Participation in International Governance Regime by the "Rest of the World": An Analysis of ICANN and South Korea

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Abstract : This paper explores the participation, policy agendas, and effectiveness of representatives from outside of North America and Europe in the processes of The Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is an important and interesting example of how the Internet and e-commerce are creating new forms of international governance. ICANN is a private corporation, created at the end of 1998. How does the unique ICANN approach to an international governance problem affect the rest of the world (ROW) than the U.S.? Does the reliance on a private sector organization with some channels open to civil society participation make representation of ROW needs and interests easier or harder? How effectively have ROW actors participated in ICANN's regimes? What procedures and substantive policies would improve the benefits received by the ROW in the ICANN process? Relying on the empirical evidence from South Korea, the paper establishes a general framework for analyzing this problem.

Key words: Internet, governance, international, ICANN, participation

INTRODUCTION

This paper explores the participation, policy agendas, and effectiveness of representatives from outside of North America and Europe in the processes of icann (The Internet Corporation for Assigned Names and Numbers). ICANN is an important and interesting example of how the Internet and e-commerce are creating new forms of international governance (Kleinwachter, 2000; Mueller, 1999). ICANN is a private corporation, created at the end of 1998. It controls the assignment of domain names and IP addresses, which are critical resources needed to identify and interconnect Internet users. ICANN could have been even more revolutionary than it is because its creators originally tried to develop a system of individual membership that would conduct global elections to appoint half the Board of Directors. The attempt, however, was resisted and eventually defeated, by ICANN's management.

ICANN is an important precedent for three interrelated reasons. First, it was rather pointedly created as an alternative to existing intergovernmental organizations, notably the International Telecommunication Union (ITU). By relying on a private sector corporation that enters into a privileged relationship with the US Government, it bypasses and in some ways threatens the hegemony of established intergovernmental institutions. Thus, it reflects a continuing power struggle between actors who want to

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avoid existing international institutions and the established international organizations and their constituents, who do not want to be bypassed and rendered irrelevant by new developments. Second, ICANN was an experiment in private sector-based international governance and is sometimes touted as an example of "industry self-regulation". A private, contract-based regime was viewed as a method of creating a global jurisdiction for establishing policy without relying on intergovernmental organizations. Third, ICANN's politics reflect the dispute, which has since become familiar in the international environment, between a dominant United States Government able to project its economic and political power globally, Europe as a countervailing regional power, and a residual category of actors referred to as the "Rest of the World". This paper focuses on the is third category. The "Rest of the World" (ROW) refers to a heterogeneous group of actors: it includes the underdeveloped countries in Africa; the newly developed economies such as Korea, Singapore and Hong Kong; and developing countries such as China, India, and Brazil. In short, they are, somewhat peripheral and divided but important players because of ICANN's need of to gain credibility as an international organization. They are also important because of their potential to become major economic powers. Similar to the concept of "nonaligned nations" during the Cold War, ROW countries are perceived as a unit by virtue of what they are not, rather than any common characteristics such as development level, ideology or language. One thing they have in common is that during the formative stages of the Internet domain name regime's development, which primarily involved US initiatives and European reactions, [1] they had little influence and joined primarily to avoid being excluded. The concept is particularly applicable to developed and developing Asian countries. These nations are economically strong enough and aware enough of Internet development to participate yet not prepared to become principle actors. They also are disadvantaged within ICANN's relatively informal processes by cultural and linguistic differences. Consequently, South Korea is used as a case study because Korea epitomizes the dilemmas of ROW status. Korea's active, even aggressive presence on the Internet and has reached impressive levels of development but it was not an initial partner in ICANN. Its government does not seem to like the self-regulatory model, and its civil society participants feel overwhelmed by the challenge of keeping pace with ICANN's processes.

This paper will discuss the participation, policy agendas and effectiveness of representatives from outside of North America and Europe in the ICANN processes. How does the unique ICANN approach to an international governance problem affect the ROW? Does the reliance on a private sector organization with some channels open to civil society participation make representation of ROW needs and interests easier or harder? How effectively have ROW actors participated in ICANN's regimes? What procedures and substantive policies would improve the benefits received by the ROW in the ICANN process? The paper will try to establish a general framework for analyzing this problem, but will rely on the case of South Korea for empirical evidence.

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1) We are counting Australia and New Zealand as European countries in this context.

GOVERNANCE MECHANISMS OF ICANN

ICANN is the organizational capstone of an international regime for assigning and allocating domain name resources. It was not founded by treaty or any other formal agreement among states. Rather, it is founded based on informal bargains among state and non-state actors.[2] The US Government[3] mediated and implemented the bargains through government contracts that transferred certain functions directly from itself to indirect management through ICANN. This contractual arrangement for the ICANN "government experiment" was supposed to end after two years. Rather unexpectedly, the US retained its special and increasingly controversial contractor role and announced that it has no plans to terminate it, which makes the government the ultimate authority over ICANN's fate.

