting independently from governmental supervision, the increase of governmental influence in decision-making processes is obvious. However, ICANN's final decision belongs exclusively to the ICANN's Board of Directors, although the Board should strive to increase the level of support for governments to participate in the GAC process, thus keeping institutional significance over the field of the Internet governance.

5. Conclusion

All in all, ICANN is the unique example of an international organization designed to be run by private interests, growing in the shadow of intergovernmental policies with states playing only a secondary role by acting in an advisory capacity through its body of GAC. However, states (mostly, but necessarily, through the GAC) have come to play a more interventionist role in this scenario of international private interest governance than was laid out at its inception.

Even though the self-regulation principle, based in ICANN's policy bones, is still a cornerstone, but constant and increasingly visible moving from hands-off to co-regulatory practice is inevitable and mainly affected by the following several significant factors: the aim to abolish U.S. Government's predominant influence (as the historical de facto Internet inventor and developer), secondly, Internet expansion, particularly commercialization, and its value as a global economic resource, and finally, Internet's capability to drastically change the direction of whole electronic communications and its policies.

Striking balance between various stakeholders and the ICANN remains an ongoing challenge, since the Internet governance has become politically and economically sensitive issue. On the one hand, the problem with this current approach is that the U.S. cannot risk the ICANN itself being captured by hostile powers, and that in turn means that the U.S. will not ever release de facto control of the ICANN. On the other hand, even the core interest of the U.S. is not to gain control, but to prevent any other party from gaining control (if the control is broken up, it is practically impossible to reverse the process), it will be extremely difficult to the ICANN (and also to the U.S.) to maintain the status quo under the current circumstances, which require diverse and even more complex solutions than before with governments standing in the forefront of their increasing interest to influence and manage the Internet governance processes.

Even if the ICANN is getting more complicated to ensure the fair participation of stakeholders in their respective roles, the multi-stakeholder model, built on bottom-up

decision-making principle, remains, so far, the best, if not the only possible, way for the ICANN to remain a leading Internet governance player. Moreover, the Affirmation and Commitments agreement left less room for constant criticism and obvious U.S. influence to ICANN's decision making policies, thus redirecting the focus to the ICANN's multi-stakeholder model with the discussion reflection of all interests, although the GAC's weight to the ICANN's decision-making processes is more than visible and will lead to the new challenges for the ICANN to maintain the fair balance between the stakeholders.

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NACIONALINIŲ VYRIAUSYBIŲ SĄVEIKA SU ICANN ADMINISTRUOJANT INTERNETĄ

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Santrauka. *Šio straipsnio tikslas – apžvelgti bei išnagrinėti ICANN (Internet Corporation for Assigned Names and Numbers) sąveiką su kitų šalių valdančiomis institucijomis interneto infrastruktūros bei taisyklių administravimo kontekste. Remiantis literatūros lyginamąja bei sistemine analize nagrinėjami autorių darbai šioje srityje, analizuojami praktiniai pavyzdžiai, pateikiamos išvados, siūlymai bei numatomos galimos*

valdymo tendencijų prielaidos administruojant internetą. Autoriai nagrinėja ICANN veiklos teorinius bei praktinius niuansus, jos esamo teisinio statuso privalumus bei trūkumus, konkurenciją tarp suinteresuotų šalių siekiant svaresnio vaidmens administruojant interneto infrastruktūrą. Taip pat nagrinėjamas GAC (Governmental Advisory Committee) santykis su ICANN bei interesų tarp skirtingų šalių derinimo niuansai. Autoriai išskiria probleminius reiškinius, susietus su interneto valdymo struktūra. Pateikiama esama ICANN padėties analizė tarptautinio teisinio statuso kontekste. Nagrinėjami veiksniai, ribojantys šios organizacijos savarankiškumą, bei apžvelgiamos prielaidos ir veiksmai, leidžiantys jį padidinti. Taip pat apžvelgiamas pasaulinis interneto pokyčių kontekstas, susietas su politinėmis bei socialinėmis realijomis.

ICANN tarptautinio teisinio statuso klausimas yra keblus ir daugialypis. Šioje srityje susikerta ne tik interneto vartotojų, nevyriausybinių organizacijų, bet ir didžiųjų valstybių interesai, tad objektyviai nešališka problemos analizė yra neįmanoma. Priklausomai nuo pristatomo požiūrio bei atstovaujamos politinės linijos, įmanomi įvairūs ICANN teisinio statuso interpretavimo niuansai, tad autoriai išreiškia vieną galimų šiuo atveju požiūrių. Autoriai skiria pagrindinius trinties šaltinius bei valdymo raidos tendencijas, galimai atsirasiančias ICANN stengiantis įgauti daugiau savarankiškumo. Įžvalgos bei pastebėjimai gali būti naudojami kaip tolesnės analizės atramos taškas. Interneto paplitimas bei naujų paslaugų ir verslo modelių atsiradimas paverčia šią technologinę sistemą galingu įrankiu. Dėl šios priežasties interneto valdymo problematika išeina už informacijos prieinamumo, žodžio laisvės bei ekonominių interesų ribų. Šiam klausimui suteikiamas ryškus geopolitinis atspalvis, todėl jo sprendimas negali būti skubotas, vienašališkas ar paviršutiniškas. Autoriai apibrėžia pagrindines ICANN tarptautinio teisinio statuso transformavimo prielaidas, nagrinėja teigiamus bei neigiamus tokių pokyčių aspektus bei pateikia savo požiūrį ir esamos situacijos vertinimą.

Tyrimo tipas**:** *bendroji apžvalga, požiūrio pristatymas.*

Raktiniai žodžiai**:** *ICANN, interneto valdymas, IANA, TLD, ITU, GAC.*