Chapter IV

REGULATORY AND POLICY ISSUES

4.1 Introduction:
Regulation in general is often considered as a process of monitoring and enforcement of rules established by primary or delegated legislation. Sometimes a written document containing rules having the force of law. Regulation creates, limits, or constrains a right, creates or limits a duty, or allocates responsibility. Webster’s New International Dictionary defines regulation as an official rule or law that says how something should be done or an authoritative rule dealing with details or an order issued by an executive authority or regulatory agency of a government and having the force of law.\(^1\) Internet regulation is basically restricting or controlling access to certain aspects or information. Internet regulation consists of: Censorship of data, and controlling aspects of the Internet such as domain registration, IP address control and more. Elizabeth considers the “impact of technology and the way in which we are able to regulate technology and how we devise policy to guide that regulation”\(^2\).

4.2 Self-regulation as a formal model:
Last two decades have witnessed rigorous debate over the contents of Internet governance and have addressed multiple aspects of a possible regulatory system. Knowing that an internationally agreed structure is missing, and that self-regulation as a formal model does not suite in all respects, new architectural and constitutional theories have been developed. These models highlight main topics of Internet governance like legitimacy, transparency, accountability, and participation. Mark Raymond in his paper concludes by articulating the need for a high-level strategic vision for Internet governance.\(^3\) Also shedding light on the key regulatory
issues such as critical Internet resources, access, protection of human rights, realization of security, safety, privacy standards, and overcoming of the digital divide. John Mathiason provides a “linkage between technology, information, individuals, old regulatory regimes and new approaches that have led to a great experiment”.

As discussed earlier Internet developed beyond a regulatory legal framework and was mainly based on self-regulation by its users, assuming that cyberspace was an independent new “province” in the world, not governed by laws in the legal sense, but rather by “codes” defining the Internet as parameters resulting from technical protocols, standards, and procedures.

4.3 Cyberspace & real World:
The need of the Internet’s regulation by law seems clear because cyberspace cannot be entirely separated from real /physical world. Activities on the Internet Surely have an influence on individuals and other entities in the real world. Net-izen (citizen entering cyberspace) cannot escape the national legal system. The success of electronic commercial transactions depends on the stability of the legal framework and “keep the fundamental architecture and values of the Internet in mind, so as to act collectively to control malicious forms of electronic wrongdoing online.”

If we are able to predict legal consequences of certain activities then only it is possible for cross-border transactional e-business achieve success. Surly, various aspects of the Internet are already managed by a number of different organizations, such as ICANN, WIPO, but The Domain Name System (DNS), in particular, was of major importance for the functioning and the regulation of the Internet and the beginnings of its governance.
4.4 Regulation and Stakeholders:
While establishing a legal regulatory framework it is required to address and balance the interests of different stakeholders involved. National involvement on issues such as cyber security and stability also call for regulation and were addressed particularly in the light of measures to defeat such acts. Internet has been affected by forms of restriction in various countries through the development of powerful scrutiny devices, which have been applied to trace the contents of communications and discover the identity of users, resulting global criticism on internet service providers. Mary rundle comments, that “those who hold freedom dear must work to build democratic values into this emerging international system”8, and Laura offers recommendations for Internet standards governance⁹.

4.5 Internet and law:
Internet is a system of interconnected computer networks transmitting data, and is specially considered by its world-wide reach, which takes no account of national boundaries. In addition, as a public sphere the Internet is generally open to everyone and accessible from everywhere. Global governance methods should have an international sphere, paying due attention to the regulation of international relations. Internet technology itself has an increasing effect on the process of globalization of legal rules, and a potential to improve the acceptance and reliability of the international law system. George’s paper adds “clarity to the discussion by presenting a framework that provides certain fundamental delineations between different aspects of the activities surrounding the Internet”¹⁰; also Robert reports that “technological decisions that have enabled both the Internet’s spectacular success and its trouble are vulnerable to attack”¹¹.
4.6 Role of intergovernmental and international organizations:

Any definition of Internet governance includes technical issues and also public policy aspects. This fact has been recognized and confirmed by the Geneva Declaration of Principles, released at the occasion of the first World Summit on the Information Society in December 2003: Para 49 particularly points to the public policy issues and the policy authority making it necessary to involve all stakeholders and relevant intergovernmental and international organizations.\(^\text{12}\)

a. Policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues;

b. The private sector has had and should continue to have an important role in the development of the Internet, both in the technical and economic fields;

c. Civil society has also played an important role on Internet matters, especially at community level, and should continue to play such a role;

d. Intergovernmental organizations have had and should continue to have a facilitating role in the coordination of Internet-related public policy issues;

e. International organizations have also had and should continue to have an important role in the development of Internet-related technical standards and relevant policies.
4.7 Policy issues relevant to internet Governance:

In this section we list few Internet governance issues which are globally addressed and discussed in various technical groups and governance related forums. Much devotion and research is being carried out in these critical areas. As the issues are interrelated and have multiple dimensions, pure classification is not possible. We have payed much attention to the identification of public policy issues that are potentially relevant to Internet governance.

