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Out of Our Domain: ICANN, Technical Organizations, and Political Challenges

Abstract

Established in 1998, the Internet Corporation for Assigned Names and Numbers (ICANN) is a private multistakeholder technical organization that oversees critical internet infrastructure. This project has theoretical and empirical goals regarding ICANN. Theoretically, this paper will present a framework through which domain name allocation and assignment, a task conducted by ICANN, becomes a public policy problem. Empirically, this paper will use two historical case studies to investigate how the multistakeholder model of governance functions at ICANN regarding political issues of domain name allocation. Through both case studies, this paper finds that states tend to have an outsized role in the ICANN multistakeholder model. ICANN tends to defer to the wishes of states, even if doing so constitutes a violation of its own rules and procedures. Despite this, accountability mechanisms can be used to prompt ICANN to overturn its initial decisions and adhere to its established rules and procedures, thereby reducing the influence of states in the multistakeholder process.

Introduction

How is domain name allocation a political challenge, and how does ICANN, in turn, navigate political disputes over domain names? ICANN is a technical organization that governs the Domain Name System (DNS). The organization, which is composed of technologists responsible for critical internet infrastructure, faces challenges that are political rather than technical in nature. ICANN is also a testing ground for the multistakeholder model, a relatively new phenomenon in global governance that is becoming a subject of greater study in the literature. This paper will be an investigation into one particular area over which ICANN governs, and how it governs it. This investigation will contribute to our understanding of how issues that appear to be technical become political, and how the multistakeholder model functions in ICANN through an in-depth analysis of two historical case studies.

As the trend of globalization links countries together, global governance has emerged as a necessary tool to manage a panoply of cross-border issues. Global governance has often taken

the form of international organization (IOs) designed to govern technical, non-political tasks, and maintain the day to day functioning of international life. As global trade, communication, health, and security have become more tightly interconnected, there has been a remarkable proliferation of organizations that govern the often taken for granted processes enabling the internet, global financial system, epidemic prevention, and so on. Nevertheless, jobs that on the surface appear technical are not necessarily apolitical. The task of maintaining the DNS is one of these cases.

The internet has become increasingly important in our daily lives but understanding of internet governance has lagged. Many in the public are not aware of *who* makes decisions regarding the internet and *how* they make them. This paper, inspired in part as a way to improve my own understanding of these issues, is an investigation into one specific area of internet governance.

The paper will consist of two parts: a framing of the DNS as a political issue followed by the case studies which will assess the functioning of the multistakeholder model when deciding political issues. I identify three broad categories of political challenges or implications: creating gatekeepers, conferring legitimacy, and determining legitimacy. The following section conceptualizes each in greater detail. I then present historical case studies of the .xxx and .amazon domain names. These cases were high profile disputes over domain name allocation at ICANN that centered around the political, not technical, implications of ICANN's role as the DNS overseer. The cases present evidence that ICANN, despite its status as a private organization (especially since its release from U.S. oversight in 2016), has deferred to the wishes of states over other stakeholders, in violation of its own established rules and procedures. Nevertheless, accountability mechanisms have been effective in influencing ICANN to reverse

these decisions and comply with established practices by making ICANN decide between political expediency and its reputation as a technocratic, rules-based global governor.

Literature Review

While often styled as a technical organization, as one of the hubs of internet governance ICANN often faces issues that are non-technical in nature, but instead political.¹ This literature review will lay the necessary groundwork for investigating how ICANN makes decisions in particular cases of non-technical policies. The first section will discuss multistakeholderism and the ICANN decision-making process. Next, the review will provide an explanation of the DNS and how technical and political issues converge in ICANN's governance sphere. Finally, this review will sketch out the types of political implications resulting from ICANN decisions.

What is ICANN's Decision-making Process?

Any investigation of decision making at ICANN must first begin by addressing multistakeholderism. The multistakeholder model, while not exclusive to internet governance, has become nearly synonymous with it. Scholars and analysts alike have described the realm of internet governance, and ICANN's structure in particular, as primarily defined by a multistakeholder approach to technical and public policy problems.² It is core to ICANN's identity. Its institutionalization within ICANN was a requirement for the United States government's relinquishment of its authority over the DNS in 2016.³ But what exactly is the multistakeholder model, and how does it work at ICANN?

¹ Harris Gleckman *Multistakeholder Governance and Democracy* (New York, NY: Routledge, 2018).

² Slavka Antonova, *Powerscape of Internet Governance – How was Global Multistakeholderism Invented in ICANN?* (Saarbrücken, Germany: VDM Verlag, 2008)

³ National Telecommunications and Information Administration (NTIA), *NTIA Announces Intent to Transition Key Internet Domain Functions*, Office of Public Affairs, March 14, 2014.

For the purpose of this paper, I will use the following commonly accepted definition of multistakeholderism: two or more classes of actors engaged in a common governance enterprise concerning issues they regard in nature and characterized by polyarchic authority relations constituted by procedural rules.⁴ This allows for variation in multistakeholder systems such as among the varieties of actors involved, and the authority relations among them. This high level of variation has led some to refer to it as an inchoate, albeit distinct, institution.⁵ Nevertheless, multistakeholder stands in stark contrast to multilateralism, which can be defined as the practice of coordinating national policies in groups of three or more states, through ad hoc arrangements or by means of institutions.⁶ The important distinction for this study is that multistakeholderism incorporates a variety of actors rather than limiting its scope to only include states. These actors can certainly include states, but also involve international organizations, firms, and civil-society groups.⁷

Multistakeholderism is commonly used to describe internet governance because of its diffuse nature. The internet is a network of pieces owned and governed by a panoply of different states, private entities, and organizations with no central governor.⁸ ICANN, which oversees the critical infrastructure of the DNS, is one of the many pieces of the internet regime complex. While the field of internet governance is characterized as being multistakeholder because it is piecemeal, ICANN is deliberately structured in a multistakeholder model as it incorporates many

⁴ Mark Raymond and Laura DeNardis, "Multistakeholderism: anatomy of an inchoate global institution," *International Theory*, 7, no. 3 (2015): 573.

⁵ Ibid.

⁶ Robert Keohane, "Multilateralism: An Agenda for Research," *International Journal* 45 (Autumn 1990): 731; John Gerard Ruggie, "Multilateralism: The Anatomy of an Institution," *International Organization* 46, no. 3 (Summer, 1992), 571.

⁷ Raymond and DeNardis, 576.