"Possession is nine-tenths of the law," and that is how the United States Government initially obtained its special status. As the original financier of the researchers who first built the Internet through the Defense Department then later through the National Science Foundation (NSF), the US Government was in a position to determine who operated the root servers and the top-level domain registries. Most notably, Defense Advanced Research Projects Agency (DARPA) grants supported Internet pioneer Jon Postel, who assigned protocol parameters, IP address blocks and country code top-level domains until the mid-1990s. Similarly, NSF contracted with Network Solutions, Inc., to register names under the .com, .net, .org, and .edu domains in 1993. Until 1998, Postel and Network Solutions had operational control of critical Internet functions, and the US government indirectly controlled both so ICANN was created only by US acquiescence.

Resource-based Regulation.

Although considered an alternative to government, ICANN is actually a powerful regulator with sweeping control over the economic structure of the domain name industry with which it has contractual agreements. ICANN can regulate because it controls a strategic critical area in a technical system. The US Department of Commerce has given ICANN policy authority over the root zone file, which defines the top of the domain name hierarchy. By deciding what names can be entered into the root, ICANN controls and restricts entry into the market for domain name registrations. It uses this control to "contractually" impose regulations on suppliers and users of domain names. For example, it caps the price of domain name registrations at the wholesale level. ICANN also regulates the market structure of the domain name industry by preventing gTLD registries from selling registrations directly to end users and imposing technical standards for access to the registry by competing retail-level domain name registration companies known as "registrars" and defines and enforces policies that accredit the registrars. It defines rights regarding domain namespace and accredits domain-name dispute resolution service providers (Froomkin, 1999). ICANN also plays a minor role

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2) See Mueller 2002, pages 211~226.
3) NTIA 1998a (the "White Paper")

in the allocation and assignment of Internet protocol address blocks, but this role might become more important in the future, as the possibility of a transition to a new Internet protocol, IPv6, may open up a huge new address space. ICANN's decisions also have privacy implications. Domain-name registration records contain contact information that can be searched and used for service of process. ICANN sets and enforces policies regarding the accuracy of this information, access to the data and the supply of this data by registries and registrars. It uses its power to take away a domain name as the method of enforcement.

Note the tension between ICANN's regulatory functions, which affect the rights of consumers of domain names and (indirectly) all Internet users, and the concept of industry self-regulation, which is attuned primarily to the needs of the suppliers of services. Traditional governmental regulators are politically accountable to elected officials who in turn should be responsive to consumers and users. ICANN lacks any direct or indirect accountability to consumers and users. Originally, ICANN intended to establish an "at large" membership structure open to any individual with an email address. During the White Paper process, the Clinton administration's policy makers forced the ICANN management to create a system whereby member would elect half the board members. However, ICANN's management and many business and technical interests that influenced it resisted such democratic incursions because they threatened the regime's dominance.[4] Political at-large membership support came primarily from North American and European advocacy groups of a liberal-democratic ideological persuasion.[5] Few ROW representatives persistently advocated for the at large option. Interestingly, however, because the at large representational structure was geographically determined, over the long term an at large system would have greatly empowered populous developing countries such as China and India. After ICANN's "reform" efforts, the at-large selection became an "advisory committee" that lacks the broad interest and participation of civil society organizations and individuals.

Financial Support

ICANN funds itself by imposing taxes on its contracting parties. Registrars pay accreditation fees that vary based on how many top-level domains they service, while registries pay both flat rate annual fees and graduated fees based on how many domains they have registered. ICANN obtains most of its revenue from the so-called "generic" TLD registries that run domains such as .com, .info and .net. To this point, ICANN has had difficulty getting the "country code" registries to sign contracts and provide funds for it.

Enforcement

ICANN enforces is regulations on by the domain name supply industry through contracts that contain provisions that regulate the end users' behavior. For example, all

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4) A compilation of articles is in Klein, 2001.
5) See The NGO and Academic ICANN Study (NAIS), www.naisproject.org, 2002.

registrars must be accredited by ICANN before they can register domain names in the gTLDs. To obtain accreditation, the registrars must contractually bind their customers to comply with the Uniform Domain Name Dispute Resolution Policy. ICANN's principle sanction is forfeiture of a domain name because it cannot levy fines or incarcerate people. As noted earlier, ICANN does not have a contractual relationship with most ccTLD operators, which means that there is a significant enforcement gap. It also does not have solid contractual relationships with the operators of ten of the 13 root servers. These root server operators emerged informally from the Internet technical community in the late 1980s and early 1990s and some are still US government agencies.