1. Domain names allocation: Adequate policies and procedures are required for distribution and allocation of generic top-level domain names. These are the domains that could be obtained by anyone irrespective of their geographic location.

2. Domain name space allotment: Need development of policies for the management, because of its complicated nature. Domain names are considered a powerful internet resource and needs attention and care while disbursement.

3. Country code top level domain names are country specific, but requires a very tedious procedure for acquiring them. Adequate policies and procedures are required for distribution and allocation.

4. IP addressing: This issue has already been addressed by the regional Internet registries (RIRs). While transferring from IPv4 to IPv6, some countries feel a sort of imbalance in the allocation policies for IP addresses, it should be insured that balanced access to resources on a geographical basis be maintained.
5. Root zone files: the existing system involves only one Government in the authorization of changes to the root zone file and a lack of formal relationship with root server operators. All the other authorities have just consensual role, root zone operators perform their functions unilaterally.

6. Uneven interconnection costs: effective global Internet governance mechanism needed to resolve this issue. Internet service providers (ISPs) based in developing countries and situated away from Internet backbones have to the full cost of the international circuits.

7. Global policy development and developing countries: multi-stakeholder participation not possible due to significant barriers to in governance mechanisms including lack of transparency, openness and participatory processes. For developing countries involvement in some intergovernmental organizations and other international organizations is often limited and expensive, this case is also true for civil society organizations, and small and medium-sized enterprises (SMEs).

8. Only members are allowed to access contents produced by some intergovernmental and other international organizations at unaffordable costs.

9. Difficulties associated with global policy meetings: frequency and location of venues are beyond the reach of few stakeholders from underdeveloped countries.
10. Governments, especially from developing countries have no role in addressing multi-sectoral issues related to global Internet policy development.

11. Resources required for Capacity building: Due to inadequate distribution of resources several countries are deprived of areas relevant to Internet management at the national level and effective participation in global Internet governance.

This is not an ultimate or final list of internet governance related issues because as time passes new issues will emerge with varying priorities and preferences.

4.8 Challenges before internet governors and users:
Inspite of amazing technological advancements, Internet governors, and common internet users are not free from day today governance related challenges. It is not possible to restrict the list of challenges, because as the global network of networks expand, so does the challenges. The list we present is neither conclusive nor authoritative, as the range and severity of challenges change from time to time and place to place.

1. Unstable and insecure networks: no multi-lateral mechanisms to deal with internet infrastructure, services and applications.

2. Very less tools and mechanisms to tackle cybercrimes: only few countries prevent and prosecute crimes committed in other jurisdictions, or other territories using technological means, causing a very negative impact of ICT on common users, thereby losing trust and confidence in internet transactions.
3. Propagation of spam: no global consensus on meaning of spam and no global agreement to address this matter or enable effective national anti-spam laws. Though, we see an increasing number of forums and conferences with anti-spam slogans, but no concrete coordination among countries to wipe out this techno syndrome.

4. Freedom of expression: no collaborative protocol to decide the degree of freedom on internet. Definition of freedom on the net is still to be unilaterally decided, due to large social and cultural controversies. Expressing views and opinions freely at one location becomes violation of rights at the other place.

5. Data protection and privacy: shortage of national legislation and enforceable global standards for privacy and data-protection rights over the Internet. This results in poor attraction of ICT to general computer users.

6. Consumer rights: Absence of national and global standards for consumer rights over the internet weakens the tendency to adopt e-commerce. In the case of digital goods and online services, there are problems for the practical and full application of traditional consumer rights.

7. Multilingualism: unsatisfactory progress has been made towards multi-lingualization. Unresolved issues include standards for multilingual TLDs, e-mail addresses and keyword lookup, as well as insufficient multilingual local content.
References:

1. "Regulation.", Webster's Third New International Dictionary of English Language.