⁸ Joseph S. Nye, "The Regime Complex for Managing Global Cyber Activities," *Global Commission on Internet Governance Paper Series*, no. 1 (May, 2014), 5.

actors within its decision-making structure. In ICANN's *Beginner's Guide to Participating in ICANN*, the following definition for their process is provided:

At the heart of ICANN's policymaking is what is called a "multistakeholder model." This decentralized governance model places individuals, industry, non-commercial interests and government on an equal level. Unlike more traditional, top-down governance models, where governments make policy decisions, the multistakeholder approach used by ICANN allows for community-based consensus-driven policymaking. The idea is that Internet governance should mimic the structure of the Internet itself – borderless and open to all.⁹

Multistakeholderism is not new to ICANN – it is part of the organization's DNA. The United States government originally formed ICANN as a non-profit corporation in California in 1998, planting the seeds for privatization and multistakeholderism from the very beginning. When announcing its plan to release its contractual hold on ICANN in 2014, the U.S. Department of Commerce stipulated that as a condition for ICANN's independence, it would need to create an effective framework to represent the multistakeholder community.¹⁰ The exact organizational structure and decision making process of ICANN is complex, but I will briefly summarize it to demonstrate how the multistakeholder model is practiced, at least on paper, at ICANN.

⁹ Internet Corporation for Assigned Names and Numbers (ICANN), *Beginner's Guide to Participating in ICANN*, October 2012 Page 2, <https://www.icann.org/resources/pages/beginners-guides-2012-03-06-en>.

¹⁰ NTIA, *NTIA Announces Intent*.

The ICANN Board of Directors is the top decision-making body at ICANN, and approves policy recommendations and new domain name allocations.¹¹ The Board is composed of voting and non-voting members representing different stakeholder communities within the internet governance sphere. Non-voting members represent the Governmental Advisory Committee (GAC), the Internet Engineering Task Force, the Technical Liaison Group, the Root Server Advisory Committee, and the Security and Stability Advisory Committee. The voting members include the President and CEO of ICANN, representatives of the supporting organizations that develop and make policy recommendations to the board, and 8 members selected by the ICANN nominating committee.

The ICANN Board composition is an attempt to bring a wide range of stakeholder voices into the ICANN decision-making process and foster community engagement. There has been considerable debate over the efficacy of this model, however. Two primary issues are potential industry capture and state influence. The concern over state influence comes in two forms: the general issue of state power at ICANN and the specific role of the United States. Within ICANN, states are represented on the GAC, which is in-turn represented by a non-voting member of the Board of Directors. Members of the GAC are able to lodge individual complaints with the Board, as can GAC as a whole. While the ICANN bylaws stipulate that the Board must take GAC advice into account, the Board may choose to ignore GAC recommendations. Therefore, states have little formal authority to shape ICANN responses to technical or political issues, but this paper will investigate how they may nevertheless shape ICANN policy.

The second concern for ICANN's multistakeholder decision-making process is the outsized role of the United States. As mentioned above, ICANN was initially founded by the United States government, and the Department of Commerce maintained control over the

¹¹ ICANN, *Beginner's Guide*, 2.

Internet Assigned Numbers Authority (IANA), which managed the DNS root zone. Due to considerable international criticism of the U.S. monopoly on the DNS, the IANA functions were transferred to ICANN.¹² It is unclear how much the Department of Commerce exercised this authority, but its direct involvement in the IANA functions was likely minimal.¹³ However, one could still point to the fact that ICANN is headquartered in the United States as a form of soft U.S. control.

Finally, many have raised concerns over regulatory capture of ICANN that stands in the way of a truly multistakeholder governance structure. The ICANN bylaws stipulate that ICANN Board members must serve the interests of ICANN rather than the entities which selected them, their employers, or any other organizations or constituencies.¹⁴ Despite this stipulation, the ICANN Board has been criticized for lack of transparency and accountability, conflicts of interest, and a club-like atmosphere.¹⁵ A common criticism among the ICANN community of the Board, and the organization generally, is the outsized role of the registry industry.¹⁶ Many members of the ICANN Board are employed by internet registries, and many participants at ICANN meetings are industry representatives. This line of criticism usually contends that ICANN policies are beholden to the wishes of the registry community, which would have bearing on how ICANN determines political issues.

In summary, multistakeholderism is the involvement of different categories of actors into the decision-making process. ICANN has attempted to implement a multistakeholder approach to decision-making. ICANN pursues a bottom-up approach to policy changes with the ICANN

¹² Kal Raustiala, "Governing the Internet," *American Journal of International Law* 110, no. 3 (July 2016): 491-503.

¹³ *Ibid.*

¹⁴ ICANN, *Bylaws*, November 28, 2019, Sect. 7.7.

¹⁵ ICANN, *Summary: Conflicts of Interest and Ethics Practice Review*, May 13, 2013, <https://www.icann.org/en/system/files/files/summary-ethics-review-13may13-en.pdf>

¹⁶ Kevin Ohashi, "The Case for Regulatory Capture at ICANN," *Review Signal*, June 24, 2019, <https://reviewsignal.com/blog/2019/06/24/the-case-for-regulatory-capture-at-icann/>

Board having final decision-making power over public policy issues and domain name allocation. The ICANN Board is designed to be inclusive of different stakeholders and representative of the internet community. Despite this, ICANN has often been criticized for acting in the interests of states or certain industries over which ICANN is supposed to regulate. This paper will investigate how stakeholders achieved success or failure in pursuing their aims within ICANN's multistakeholder model.

What Does ICANN Decide?

ICANN's role within internet governance is primarily in overseeing the DNS. This includes the day to day technical maintenance of internet protocols and infrastructure, as well as political issues that will be outlined later in this paper. For now, I will provide a preliminary explanation of what the DNS is, how it is structured, and how political challenges are inherent in it. This will be necessary to contextualize the case studies that will be investigated in this paper.

The DNS is the core infrastructure of the internet. It functions as the phone book of the internet. It matches domain names, which are the website names that people know and enter into web browsers, to IP addresses, which are strings of numbers that computers use to keep track of each other. Every single device connected to the internet has a unique IP address, such as 52.31.245.197 (the IP address for the amazon.com server). Because of the difficulty of using strings of random numbers to navigate the internet, we give names to specific strings. 52.31.245.197 becomes amazon.com.

Most domain names are comprised of two parts: the domain name and the Top-Level Domain (TLD). In our example of amazon.com, amazon would be the domain name, and .com would be the top-level domain. Together they form the root domain of amazon.com. Many will

have encountered websites with .edu, .org, .gov, or various other endings in them. This means that amazon.com and amazon.org could be two different websites because they are housed in two different TLDs, but they could also be registered to the same IP address if they are both owned by the same entity. To return to the phonebook analogy, the domain name is the house number, and the TLD is the street name.