Structure and Policies

As a private corporation evoked by the US Department of Commerce, ICANN's structure and policies predominantly reflect the interests of several major private sector actors. These actors include primarily the intellectual property lobby (the International Trademark Association, WIPO, FICPI, major international brand holders); major e-commerce firms (e.g., IBM, AOL-Time Warner, and trade associations such as ITAA and WITSA, all of whom also have an interest in the trademark protection aspects of domain name policy); and major multinational telecommunications companies or ISPs (BT, AT&T). Certain key members of the Internet Society's governing hierarchy acquiesced to ICANN's establishment. They hoped that a non-governmental approach would preserve as much as possible the IETF-based technical community's historical control over DNS management. The European Union also participated in and approved of the private sector approach. Along with the EU, certain parties in the Australian government played an important role in carving out a larger role in ICANN's structure for national governments and traditional international organizations.

The issues and stakes of ICANN policy making are straightforward. Fundamentally, ICANN regulates a US$3 billion per annum domain-name registration industry; it determines what firms are able to enter that market and the terms and conditions under which firms compete. ICANN also defines and enforces rights to names in the domain name space. That is, ICANN decides how to apply trademark laws within the global domain name space and defines other exclusive rights to names or words such as reservations of country names. ICANN's control of the registry industry also gives it substantial power over DNS technical standards (although its failure to take control of or sign contracts with the root server operators and address registries currently undermines this power). For example, in the transition to internationalized domain names, ICANN can affect if and how domain name registries implement such a service. It can influence the geographical placement of the root servers, which has a direct affect on the technical quality of Internet service in many ROW countries. Moreover, as noted before, one of the key high-stakes issues is how or whether the ccTLDs are incorporated into the ICANN regime. This will determine whether ICANN is a truly global regime and to some extent impinges on traditional notions of national sovereignty. A similar issue is the degree to which the United States will remain the dominant regulator of last resort in the ICANN regime. That is, will globalization be ushered into existence through superpower dominance or will it be an equally distributed, self-governing regime composed of cooperating members of the global Internet community?

GENERAL BARRIERS TO PARTICIPATION

The most daunting structural barriers facing ROW participation are language, funding, mobilizing expertise, the lack of clearly defined interests and diverse historical and cultural experiences. According to resource-mobilization or resource dependency approaches, in order to survive in a new environment an organization needs to acquire funds, personnel, information, power, specialized expertise, good connections and authority.[6] ROW countries lack most of these resources and face great difficulty evolving from their subsequent lack of ability to procure the information needed to act in their interests. Among these resources, funding and expertise are the biggest obstacles to meaningful participation; lack of interest and English skills compound the problem.

In ROW countries, most financial resources to support participation in international agencies are in the public sector. ICANN's focus on private participation thus makes it difficult for people from these countries to acquire funding. Some private companies are interested, but they have their own agendas and interests. Thus, the most feasible way for individuals and civil society to acquire funding to participate in ICANN is to draw on government resources. The irony is that the more financial support civil society participants receive from the public sector, the less their participation is private or self-governing. A discussion on the relationship between the government and the private sector and their influence on ICANN participation follows below.

Language has always been a problem in international participation, but it compounded when trying as ICANN did, to encourage civil society participation. This is particularly applicable to citizens of many Asian and developing countries, most of whom have never been abroad or been trained in English. In Korea, the language problem exists in both the public and private sectors. Most government officials are educated and trained within the country, and those who have trained abroad tend to become academics or business people due to the exclusive nature of the bureaucratic system. In many cases, even government officials that participate in international meetings lack English fluency although they do have the financial resources and authority to employ translators or other experts. Those who participate from the private sector might have better English ability than do government officials, but they do not have the financial resources at their disposal to employ the same kind of assistance.

The language problem also applies to other ROW countries that have not had previous language difficulties in other international meetings. Unlike most inter-governmental meetings such as OECD and ITU, ICANN meetings are not simultaneously translated. In addition, the pace of communication at ICANN meetings is rapid compared to other international meetings, so non-English speakers find the discussions very difficult to follow. The lack of translation, compounded by the pace of communication, places non-English speakersat a disadvantageous position, and this disadvantage is also felt by many of the European countries.

