

Some further notes (Matthias Bärwolff, May 22, 2011)

For starters, I think it would be useful to appreciate the special role of the US in the history of the Internet, after all they were very much the ones who made it happen, while the Europeans were still firmly in a world and mindset dominated by the PTTs at the time (1970s/1980s). As for the values the Internet ought to further, freedom and an irreducibly minimum common ground were always top of the list. Keeping the bad guys off the net (so as to maintain order on the inside and opportunities for the good guys at the ends to create value) has quickly risen in priority, especially since the Internet has become the foundation for so much commerce (both as in making money and in conversing for random reasons). The crux of the problem is of course that those two ends are mutually conflicting -- keeping the bad guys out while maintaining freedom is not trivial; and many solutions that would come to mind would screw things up in various ways.

(The tussles paper by Clark et al has tried to capture some of these issues and has at least given us some terms in which to frame the due discussions. Solutions, however, that would not affect the goal of freedom on the Internet have proven hard to come by. Bob Briscoe's ReECN (currently pursued in the IETF Conex WG) is a neat example of something that could work; but, as always, it takes a critical mass of ISPs to implement it in order to have some appreciable effect.)

The US policy statement proposes to address those issues by harmonizing norms if not laws internationally so as to make being a bad guy on the Internet costly in terms of legal risks (and social punishment more generally) and thus remove the economic incentives for being a bad guy. It will not be easy to get such a system right, but it is certainly worth discussing about. The careful reader of the US statement will of course have noticed a certain hegemonic touch, sometimes bordering the threatening [quotes to be added, "like-minded states" etc.], but then again, it may be that tit-for-tat diplomacy type of action may be a feasible route to get some states on board.

It is hard to comment on the document in any conclusive way, for it is addressed to a broad but vague constituency, and talks in a very broad and vague way at that. I think it contains some good passages in which it argues very specifically that shutting people off the Internet in a non-discriminatory fashion must not be part of any solution to the problems faced. It is also strong on one of its key points, that action has to be driven in concert, and by *all* of the legitimate stakeholders, for no party alone can succeed in addressing the problems.

What ought to be articulated in more detail though is what (and what not!) the aims of the whole exercise are -- possibly having this worked out at two conceptual levels, one of higher-level second-order goals and purposes of the Internet, and one of more specific goals to be achieved (in some quantifiable terms). Then it might become more straightforward to work out the requisite means to achieve those goals.

In all, it is great to have such a high-profile document about the state of the Internet and some of the near-term political challenges in addressing some of its obvious problems. It may help trigger a debate about governance beyond ICANN type of issues (domain names and such) which tend to dominate many debates on Internet governance. Finding ways to have all stakeholders agree on those matters and have

them act in some coordinated fashion has never been easy, and it won't be in the future, but it is certainly worth trying.