ICANN manages the DNS root zone which entails the assignment of domain names. ICANN delegates this task to many registrars who maintain a specific TLD file. Most notable of which would be the Virginia based firm, Verisign, which manages the .com registry under an agreement with ICANN. Verisign then sells swaths of .com domain names to registrars such as GoDaddy (the largest on the market), who then sell domain names to individuals looking to register a website. While the DNS business is small by tech industry standards, some estimate that the domain business is worth three to five billion USD yearly.¹⁷

In summary, the domain name is the basic unit of real estate on the internet. Each domain name is unique and represents a particular space on the internet. Because each domain name is unique and exclusive, there is inherent scarcity in the DNS. There is an infinite number of unique strings that one could come up with to put in front of .com or .edu, but there are finite domain names that people want to use. Therein lies an important issue of governance on the internet that ICANN must grapple with: who gets what domain name?

How Is the DNS a Political Issue?

It takes technical know-how to administer the hundreds of millions of domain names, match them to their respective IP addresses, and so on, but managing the DNS requires

¹⁷ John Levine, "How Big Is the Domain Business?" *CircleID*, August 13, 2018. http://www.circleid.com/posts/20180813_how_big_is_the_domain_business/

navigating important economic and political challenges as well. Domain name assignment is a public policy issue because domain names are not only valuable, they are essentially property rights and as such, their owners have exclusive rights to their use. ICANN therefore determines who receives the value of individual domain names. They have economic and political value in that they determine who gets a voice, who gets represented, and who gets branded on the internet.¹⁸ The value of brand domain names, for instance, is obvious. Nike.com or facebook.com are important for the marketing of their respective owners.

When doling out domain names, ICANN is forced to adjudicate who is the legitimate owner of the name. On the political end of the spectrum, given the competing claims for legitimacy by the People's Republic of China and Republic of China (Taiwan), who gets to own china.com? Additionally, every country receives a unique country code TLD (ccTLD) to administer. While the .uk code is obviously administered by the United Kingdom, who should get to administer .cn, the ccTLD for China? Is the creation of the .tw ccTLD not a tacit act legitimizing Taiwan just as the .ps ccTLD for Palestine is a recognition of the State of Palestine? Who represents communities on the internet? Who can claim to represent all of Islam with islam.com or all of the worldwide gay community with gay.com? Beyond the technical task of creating and registering these TLDs, the determination of which are created and who maintains them are fundamentally political questions.

In 2011, these questions became even more pressing when ICANN announced the rollout of a new generic TLD (gTLD) program. In the early days of the internet, the DNS consisted of 7 gTLDs. These gTLDs, such as .com, .edu, .gov, and .org remain the most widely used, but ICANN has slowly added more gTLDs to the DNS, such as .biz and .info, and by 2011, there were some 22 gTLDs. The addition of each new gTLD opened a new "street" on the internet

¹⁸ Kal Raustiala, *Governing the Internet*, 493.

under which domain names could be registered. Additionally, with each new gTLD, some entity was given the license to administer the registry. ICANN's 2011 gTLD expansion program allowed anybody (with sufficient funds and technical capacity) to apply for a new gTLD.¹⁹ Instead of only 22 gTLDs, there could be an infinite amount of new gTLDs. Not only would there be a potentially infinite supply of amazon.(insert here), but that Amazon could register for a .amazon TLD, where then Amazon Corporation could manage the .amazon registry (a case study which will be analyzed in depth later).

Competition would no longer be limited to domain names, but TLDs as well. Eight years after the gTLD expansion project began, it has proved to be immaterial in changing the landscape of the internet given the infinitesimal traffic to websites outside of the traditional TLDs, but that was not the expectation in 2011.²⁰ The project, for many, had high stakes. Brands desired their own TLD either to host many services within one brand, such as book.amazon or shop.amazon, or to prevent their brand's gTLD from being snatched away by somebody else. It was also important for communities. Anybody who administered the .gay or .islam registries could, in theory, determine what content could be shown under that TLD. Essentially, the program created gatekeepers. Who should those gatekeepers be was a question that ICANN was forced to grapple with. While the results may be moot given the overwhelming dominance of the traditional registries such as .com and inability of new TLDs to gain any significant market share, it is nonetheless indicative of how the internet can be a political battleground in which ICANN must determine how to allocate scarce resources, establish gatekeepers, and determine the legitimacy of brands, countries, and communities.

¹⁹ The evaluation fee for new gTLD applications was set at \$185,000, which led some to complain that the introduction of gTLDs was a cash grab attempt by the organization.

²⁰ Andrew Allemann, "New TLDs, Five Years In," Domain Name Wire, February 28, 2019, <https://domainnamewire.com/2019/02/28/new-tlds-five-years-in/>.

Gatekeeping

One way in which ICANN domain name assignment is political is through the process of creating gatekeepers for spaces on the internet. Gatekeeping has been the subject of significant study in the social sciences and can have very specific definitions depending on its context, but for the purpose of this paper, I will use a common understanding of the term: the activity of controlling, and usually limiting, general access to something.

ICANN is a gatekeeper itself considering that it has a monopoly on the DNS, but ICANN also *creates* gatekeepers through the process of domain name allocation and assignment. ICANN does not manage each TLD registry but instead delegates the responsibility to firms or organizations. For instance, ICANN does not run the day to day filing for new .com domain names. The process of enrolling new .com names into the .com registry falls to Verisign. These registrars determine who or what gets to be represented on their plot of the internet. In essence, ICANN creates a hierarchy of internet representation decision-making, and then elevates organizations to positions of relative authority over others. I will stress that who gets to occupy these positions of power over swaths of the internet and the degree of autonomy they are allowed to exercise in their management have profound economic, social, and political implications. Registrars, if given full latitude, would have a method to enact a form of censorship on the internet by denying individuals the ability to set up shop within their TLD space.

The concern over potential throttling of representation by TLD registrars has been a previous concern in ICANN discussion on certain TLD agreements in the past. For instance, when a private firm in Turkey applied for the rights to operate the .islam gTLD, ICANN put the application on hold due to concerns of the private entity to adequately represent the diversity

within the worldwide Islamic community given the range of sectarian and regional divides.²¹ I will not assess this case in greater detail, but it serves as an indication of registrars' ability to determine the kind of content displayed within their digital tract of land.

TLD registrars operate tracts of the internet and set criteria for domain name registration under their TLDs. Through this, registrars play a gatekeeping role by controlling access to representation under their TLD. Therefore, ICANN elevates individuals or organizations to key gatekeeper roles in the domain name hierarchy by creating new TLDs and evaluating registry applications.