Cultural differences related to the style of communication and decision-making processes make it even more difficult for some ROW participants to be active players in ICANN. Decision-making through presenting arguments and exchanging different

6) See Lauman and Knoke, 1987; Knoke and Wood, 1981; Aldrich, 1979; Benson, 1975.

views is unfamiliar to many Asian countries. In Asian societies, most people are relatively discouraged from talking freely in public, especially concerning sensitive issues that involve conflicting interests. Most Asians are more comfortable being instructed by senior people or by those with authority than engaging with authority. In the ICANN setting, however, Asians are pressured to express their opinions, which may result in confusion and feelings of inadequacy. In addition, Asian institutional processes are arguably slower-paced in general than Western ones. ICANN has a great many urgent issues that require immediate discussion and decision-making, and this disadvantages Asian? particularly individual participants who lack institutional support and incentives.

The widespread use of online communication in ICANN also generates a variety of difficult situations for ROW countries. In ICANN, many issues are rapidly handled through e-mail communication or bulletin boards. Some ROW participants do not have the basic resources to have access to this kind of communication. Even with the technical resources, online communication is not speedily acquired in ROW countries. The lack of online discussion experience and the time differences between the East and the West contribute to participation problems. The problem is exacerbated when many of the Internet domain name issues are new and cannot be quickly apprehended. Pondering is impractical when discussions are heated. A Korean participant said, "I looked at the bulletin board at night, and thought about it, but couldn't immediately decide what to say. So, I decided to post my opinion the next morning, but I had a busy day. I went to work and returned to my computer that evening only to find that most of the discussion happened during the day, which was at night in America? the issue was almost resolved." When the participants were not actively engaged in the online communication, attending the off-line meetings often proves less meaningful and influential. Thus in ROW countries, both the private and public sectors engage in only limited participation because of their unfamiliarity with the intensive online communication.

ROW countries may also have other problems of a historical and institutional nature. Notions of self-regulation and the privatization of governance valorize Western ideas of freedom and liberty in cyberspace. However, these may not be the preeminent values in ROW societies. To countries without the historical and philosophical underpinnings of private sector and individual participation, the self-regulatory framework may not be recognized as plausible even if it "sounds" good.

Because the Internet domain name and IP address economy is new and economically and technologically dominated by the US (and occasionally Europe), ROW participants face uncertainty about what they can get out of the process, who they should interact with, what the real issues are. The unusual form that ICANN has taken with its completely new and relatively informal mechanisms for policy development exacerbates uncertainty. That many ROW countries lack clearly defined collective interests in ICANN-related issues is one of the most significant barriers for their meaningful participation in ICANN. For a country or a group to consume financial and human resources necessary to continually participate in a program, there must be a clearly defined goal that works toward their interests. The important question then becomes whether the interested parties exist. Many of the ICANN issues are less important than

other issues ROW countries are currently facing. ROW countries often have not yet developed the technical infrastructures, or business or cultural interests related to these governance issues.

Even if the ROW participants do not perceive ICANN issues as directly related to their interests, many of the ICANN decisions will eventually influence all the Internet stakeholders. However, by the time the ROW Internet stakeholders develop their interests in these areas, many important decisions will have already been made for them by the US and European participants. When society does not have pressing social or national ICANN interests, it is difficult for society to participate urgently or genuinely, even if it recognizes the long-term significance of those decisions.

SOUTH KOREA: A CASE STUDY

This section details more about the problems confronting ROW participation in ICANN by analyzing issues facing South Korea.

Stakes and Stakeholders in Korea

In Korea, the material interests in ICANN issues tend to be greater than in many other ROW countries. The development of digital technology is advanced and the spread of the Internet is extensive. There are several groups interested in participation, such as the country code TLD manager, KRNIC, the gTLD registrar businesses and to a lesser degree non-commercial and governmental actors. Korea has about 10 ICANN accredited registrars. Local registrars for the ccTLD also have some business interests in ICANN policy-making although they do not see themselves directly influenced by it. Korea has also developed steady, but individual-based participation in the Non-commercial Users Constituency (NCUC) because civil society in general is interested in social and cultural issues that affect Internet users.

The Korean Government has also more regularly participated in GAC than other ROW countries. The government, however, tends to oppose self-regulation: an approach that conflicts with the ICANN regime. At the ITU Marrakech meeting in 2002, the South Korean government suggested that the current ICANN activities should be delegated to ITU. Within the country, the government routinely attempts to control or influence private sector participation in ICANN. Whereas civil society views ICANN and the new Internet governance system as a slightly more desirable model of policy and decision-making concerning Internet issues, the Korean government has been known to regard it as a nuisance and a threat to their pre-existing regulatory authority. This power struggle contributes to the previously mentioned difficulties of ICANN participation.