Conferring Legitimacy

Another way in which ICANN's task of creating new TLDs and delegating registry agreements is inherently political is through the legitimacy that is attached to a domain name. Ownership of a particular domain name, or the creation of TLDs, confers legitimacy on communities, individuals, brands, and organizations by deeming them worthy of space on the internet. Whether or not individuals or communities deserve the right to representation on the internet, much less the ability to administrate it, becomes a political question in domain name allocation. The act of allocating a domain name address can therefore be a political statement, and the process of doing so can become a political battleground.

The best example of domain name allocation as a legitimizing act is through ICANN community TLDs. Community TLDs were developed during ICANN's TLD expansion project in 2011 as a way for communities to operate registries and secure representation on the internet. ICANN became involved in determining who were the legitimate representatives of communities, which will be discussed in the next section, but also in recognizing and affirming

²¹ Governmental Advisory Committee, *GAC Communiqué*, Beijing, People's Republic of China, April 11, 2013.

the existence of communities - sometimes at odds with the interests of member states. An example would be the multiple applications for the .gay community TLD. The .gay case had two political issues at play: determining the right applicant to delegate the administration of the TLD to, and whether or not to give the global LGBTQ community the right to a space on the internet given protests from GAC members such as Saudi Arabia. The latter is an issue of conferring legitimacy and recognition through domain name allocation, especially for communities that may lack recognition from certain states.

Other examples of TLD determinations with political implications are the country-code TLDs of .ps for the State of Palestine and .tw for Taiwan. Given that every state has a unique country-code TLD, the existence of unique TLDs for states not universally recognized is not only a technical necessity, but also an implicit political statement. While it would be a stretch to call the creation of .ps support for the State of Palestine, it nevertheless gives Palestine yet another constitutive element of a state.

Domain names, whether it be a simple website or potentially a TLD, have become a constitutive element of brands, businesses, communities, and states. Allocation of internet property rights is therefore a legitimizing act by ICANN, as well as an opportunity for political battles to arise over recognition of otherwise marginalized groups.

Determining Legitimacy

In addition to creating gatekeepers and legitimizing communities through allocation of domain names, ICANN must often determine the legitimacy of actors. When multiple applicants claim the same TLD string, ICANN must determine which actor ought to have sole ownership of the string. This issue is closely tied to the practice of cyber-squatting; individuals buy domain

names that use the names of existing businesses with the intent to sell the names for a profit to those businesses.²² Consequently, much of the process of determining legitimacy manifests itself in trademark adjudication which became especially necessary after the 2011 TLD expansion project.²³ While ICANN handles a large quantity of trademark dispute cases, I consider this more of a legal issue than political issue.

Beyond trademark disputes, many string contentions have no clear-cut solution. Multiple actors with legitimate ties to the string in question may file for applications with ICANN. In some cases, the dispute is resolved by the parties with contending applications going to auction as happened with .gay. While a simple remedy, this process is not apolitical or neutral – it privileges actors who have the wherewithal to outbid their opponent. Other times, ICANN may try to get the disputing parties to come to a negotiated settlement, as happened in the .amazon case.

In certain cases, multiple parties may not have contending applications, but ICANN must determine whether or not the new string should be created based on the effects it would have for third parties. The .amazon dispute, which will be investigated in a later section of this paper, is a case of this. While Amazon Corporation had an outstanding application for the .amazon TLD, GAC member states opposed the creation of the string because of protests from the Amazon Cooperation Treaty Organization (ACTO), and its reference to a region of South America. Who was the rightful claimant of .amazon? By deciding which would have the right to administer the .amazon TLD, and by creating the string under the Amazon Corporation’s application in the first

²² “What is the Definition of Cybersquatting?” Winston and Strawn LLP, <https://www.winston.com/en/legal-glossary/cybersquatting.html>.

²³ “Three Ways to Protect Your Trademark During the Top-Level Domain Expansion,” ICANN, <https://www.icann.org/news/blog/three-ways-to-protect-your-trademark-during-the-top-level-domain-expansion>.

place, ICANN was engaging in determining which actor was the legitimate representative of, or had the most legitimate claims to, the amazon name on the internet.

Determining legitimacy often overlaps with creating gatekeepers and conferring legitimacy, but they are analytically distinct. Indeed, ICANN elevated Amazon Corporation to a gatekeeping position while determining that they were the legitimate claimant of .amazon. Gatekeeping is more structural however – ICANN creates and manipulates hierarchies. Establishing gatekeepers is also a product of ICANN decisions. Determining legitimacy is a challenge in making a decision rather than an outcome of them. Conferring legitimacy is less about determining which actor is the legitimate representative of a TLD string, but instead about whether an actor is deserving of representation through a TLD string in the first place.

Methods

To investigate ICANN's decision-making in cases of political rather than technical questions, I have conducted multiple historical case studies. The methods used in this paper are largely inspired by previous research on IO behavior, most notably work by Barnett and Finnemore investigating organizational culture's effects on organizational behavior.²⁴

Case Selection

I am investigating how ICANN resolves political rather than technical challenges in the DNS. The cases of ICANN decision making that were selected for historical analysis were chosen by multiple criteria. In this paper, a case refers to a single policy issue, and the decisions and discussions made pertaining to it. For example, the .amazon case, which is investigated in

²⁴ Michael Barnett and Martha Finnemore, *Rules for The World: International Organizations in Global Politics* (Ithaca: Cornell University Press: 2004)

this paper, covers the seven year debate over the .amazon gTLD. It begins with the submission of the gTLD request and follows the policy through its final resolution. Therefore, when speaking of case studies, this paper assesses how multiple issues unfolded and were resolved at ICANN.

The first criterion used to select cases was the nature of the policy in question. ICANN handles a wide range of technical issues, but this paper is concerned with how ICANN handles non-technical issues. To clarify, a case that would not pass this criterion would be ICANN's IPv6 initiative. IPv6, as described by ICANN, is "the protocol that will support the next generation of the internet."²⁵ It is the protocol that provides identification for computers operating across the internet and routes traffic throughout the network.²⁶ While the implementation of this protocol is important, it is a purely technical matter. To qualify as a case to study in this paper, the case must pertain to a non-technical policy output by ICANN.

The next criterion, which was more of a heuristic in selecting cases, was the level of controversy each case generated. This criterion was used for multiple reasons. The first is that controversial decisions often generate the most reportage, and therefore have the most readily available information with which to construct the historical case study. Additionally, this paper is not concerned with the fringes of ICANN behavior and highly controversial issues are often the most salient examples of clearly opposed stakeholders fighting for important purposes. Controversy in this sense should not be confused with cases in which ICANN was condemned or its decision-making was questioned, but in which there simply wasn't consensus on the question which ICANN had to decide on.

²⁵ "ICANN's IPv6 Initiative." ICANN.org. Internet Corporation for Assigned Names and Numbers, <https://www.icann.org/resources/pages/ipv6-initiative-2017-02-28-en>.

²⁶ Keith Shaw and Josh Fruhlinger, "What is IPv6, and Why Aren't We There Yet?" Networkworld.com, last modified August 26, 2020, <https://www.networkworld.com/article/3254575/what-is-ipv6-and-why-aren-t-we-there-yet.html>.

The third consideration in selecting cases was the desire to be representative of ICANN across the time period of its existence. While I was not able to capture controversies across the entire span of 1998 to 2020, the selected cases cover most of ICANN's existence. Each case may be a snapshot, but together they will help to provide a view of ICANN behavior over a long time. What may hold true in 2012 may not hold true in 2013, but hopefully we can see dominant trends that transcend the boundaries of the cases.

Summary of Cases:

The analysis will examine two historical case studies. They are summarized below in chronological order:

1. .xxx TLD (2000-2011): One of the longest running and most intense controversies at ICANN was over the creation of a specific .xxx TLD, which would create an online home for the adult entertainment industry. ICANN made several policy reversals throughout the period as the .xxx domain faced opposition from conservative politicians and civil society especially in the United States, and ironically, from the adult entertainment industry itself. In 2011, ICANN finalized the creation of the .xxx TLD which operates to this day.
2. .amazon TLD (2012-2019): In 2012, Amazon Corporation applied for the .amazon TLD. The application faced opposition from the Governmental Advisory Committee (GAC) and the Amazon Cooperation Treaty Organization. After a long process of deliberations, review, and attempts to reach a negotiated settlement, ICANN approved the .amazon TLD application in mid-2019.

Data Collection

I will develop the historical chronologies and stakeholder interests in the studies using information in documents sourced from ICANN, public comments provided by relevant stakeholders in each case, and journalistic accounts. Journalistic accounts provide a broad overview of chronology while ICANN documents delve into specifics of processes and justifications used by ICANN. Many stakeholders publish public comments on ICANN policies, and will be used to determine the interests of each stakeholder at the outset of the case and their reactions to developments.

Data Analysis

Once constructing the historical timelines, I will analyze each case for what kind of power stakeholders used to achieve their preferred policy outcomes and how ICANN justified its decisions. While the sample size is admittedly small, in part due to space constraints, these case studies will help us identify a common theme of accountability, as well as the decision making process more generally.

Case Studies

The following section will consist of in-depth case studies of ICANN decision-making regarding the two TLDs briefly outlined above. Each case will identify relevant stakeholders, competing interests, a brief chronology, and a discussion of the final policy outcomes and the types of power wielded by stakeholders within the multistakeholder process.

.xxx TLD (2000-2011)

The introduction of the .xxx TLD for the adult entertainment industry remains one of the most contentious issues in ICANN's history. ICANN's published rationale for the approval of the .xxx registry agreement claimed in 2011 that, "this single issue generated higher volumes of community content than nearly any other issue ever faced within ICANN."²⁷ When a 45-day public comment period was held on the matter in 2010, ICANN received over 13,000 comments, the highest number of comments ever received on a single topic at that time.²⁸ Such a highly controversial issue, and one that generated a high degree of community engagement, is a perfect candidate for investigating the functioning of ICANN's multistakeholder process.

In addition to being a landmark dispute in ICANN's history, the .xxx TLD was a political, public policy issue rather than a purely technical affair. It therefore fulfills the second criteria of case selection. The main political issue at play is the conferral of legitimacy. There are other themes that will be discussed, but whether or not ICANN should give space to content deemed offensive by many became a concern central to the policymaking process. A second issue at play was the gatekeeping potential of the .xxx TLD. Whether the ICM registry would be representative of the adult entertainment industry was one question, but the primary gatekeeping concern was not that the applicant for the TLD would restrict content, but that content housed in a separate TLD would be at greater risk of censorship because of the relative ease of cordoning off entire TLDs.

The .xxx TLD debate had a wide variety of interested parties. The TLD application was originally submitted by ICM registry in 2000, which claimed to be representing the interests of "responsible online adult-entertainment industry."²⁹ However, throughout the policymaking process differences emerged within the industry. ICM wanted to be granted the rights to operate

²⁷ ICANN, *Rationale for Approving Registry Agreement with ICM's for .XXX sTLD*. March 18, 2011. 1.

²⁸ *Ibid.*, 6.

²⁹ *Ibid.*, 2

the .xxx domain so as to protect against copyright infringement and other illegal activity while enforcing responsible adult entertainment.³⁰ Concerns within the industry eventually arose regarding the potential for content housed in the .xxx TLD to be censored more easily than if it were on .com domains. Civil society also became an interested party to the dispute. Conservative advocacy groups, especially the Family Research Council in the United States, opposed the creation of the .xxx domain because of concerns “that the domain would ascribe what it believed to be unwarranted legitimacy to the porn industry.”³¹ There was some support from other groups, however, that believed that corralling pornographic content onto the .xxx TLD would be positive in that it would allow parents to more easily block inappropriate content for their children.³² Finally, governments were generally neutral or opposed to the development of the .xxx TLD. The GAC raised several public policy concerns under the advice of member states such as the United States, Canada, and Brazil--likely as a result of conservative interest group lobbying. In summary, there was clear contestation of what path ICANN ought to pursue regarding the approval of the .xxx TLD. Advocates of the TLD believed that it would allow for responsible use of adult entertainment, while opponents either feared censorship of their content, or its legitimization of the adult entertainment industry.

Ultimately, the advocates of the .xxx TLD won, and ICM has operated it since 2011. The application for TLD, while finally approved, nevertheless took some 11 years to get there, and had significant policy limitations imposed upon it with the final approval by the ICANN Board. I will now describe and evaluate this 11-year policymaking process.

³⁰ Joi Ito, “It’s OK That Amazon Will (Likely) Get the .amazon Domain,” *Wired*, May 25, 2019, <https://www.wired.com/story/its-ok-that-amazon-will-likely-get-amazon-domain/>

³¹ Laura DeNardis, *The Global War for Internet Governance* (New Haven, CT: Yale University Press, 2014), 59.