On the other hand, Korea has very little participating in the GNSO's Registry Constituency, the Intellectual Property Constituency, the Internet Service Providers Constituency, the Business and Commercial Users Constituency and the Root Server Advisory Committee. The country has neither the resources nor the developed interest or experience to participate in these areas. Korea has no registries or root servers, and ISPs and relevant businesses sufficiently interested in lobbying or active participation

although companies such as Netpia have expressed some interest in multilingual domain names. Intellectual property issues garner some interest but only among individual academics or lawyers, not at the corporate level. Korea has not developed the specialized services in this area as to participate in ICANN with a clearly defined purpose. Even when certain interests are relatively clear, the potential participants still have to ponder whether there is an appropriate reward for participating. They confront a cost-benefit calculus with an uncertain result and are reluctant to expend their limited resources on participating.

The Tensions of Self-Governance: KRNIC and the Government

Korea and many other countries have a history of strong government administration and a relatively weak private sector that closely follows the government's instructions. This fundamental difference in the institutional framework and experience makes it more difficult for Korean participants to understand how to participate in ICANN. Consider the following example. In 1998, the Korean Ministry of Information and Communication (MIC) returned from the OECD meetings and told their Internet Service Providers to devise suggestions for a self-regulatory framework. After mulling the matter over, the ISPs and other Internet players told the government that they would rather have the framework provided by the government. This occurred for two reasons. First, the Internet actors were worried that the government would later do something that contradicted their proposals and secondly, they had no clear idea of what to do. For its part, the government also did not know what to do, because they had no experience with Internet governance.

This incident clearly illustrates the Korean persistence of top-down approaches to policy-making and implementation, which dates back to the 1960s, when Korea was undergoing rapid economic development. Korean governments had little experience in systematically researching and mobilizing experts and interest groups. The government simply does not trust the private sector to devise feasible solutions to the controversial issues. The government is viewed as accountable for any problems that arise from policies. In addition, they have experienced criticism and bureaucratic reprisals if any problems occur. Consequently, the Korean public sector rather the private sector is perceived as the socially responsible body, so self-regulation and private ordering is still not meaningful. The attitude of deference to government characterizes other ROW countries as well as Korea. This is one of the reasons why the US ended up leading ICANN and in other Internet activities involving governance.

The tension between the government and the private sector is most keenly revealed in the policy controversies surrounding the Korea Network Information Center (KRNIC), the entity that centrally coordinates ICANN participation. Arguably, KRNIC is a private entity. It was founded as a nonprofit foundation pursuant to the Basic Law of Facilitating Informatization that deals with facilitating the use of information services and the management of Internet addresses. However, there is considerable confusion regarding the legal status and the actual nature of KRNIC's activities. Some argue that KRNIC is a private organization because the government does not mandate their activities.[7] Others argue that KRNIC is an administrative agency under the Ministry of

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7) See Kim, 2001.

Information and Communication (MIC) because it was established under MIC auspices, (and the articles of incorporation of KRNIC were drafted to give MIC authority over many of its activities. While MIC wanted to retain regulatory power over matters regarding Internet addresses, the Ministry of Finance and Economy and the Ministry of Planning and Budget declared that KRNIC was a nonprofit foundation rather than a governmental agency. However, the close tie between MIC and KRNIC still exists. Many KRNIC staff members are former employees of organizations founded, funded and controlled by MIC, such as the National Computerization Agency and the Korea Agency for Digital Opportunity and Promotion. These employees lack private sector experience and are keenly sensitive to the stability and conservatism of the public sector. Some KRNIC staff perceive themselves as part government employees and acquiesce to MIC requests.

The new role for the private sector generates additional tensions. KRNIC supports a number of private committees, such as the Name Committee and the Name and Number Committee, which are the central channels through which civil society participates in the Internet address decision-making processes. When these committees conflict with KRNIC or make decisions unfavorable to KRNIC, one of the easiest ways to limit the power of these committees is to encourage the intervention of MIC. At the same time, when the committees do not follow the MIC policy instructions or suggestions, make other recommendations or simply fail to follow the instructions immediately, MIC encourages KRNIC to ignore the committee decisions or to simply implement MIC the policies. As a result, tension escalates among the committees, which are private decision-making bodies; KRNIC, which was designed to support and facilitate this private decision-making processes; and MIC, which is the traditional governmental body. One negative result of the growing tension is that when many committee participants who are mostly volunteer experts with other obligations, see that their recommendations are not followed, they become disillusioned about the so-called private decision-making structure, and scale back their participation or abandon this process altogether.