³² *Ibid.*

Chronology

ICM Registry originally proposed .xxx as a generic TLD in an ICANN Proof of Concept Round for the expansion of TLDs in 2000, but the initial proposal was rejected by ICANN's evaluation team due to the "controversy surrounding it and the poor definition of the hope for benefits of .xxx."³³ ICM followed this with a request for reevaluation, but nothing came of the original gTLD application in 2000. Only in early 2004, following ICANN's request for new sTLD proposals, was the .xxx TLD issue brought back to the table, albeit under a new application.³⁴ After an initial failure to meet the criteria for a sTLD, ICM Registry revised their application, and the approval for the TLD moved on to the ICANN Board. In June, 2005, the ICANN Board had authorized the CEO, Paul Twomey, and the General Counsel, Jon Jeffrey, to begin negotiating the registry agreement with ICM for the delegation of the .xxx sTLD. Months later, on September 5th, the proposed agreement was submitted to the Board, and as per ICANN procedure, was made open to public comments.

During the public comment period and continued contract negotiations, opposition to the ICM application emerged from multiple sectors. Conservative religious groups in the United States submitted many of the comments against the .xxx domain. Furthermore, a letter submitted to ICANN by Michael Gallagher, the Commerce Department's assistant secretary for communications and information, requested a delay in the creation of the sTLD given the nearly six thousand letters the Department of Commerce had received from those concerned about the impacts of internet pornography.³⁵ In August of 2005, the Free Speech Coalition, a trade association of over three thousand members of the adult entertainment industry, submitted a

³³ ICANN, *Report on TLD Applications: Application of the August 15 Criteria to Each Category or Group*, November 9, 2000.

³⁴ sTLDs, or Sponsored Top Level Domains, are a subset of Generic Top Level Domains. sTLDs have a sponsor responsible for developing policies and ensure transparency in the functioning of the registry.

³⁵ DeNardis, *Global War*, 59.

letter to the Chair of the ICANN Board opposing the .xxx sTLD and ICM's claim to represent the industry as a whole.³⁶ Finally, opposition came from individual GAC member states and the GAC itself. On March 28, 2006, the Wellington Communique, submitted by the GAC, outlined public policy concerns regarding the creation of the .xxx sTLD and mentioned that "several members of the GAC are emphatically opposed from a public policy perspective to the introduction of a .xxx sTLD."³⁷ When a revised registry agreement was published in 2007, the GAC produced the Lisbon Communique, reiterating its opposition to the .xxx sTLD.

After the extensive debate within ICANN, many thousands of public comments in opposition to the .xxx sTLD, and two GAC communiqués highlighting public policy concerns, the ICANN Board rejected ICM's application for the .xxx sTLD on March 30, 2007. ICANN's official rationale for rejecting the application was mostly concerned with its failure to meet sponsored community criteria and the public policy issues raised by the public comment period such as law enforcement concerns.³⁸ Despite these justifications, the common consensus --and what seems readily apparent -- is that ICANN bowed to political pressure from conservative civil society by way of GAC member states such as the United States.

Undeterred, ICM lodged a request for an independent review of the Board's action as per the ICANN bylaws. ICM's request alleged that among other wrongdoings, ICANN "improperly considered 'public policy' issues and such consideration goes beyond the technical function of ICANN."³⁹ On February 19, The Independent Review Panel (IRP) issued its advisory declaration that ICANN had not acted in a manner that was "consistent with the application of neutral, objective and fair documented policy."⁴⁰ While the panel declaration was in no way binding, the

³⁶ Michelle Freridge to Vint Cerf, August 30, 2005, <https://www.icann.org/resources/pages/freridge-to-cerf-2005-08-30-en>

³⁷ Governmental Advisory Committee, *GAC Communique*, Wellington, New Zealand, March 28, 2006.

³⁸ ICANN, *Rationale*, 4.

³⁹ *Ibid.*, 4-5.

⁴⁰ *Ibid.*, 6.

ICANN Board was required by its bylaws to consider the decision, and by the end of March 2010, the ICANN Board had been presented with its options regarding the declaration.

During the 45 day public comment period regarding ICANN's next steps on the creation of the .xxx TLD, over 13,000 comments were submitted. A summary of the submitted comments was presented to the board and provided the following analysis:

In overall terms, there was a clear split between those who wish the Board to accept all findings of the IRP Declaration ("option 1") and those who want the Board to adopt the Declaration's dissenting opinion ("option 3"). No respondents spoke in favor of "option 2" where the Board accepted in part and rejected in part the Declaration.

The main argument put forward by those supporting Option 1 was that ICANN has a duty to follow its independent review process and its credibility will be damaged if it were to reject the result of that process.

The main argument put forward by those supporting Option 3 was two-fold: first, that pornography itself is damaging and since the dot-xxx top-level domain is designed specifically for this sort of content, the Board should reject its creation; and second, that the dot-xxx applicant, ICM Registry, had not met the necessary sponsorship requirements for approval.⁴¹

The summary and analysis of the comments provides more insights on the breakdown and weighting of comments, but I will refrain from going into this due to space constraints.

⁴¹ ICM Registry, "A Summary and Analyses of ICANN's Public Comment Period on Dot-XXX," CircleID, May 18, 2010, http://www.circleid.com/posts/a_summary_and_analysis_of_icanns_public_comment_period_on_dot_xxx.

Suffice it to say that there was significant controversy, and that many parties directly involved in the ICANN community wished to see the issue brought to a final resolution.

Following the comment period, the ICANN Board accepted the IRP's findings that ICM met the required criteria for an sTLD. The Board commenced with the negotiation of a new registry agreement. During yet another mandatory comment period, the GAC advised the ICANN Board that there is no active support within the GAC for the introduction of a .xxx TLD. Despite this lack of GAC support, ICANN finally approved the ICM application for the .xxx TLD on March 18, 2011.

Discussion

The .xxx case brings to the forefront the struggle between politics and procedure. Procedural methods and political pressure seemed to be important for the ICANN Board throughout the process of deciding whether to accept ICM's application for the .xxx sTLD. In 2007, observers would have seen ICANN's rejection of the registry agreement as a win for states and conservative civil society. Christian groups launched large campaigns that effectively lobbied powerful states such as the United States to oppose the creation of .xxx in addition to lobbying directly to ICANN. Despite the GAC's lack of veto over ICANN Board decisions, Board members were likely concerned about potential backlash from states that would result in a rejection of their policy advice.

At the end of the day though, .xxx exists. Why did ICANN, despite a highly mobilized civil society and industry opposition, and opposition from states, finally approve the creation of the TLD? Anti-.xxx stakeholders did not have a monopoly on the public comment periods, and ICM was not the only actor in favor of the creation of .xxx, but the pivotal factor was

accountability. By utilizing the IRP, ICM effectively put the spotlight on the ICANN Board and made them choose between legitimacy and political expediency. When ICANN made the 2007 decision to reject ICM's application, it was not publicized as a violation of ICANN's procedures. When the panel declared that it was, the reputational costs of rejecting .xxx and maintaining a position in violation of established rules and procedures rose significantly.

Having well run civil society campaigns and the backing of important states was not enough to sink ICM's bid for the .xxx domain. To directly answer the research question of how ICANN makes decisions on political issues -- this case would indicate that ICANN will adhere to established rules and procedures instead of bowing to state pressure insofar as its legitimacy as a fair global governor is at stake. To this end of shining a spotlight on potential procedural injustices, accountability mechanisms such as the IRP can be helpful. Moreover, despite the lack of consensus, this is an example of the multistakeholder model working. The anti-.xxx coalition was not all encompassing. More importantly, the decision-making process involved a multitude of actors, and states didn't have a monopoly on the decision-making. To be clear, ICANN's initial failure to adhere to its rules and procedures is concerning, but ICANN nevertheless rectified this by accepting ICM's application in 2011.

.amazon TLD (2012-2019)

The 7 year dispute over the allocation of the .amazon TLD is the more recent spiritual successor to the .xxx case. It has been one of the most high-profile disputes following the rollout of the gTLD expansion project in 2011 and has been an important test for ICANN's decision-making process. The case received less direct community engagement than the .xxx

TLD did, but it nevertheless captivated the interest of the community and pitted important stakeholders against each other.

In addition to being one of the landmark decisions in ICANN's recent history and the TLD expansion project, .amazon, like .xxx, was deeply political rather than technical. In fact, states party to the dispute even went so far as to refer to it as a matter of sovereignty. Within the broad categories of political issues laid out earlier in this paper, .amazon represents the issue of creating gatekeepers and determining legitimacy. On one hand, whether or not the Amazon Cooperation Treaty Organization (ACTO) or Amazon Corporation was the rightful claimant to manage the .amazon domain, it is a clear case of ICANN having to determine legitimacy. On the other hand, gatekeeping was an especially salient concern in this case. Whoever controlled the domain would control the content which was displayed under it. This concern was raised explicitly by parties in the dispute.

Like .xxx, the .amazon dispute brought multiple stakeholders into competition within ICANN's decision-making process. Amazon Corporation, the American-based online retail company, initially submitted a gTLD application for the .amazon domain in 2012. As per the application, the .amazon registry would "provide a unique and dedicated platform for Amazon while simultaneously protecting the integrity of its brand and reputation."⁴² Opposition quickly arose from consumer advocacy groups such as Consumer Watchdog who were concerned with the gatekeeping potential of the creation of a .amazon gTLD. In a letter submitted by U.S. Senator Rockefeller, the Chair of the Senate Commerce, Science and Transportation Committee, Consumer Watchdog stated:

⁴² ICANN, *New gTLD Application Submitted to ICANN by: Amazon EU S.à r.l.*, August 9, 2019, <https://gtldresult.icann.org/applicationstatus/applicationdetails/984>

Large parts of the Internet would be privatized. It is one thing to own a domain associated with your brand, but it is a huge problem to take control of generic strings. Both Google and Amazon are already dominant players on the Internet. Allowing them further control by buying generic domain strings would threaten the free and open Internet that consumers rely upon.⁴³

Consumer Watchdog's protests serve to indicate an issue that was at stake, but its influence on ICANN's decision was likely marginal.

The most significant opposition to Amazon's application came from states in the Amazon region of South America. The members of the Amazon Cooperation Treaty Organization (ACTO) - Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, and Venezuela - all claimed that giving exclusive control of the domain to Amazon would impact their sovereignty.⁴⁴ While the United States initially backed Amazon in the application process, it announced neutrality in the early stages of the dispute. In summary, the dispute was primarily between Amazon Corporation and the members of the Amazon Cooperation Treaty over Amazon's exclusive control of the gTLD. Some civil society groups were concerned with consumer protection, environmental, and indigenous community concerns, but this case engendered less public engagement than .xxx.

In the end, ICANN approved Amazon's application for the gTLD in May 2019. I will now present the chronology of the dispute to outline how ICANN handled the process and came to its final decision.

⁴³ John M. Simpson to Sen. Jay Rockefeller, September 19, 2012, <https://www.consumerwatchdog.org/resources/ltrrockefeller091912.pdf>

⁴⁴ Pablo Uchoa, "The nations of the Amazon want the name back," *BBC News*, April 4, 2019, <https://www.bbc.com/news/business-47794353>.

Chronology

Following the initiation of ICANN's generic TLD expansion program in 2011, Amazon Corporation submitted an application for the .amazon gTLD in 2012. The application received the highest possible score on its initial evaluation for conforming to the New gTLD Applicant Guideline, and ICANN was set to delegate the TLD.⁴⁵ As mentioned above, consumer protection groups responded with criticism in the United States. Additionally, the governments of Brazil and Peru submitted a GAC early warning on November 20, 2012, expressing their concern regarding the .amazon gTLD. GAC early warnings are not a formal objection towards the gTLD, but a notice that the application would be subject to GAC advice or a formal objection at a later stage of the approval process.⁴⁶ The notice, lodged by Brazil and Peru, and endorsed by the governments of Bolivia, Ecuador, Guyana, and Argentina, provided the following rationale for the early warning:

Granting exclusive rights to this specific gTLD to a private company would prevent the use of this domain for purposes of public interest related to the protection, promotion and awareness raising on issues related to the Amazon biome. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region. In addition, this gTLD string...matches part of the name...of the "Amazon Cooperation Treaty Organization", an international organization which coordinates initiatives in the framework of the Amazon Cooperation Treaty...It

⁴⁵ Farzaneh Badij, "ICANN Needs to Delegate .Amazon," *Internetgovernance.org*, Georgia Tech School of Public Policy, May 2, 2019, <https://www.internetgovernance.org/2019/05/02/icann-needs-to-delegate-amazon/>

⁴⁶ ICANN, *GAC Early Warning – Submittal Amazon-BR-PE-58086*, November 20, 2012, <https://gac.icann.org/work-products/public/amazon-br-pe-58086-2012-11-20.pdf>

should also be noted that the application for the “.AMAZON” gTLD has not received support from the governments of the countries in which the Amazon region is located.⁴⁷

Months later, the GAC met in Beijing for the ICANN Public Meetings in April 2013, but it was unable to reach a consensus objection to the .amazon string because of U.S. government protests.⁴⁸ On July 5th, however, the National Telecommunications and Information Administration published a paper stating that it would remain neutral on the .amazon string “thereby allowing the GAC to present consensus objections on these strings to the Board.”⁴⁹ Following the GAC objections, the ICANN Board rejected Amazon’s gTLD application on May 14, 2014.