The tension has an unfortunate effect on ICANN participation. Recently, fewer of the original Internet experts involved in the committees are turning out for meetings. These members are irreplaceable because a limited number of people have the desire and expertise to participate. In addition, the degree to which KRNIC coordinates and supports private sector participation in ICANN is often not fully realized, irrespective of ill will or lack of ability. KRNIC has been supporting ICANN participation since its inception. Those who receive the most support are those who have formal membership or chairmanship in ICANN, councils or constituencies, as well as KRNIC committee who actively participate in the policy discussions. In the earlier stages of ICANN, if meetings were held in geographic proximity, a great many people from civil society and educational institutions were also supported to attend the meetings, but since their specific role was unclear, support was limited to presenters and contributors. However, KRNIC did not support some active participants; the only apparent reason was that they openly opposed the amendment of a government bill.

In addition, attending ICANN meetings does not guarantee making a meaningful contribution. To participate meaningfully, one must closely follow the discussions of

important issues and understand the policy alternatives. Only a limited number of Korean participants have achieved this level of competence. They have developed this competence through their own determination, not from any support from the government or private enterprise. However, as mentioned above, these individuals are volunteers and have other immediate concerns beyond Internet addresses. Consequently, they find it difficult to remain active. In the future, KRNIC must explore how to incorporate the need for constant involvement and support. So far, Korean participation in ICANN has remained relatively stable, but it is still uncoordinated and idiosyncratic. It remains to be seen if this tension between the government and civil society will be a positive influence to facilitate more dialogue and open the way to a new, creative governing mechanism that involves all the interested parties.

Korea and the UDRP

The Domain Name Supporting Organization (DNSO) task force on revising ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP) is an example of how ROW participation plays out in the details of policy making.[8] At the time of forming the Task Force (TF), the DNSO Names Council consisted of three seats elected from each constituency. Each of the three seats was drawn from a different geographic region. When the UDRP Task Force was formed, each DNSO constituency selected one representative; additionally, each dispute resolution service-provider (two were based in North America and one in Geneva) nominated two representatives each. A Representative of Complainants, a Representative of Respondents, and two independent experts in international law and alternative dispute resolution completed the selections. The geographic distribution of the TF resulted in a selection of 16 from North America; three from Europe; one from Africa; one from Asia Pacific; and one from Latin America/Caribbean. Since there were Complaints about geographic imbalance, the TF chairs added two more representatives: one from Latin America and one from South Korea.

While the distribution appears disproportional, it is a mistake to view geographic representation as the primary goal of the UDRP deliberations. The UDRP involves conflicts between trademark rights and domain names in gTLDs. The vast majority of UDRP cases involve complainants and/or respondents based in North America and domain names registered in .com; the names involved are English or European names involving trademarks registered in the developed world. The disputes may or may not have regional or geographical implications. Most of the time, domain-name dispute resolution pits corporate trademark-holders against individual or small business registrants, and the nature of these conflicts are often similar whether they are in the North or the South.

In a constituency-based or stakeholder system, each interest wants to send the strongest and most informed representative possible to a TF concerned with a high-stakes, contentious issue. With the UDRP, expertise and strength of advocacy is concentrated in

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8) For general critic of UDRP and its implications for ROW countries, see Geist, 2001; Mueller, 2000; Froomkin, 1999a, Froomkin, 1999b; and Woo, 2001.

North America and Europe. Thus, even the public interest advocates in the Noncommercial Users Constituency (the part of ICANN historically most sensitive to issues of ROW representation), nominated US-based law professor Michael Froomkin to the Task Force. Professor Froomkin is an expert in this area, a strong advocate of individual rights and has previously served on WIPO panels. The Noncommercial Users Constituency favored him because he was presumed to advocate against the dominance of intellectual property interests. To the public interest advocates, task force representation was about trademark interests vs. civil society interests, not regional or geographical interests. Nevertheless, this method of developing policy definitely marginalizes ROW; or perhaps it would be more accurate to say that the method reflects the marginal role that ROW already plays in domain-name trademark disputes.

Being "represented" on a Task Force is one thing; being influential on it is another. Over the 15-month life of the UDRP Task Force, the African representative sent only one message to the TF listserv, the Korean participant sent only two messages, and the Latin American participant sent eight. This pattern is typical of ROW participation in ICANN. Even when ROW participants were unusually active, as was the Latin American representative, they were primarily offering information sources or responding to tasks given to them by the TF chair; they were not aggressively proposing or shaping policies. Professor Froomkin, in contrast, sent 30 messages to the list server and frequently attempted to shape the agenda and promote specific policy ideas.

Another reason that ROW participants are not more active is that they are often overloaded with tasks. Expertise in this highly specialized area of Internet policy is rare in their countries, so knowledgeable and capable people typically have numerous responsibilities and wear multiple hats. Typically, they have heavy domestic responsibilities as well as many international processes to monitor. For example, the African UDRP TF Representative's one message read, "Apologies for not taking a more active role in this task group... been very busy on this end especially with the release of new piece of draft legislation (South Africa - Electronic Communications and Transactions Bill) - It appears our government wishes to regulate a number of issues, especially the ccTLD." By way of contrast, the intellectual property interests representatives were trademark lawyers and in some cases specialized on trademark issues in domain name disputes.