After the rejection of the initial application, Amazon began a multi-year review and dispute resolution process. Amazon’s request for reconsideration of the decision was rejected by the Board in August 2014. No resolution was reached in the following cooperative review process, but in March of 2016, Amazon filed for an independent review with the International Centre for Dispute Resolution. The final decision reached by the Independent Review Panel found that the GAC had not treated Amazon fairly, that ICANN failed to provide sufficient reason for rejecting the application and that the Board “cannot accept GAC consensus advice as

⁴⁷ Ibid.

⁴⁸ Kevin Murphey, “Amazon’s dot-brand likely doomed as US withdraws geo objection,” Domainincite.com, July 6, 2013, http://domainincite.com/13637-amazons-dot-brand-likely-doomed-as-us-withdraws-geo-objection?goback=%2Egde_1840166_member_255992449.

⁴⁹ NTIA, *U.S. Statement on Geographic Names in Advance of Durban Meeting*, July 5, 2013, <https://www.ntia.doc.gov/other-publication/2013/us-statement-geographic-names-advance-durban-meeting>.

conclusive.”⁵⁰ With .amazon as with .xxx, the IRP had found that the ICANN Board wrongly submitted to the wishes of GAC and violated its own rules and procedures in the process.

Rather than moving forward with the negotiation of the registry agreement as in the .xxx situation, the ICANN Board passed a resolution calling for Amazon and ACTO to come to a negotiated settlement.⁵¹ These negotiations continued for two years without any resolution. In an effort to appease the ACTO governments, Amazon offered various payments and the creation of country specific domains such as br. amazon, but the ACTO members refused any outcome in which Amazon had sole authority over the registry.⁵² Amazon, on the other hand, said that it could not accept ACTO members having veto power over specific names, since that would give them “authority over global naming decisions for Amazon’s new, not-yet-launched products and services.”⁵³

Finally, in 2019, the United States declared that it would not support further GAC advice on negotiations and that the ICANN Board should make a decision rather than continue to draw out the process.⁵⁴ Therefore, ACTO countries were unable to secure GAC consensus, and the ICANN Board was free to make a final decision on Amazon’s application. Finding Amazon’s compromise terms acceptable, and the lack of any public policy reason to prevent the creation of the .amazon gTLD, the ICANN Board approved Amazon’s application on May 20, 2019. The compromise terms proposed by Amazon in April 2019 included the blocking of domain names using words with “a primary and well-recognized significance to the culture and heritage of the

⁵⁰ International Centre for Dispute Resolution, “Amazon EU S.A.R.L. and Internet Corporation for Assigned Names and Numbers,” July 10, 2017, <https://www.icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf>

⁵¹ Farzaneh Badii, *ICANN Needs to Delegate*.

⁵² Camilla Hodgson and Andres Schipani, “Amazon wins domain name dispute with Latin American governments,” *Financial Times*, May 20, 2019, <https://www.ft.com/content/c8f227e6-7b0c-11e9-81d2-f785092ab560>.

⁵³ *Ibid.*

⁵⁴ Kieren McCarthy, “The .amazon argy-bargy is STILL going on – and Uncle Sam has had enough with ICANN,” *The Register*, November 4, 2019, https://www.theregister.com/2019/11/04/amazon_domain_name/.

Amazonia region.”⁵⁵ A 30 day public comment period followed the Board’s preliminary decision, and at long last, the seven year battle for the amazon domain name was finished.

Discussion

The .amazon case is remarkably similar to the .xxx case insofar as it brings the clash of politics and procedure into clear focus. The ACTO member states had a brief win when the ICANN Board rejected Amazon’s application, but accountability mechanisms such as the independent review panel were key in altering ICANN decisions. In both cases, ICANN had followed the advice of the GAC in rejecting the applications, yet independent review bodies found that ICANN had violated its own rules and procedures in doing so. Unlike with .xxx, ICANN delayed making a decision on .amazon by trying to piece together a negotiated settlement, but the initial applicant won out despite state opposition.

Conclusion

ICANN is far from a purely technical organization, and the DNS is far from an exclusively technical issue. In this paper, I conceptualize domain names as internet property rights that are imbued with economic, political, and social value. Internet domains serve as a constitutive element of many brands, countries, and communities. This makes domain name allocation a political task with political implications. I demonstrate that domain name allocation creates gatekeepers for internet content, confers legitimacy on groups, and can require determining the legitimacy of competing claims for the same domain name. Given the political, economic, and social ramifications of ICANN’s task as the arbiter of the Domain Name System, it is necessary to investigate how decisions are made in internet governance.

⁵⁵ Camilla Hodgson and Andres Schipani, *Amazon wins domain*.

To assess ICANN's multistakeholder model, I conducted two historical case studies. The .xxx and .amazon were two high profile controversies at ICANN that centered around the issues of creating gatekeepers, determining legitimacy, and conferring legitimacy. In each case study, I use primary and secondary sources to create historical chronologies, identify stakeholder interests, and investigate how stakeholders exercised power within the multistakeholder model. The findings cast doubt on ICANN's assertions of being a truly representative organization. In both cases, ICANN rejected suitable applications for domain names due to pressure from GAC member states, despite their formal lack of veto power within the organization. Applicants were able to successfully use accountability mechanisms such as independent review panels, which found ICANN in violation of its established rules and procedures in both cases, to put ICANN's credibility as a legitimate and rules-based global governor on the line. It is commendable that ICANN parted from state wishes in both cases, but it is nevertheless concerning that it came after years of dispute.

Future research could go in many directions. The most obvious way would be to observe a greater number of cases. This paper was limited to two and may suffer from selection bias. Future research should investigate whether the findings of ICANN's willingness to violate its established rules holds across other cases. Furthermore, ICANN is not the only organization claiming to embody the multistakeholder model. More research should be done investigating multilateralism vs. multistakeholderism in different organizations and policy areas. Another way to investigate the functioning of the multistakeholder model would be to assess the creation of ICANN's rules in the first place, such as the criteria for gTLD applications. This study used the rules as a jumping off point, but the rules themselves come from the multistakeholder system.

Investigating how rules are created, rather than executed, would deepen our understanding of how ICANN's multistakeholder model functions.