Initially within Korea, the Uniform Domain Name Dispute Resolution Policy was not acknowledged as important. Even after some scholars tried to alert people to its significance, few domestic actors understood the implications. Some stakeholders, such as domain name registrants, understood and asked the government or KRNIC to do something. Little could be done, however, because few people knew about the UDRP, and those who did know were simply too busy to take on additional tasks. When Korea attempted to develop its own dispute resolution system there was much confusion; it was not even clear why Korea would need a dispute resolution system apart from the court system and ICANN's UDRP. At first, the new system imitated UDRP, which lead to many disagreements. Legal and academic experts cautioned that UDRP enlarges the trademark holders' interests, especially large companies in developed countries. They also argued that the UDRP was designed for gTLDs with a first-come, first-served registration process that naturally generated jurisdictional and legal conflicts, and thus

inappropriate for the Korean ccTLD, which has a more restricted registration policy. Many suggested different kinds of dispute resolution policies that were more consistent with the Korean legal system and domain name use. Others advocated avoiding the creation of any new system of dispute resolution because the national courts and other arbitration centers were adequate to deal with domain name disputes. On the other hand, some saw no reason why Korea should have a different system than UDRP when UDRP will govern international domain names and thus soon govern other domains as well. The cacophony of voices generated an impasse for a while. Eventually, Korea's Ministry of Information and Communication (MIC) intervened after succeeding in amending the relevant law so it could create a domain-name dispute resolution mechanism.

After a few meetings and discussions led by MIC, KRNIC established the Domain Name Dispute Resolution Center (DDRC) in 2002, which was later renamed as the Internet Address Dispute Resolution Committee (IDRC). The dispute resolution policy is quite similar to UDRP in terms of its procedure, but it lacks a similarly specific substantive policy. The composition of the panelists (judges of domain name disputes) also reflects government influence. Many knowledgeable people who had been involved with domain-name dispute resolution policy from the beginning but had different views from MIC were excluded from the list of panelists. For example, among the eight Koreans working as WIPO UDRP panelists, only one was included on the national list. In this case, the government excluded the more liberal individuals as dispute resolution panelists and pursued a more pro-business agenda. This may negatively affect the domestic and international discussion of domain-name dispute resolution policy because most of the excluded are the experts in international domain-name dispute resolution.

So far, not many cases have been decided by IDRC: only 54 cases in 2002, 49 cases in 2003, and 23 cases in 2004. There are numerous reason for this: the higher-than-expected cost (880,000 Korean won for a1-member panel and 1,760,000 won for a 3-member panel), the existence of other experienced dispute resolution bodies such as the national courts, the Korea Commercial Arbitration Center, and E-Commerce Mediation Committee, and the end result is publicly known but there is no review process. It remains to be seen whether the new system is developed as a central body as was designed, and whether the existence of this Center facilitates Korea's participation in the UDRP processes.

ICANN vs. A TRADITIONAL IGO

Now we confront an important but difficult question: were the problems ROW countries encountered within ICANN unique to ICANN's peculiar status and structure, or were they a function of ROW countries' relative lack of resources and weaker bargaining power, and hence would occur in *any* international arena? The answer was easy to formulate and difficult for the co-authors to agree on. As we see in the Korean case, cultural differences related to experiences with online communication, active discussion and self-ordering had a detrimental effect on the ability to participate in ICANN. The peculiar structure of ICANN was developed and operated mainly by US and European participants and seemed to compound problems the already difficult

participation of the ROW countries.

However, the conflict between Korea's Internet-related civil society participants and the Korean government raises an important qualification. Because ICANN is a new institutional framework, it has provided a channel for participation for a different, and broader, set of people in Korea (and probably several other ROW countries) than an institution that relied entirely on traditional governments. Even though some civil society interests in Korea are highly dissatisfied with the ICANN model and feel marginalized within it, they are relatively more empowered within the ICANN framework than in a traditional intergovernmental organization system. That is, the new private sector orientated governance structure shifted power away from governments and toward civil society even in ROW countries.

What makes this problem even more complex is that, as noted before, in ROW countries most financial and human resources that are available for participation in international organizations are in the public sector. Yet, the public sector often lags behind individual actors in terms of their appreciation of the interests at stake in Internet-related issues. If these individual actors outside the government are provided with the necessary support, they can become a great asset to the ICANN process and enhance ROW participation. However, civil society in many ROW countries, unlike in the Western countries, developed with a very close interconnection with the government; Thus, this non-commercial private sector in ROW must develop more strength and identity before ICANN-like private sector participation comes about. While funding and otherwise supporting relevant NGOs would be a good way to begin, devising a new way to organize these potential non-governmental representatives is also needed.

Clearly, we cannot too easily condemn or ignore the role of government in ROW countries. As we have seen in the Korean case, coordination and cooperation between the private sector and the government can be the key to enhance the participation in the international realm. In addition, an ICANN or ICANN-like alternative cannot eliminate the need for "governance" and government-like representation and procedures.[9] It may be beneficial to fundamentally re-think the advantages of the self-governance system and search for a new, creative system. As a research agenda, it might be useful to survey the different governance systems in other policy domains, countries and societies, and explore a better combination of participation and initiatives from the public and private sectors.

CONCLUSION

This paper examined the participation of ROW countries and the effectiveness and limitations in the new governance regime of ICANN with a case study of South Korea. Because ICANN is based on private ordering and self-regulation and was developed by US and European initiatives, ROW participation in the international governance is limited because of the lack of financial resources and expertise, lack of clearly defined interests, language difficulties and cultural differences. Without a clear recognition of

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9) See Mueller, 1999 for a critique of self-regulation rationales as applied to ICANN.

these problems and substantial efforts to solve them, ROW countries will become more marginalized and disadvantaged in the new governance system that was developed as an alternative to the traditional intergovernmental organizations. It is very difficult to suggest a desirable international governance system in the future. Questions such as whether there exists another alternative system that can realistically replace this privatized ICANN and whether we should return to traditional intergovernmental organizations involve many complex and sensitive issues. It is difficult to imagine that the tendency towards privatized governance system will weaken. In the World Summit on the Information Society, both civil society actors and business interests resisted calls by nation-states to turn ICANN's functions over to an intergovernmental organization.[10] While, the civil society organizations involved in WSIS have ambiguous and unsettled opinions about the problems, they still expressed hope that the growing participation civil society actors in international policy arenas will create political pressure to move in the directions they find desirable.

While we found serious shortfalls in ICANN's processes, we could not avoid the conclusion that as a mechanism for involving civil society actors, a private sector-based regime such as ICANN has advantages over traditional intergovernmental organizations. We described how the agenda and demands from civil society ROW participants often conflict with the agenda of their own governments, and that – as limited as ROW civil society participation has been – it exceeds what occurs in IGOs. In that sense, efforts to broaden opportunities for civil society participation seem to be the key to ICANN's future success. What is clear here is that ICANN needs to do more work to encourage greater ROW participation. Toward that end, we make three concrete suggestions. The first is to create a new Advisory Committee devoted to "Multicultural Awareness and Outreach." This committee would mentor ROW members and encourage their participation. The second is to use more objective and regular procedures to allocate valuable resources such as top-level domains. The goal should be to replace insider lobbying, with procedures such as auctions and random selection, which are less discretionary. Third, whenever possible, ICANN should explore the possibility of regionalizing control of resources. We urge ICANN to expand the opportunities for civil society participation rather than narrowing them. While efforts to expand participation in international institutions are laudable, we should avoid setting unrealistic expectations about how expansion might alter major international power relationships. International governance relationships reflect, as well as reproduce, inequalities in power and wealth among countries. To think that stronger countries will passively surrender advantages to weaker countries simply to facilitate widespread participation in international governance is unrealistic. Structural changes, such as the open entry procedure and regionalization have a better chance of success in the long term. More democratic processes that devolve power to individuals and civil society rather than other states or IGOs may also short-circuit traditional political objections to change. Of course, those recommendations must be implemented over the objections of those who benefit from the current regime.

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10) See the "Statement of the Civil Society Internet Governance Caucus" by Wolfgang Kleinwachter" at http://prepcom.net/wsis/1058345885001, 2003.

The paper suggests that although principles of private ordering and self-regulation reflect the current trend of international governance, this trend is not necessarily natural or desirable. The effects of the privatization of governance on ROW countries need careful examination. In ROW countries such as Korea, resolving conflicts and enhancing cooperation between the government and the private sector is critical to enhancing participation in international organizations. That means in ROW countries, a different approach from the US or Europe is needed in order to promote participation. Although changes in the relationship between the public sector and private sector have occurred in Korea irrespective of international issues, the change in the international governance systems such as ICANN will eventually affect the relationship between the public and private sectors within the country. The interaction between the national and international governance systems will continue, and it is important to examine the role of the international governance such as ICANN on different countries with different geographic and cultural backgrounds. It remains to be seen whether ICANN's evolution turns out to signal important and positive changes in international governance.

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