

Contents

Bibliography	XIII
Materials	XXIX
Abbreviations	XXXV
I. Introduction	1
A. Perceptions of Governance	1
1. Cyberspace and Governance	1
2. Governance and Internet's Legal Framework	3
3. Mapping of Governance Issues	7
B. Perceptions of Information Society	9
C. Regulatory Approaches	10
1. International Agreements and Cooperation	11
1.1 Forms, Strengths and Weaknesses of International Law	11
a) Introduction	11
b) International Conventions	13
c) Customary Rules	14
d) General Legal Principles	15
1.2 Future Prospects	16
2. Self-Regulation	17
2.1 Background	17
2.2 Forms and Legal Quality of Self-Regulation	18
a) Forms of Self-Regulation	18
b) Legal Quality of Self-Regulation	20
2.3 Strengths and Weaknesses of Self-Regulation	21
a) Strengths of Self-Regulation	21
b) Weaknesses of Self-Regulation	21
3. Concluding Remarks	23
II. Historical Developments	25
A. From McBride to WSIS	25
B. From ICANN to WSIS	28
1. First Steps towards the Internet's Institutionalization	28
2. Internet Corporation for Assigned Names and Numbers (ICANN)	29

3. World Summit on the Information Society and Internet Governance Forum	31
3.1 First Phase: Geneva 2003	31
3.2 Working Group on Internet Governance (WGIG).....	33
3.3 Second Phase: Tunis 2005	35
3.4 IGF Meetings.....	36
III. Organizational Framework in Internet Governance.....	39
A. Overview	39
B. Policy and Technology Organizations	40
1. International Telecommunication Union.....	40
2. Internet Engineering Task Force and Internet Architecture Board....	42
3. Internet Society	43
4. World Wide Web Consortium	47
C. Internet Corporation for Assigned Names and Numbers	51
1. Basic Framework and Development	51
2. Membership and Financing.....	54
3. Organizational Structure	55
3.1 Board of Directors	55
a) Composition	55
b) Meetings.....	56
c) Duties	56
d) Committees	57
3.2 Officers	57
3.3 Ombudsman.....	58
3.4 Advisory Mechanisms.....	58
a) Advisory Committees	58
b) External Expert Advice	59
c) Technical Supporting Group	59
3.5 Supporting Organizations.....	60
4. Discussions about the Role of ICANN	60
4.1 ICANN's Significance for the Governance of the Internet.....	60
4.2 Points of International Criticism	61
a) Public Policy Set by a Private Entity	61
b) US Influence.....	62
c) Democratic Legitimacy	62
4.3 Possible Adaptations	64
5. Outlook	65

D. World Summits of the Information Society and Internet Governance Forum	66
E. European Dialogue on Internet Governance	71
IV. Philosophical and Sociological Environment	73
A. Philosophical Concepts of a Social Contract for the Internet Community	73
1. Introduction	73
2. Philosophical Concept of the Social Contract	74
2.1 Form of Integration	74
2.2 Necessity of Overall Approval	75
3. Adaptability of the Social Contract Concept	76
3.1 Inclusion of Civil Society in All Areas	77
a) Bottom-up Approach	77
b) Realization of an Open Society	78
3.2 No Authority of one Individual through the Creation of a Social Contract	79
3.3 Application of the General Will (Volonté Générale)	80
a) Derived from Everyone	80
b) Aimed at Everyone's Welfare	83
4. Enshrinement of Fundamental Rights	84
4.1 Right to Freedom	84
a) Continuing Freedom for Everyone	84
b) Socialization and Right to Freedom	85
4.2 Equity and Equality	86
4.3 Fairness	86
5. Outlook	87
B. Multi-Stakeholderism in Internet Governance	88
1. Introduction	88
2. Architectural and Constitutional Principles	89
3. Theories of Global Rulemaking	92
3.1 Processes of International Regime Formation	92
3.2 Creation of Government Networks	94
4. Milestones for Multi-Stakeholderism in Internet Governance	96
4.1 Improvement of ICANN's Democratic Legitimacy	96
4.2 Need for Better Transparency and Accountability	98
4.3 Creation of an International Internet Governance Body	99
a) Appropriateness and Framework	99
b) Governing Structures within a New Entity	102

V. Discussion Topics of Internet Governance	105
A. Introduction.....	105
B. Legitimacy	105
1. Introduction	105
2. Present Problems with Legitimacy.....	106
2.1 Criticism on Internet Governance Organizations' Legitimacy ..	106
2.2 Adherence to Democracy as a Remedy?	107
3. Linking Legitimacy and Democracy?	109
3.1 Attempts towards framing Legitimacy	109
3.2 Perceptions of Democracy	112
3.3 Assessment	114
4. New Approaches	115
4.1 Conceptual Shifts in addressing Democracy and Legitimacy in International Governance	115
4.2 Framing the Stakeholders.....	116
4.3 Legitimacy through Fair Processes of Consensus-Making.....	118
4.4 Architectural Principles	119
5. Outlook	120
C. Transparency.....	121
1. Introduction	121
2. Assessing Guiding Principles of Transparency.....	121
3. Addressing Transparency in Other Markets.....	124
3.1 Transparency in the WTO Framework.....	124
3.2 Transparency in the IMF/World Bank Framework.....	125
3.3 Transparency in the EU Framework.....	126
4. Enhancing Transparency for the Future of Internet Governance	127
4.1 Tackling Controversies over ICANN.....	127
4.2 Further Developments	129
5. Outlook	131
D. Accountability	132
1. Introduction.....	132
2. Notion and Importance of Accountability	133
3. Accountability in Internet Governance at Present	134
3.1 Accountability in ICANN's Documentation	134
3.2 Relevant Accountability Types	135
4. Evaluation of Accountability Elements	137
4.1 Organization Level Aspects.....	137
4.2 Project Level Aspects	138
4.3 Policy Level Aspects.....	139

5.	Approaches for Improving Accountability.....	140
5.1	Extended Consultation of Civil Society	140
5.2	Improved Inclusion of Civil Society	141
5.3	Intergovernmental Supervision.....	143
5.4	Market-Oriented Accountability.....	145
6.	Outlook	146
E.	Participation	148
1.	Introduction	148
1.1	Desirability of Public Participation in the Internet.....	148
1.2	Comparable Developments in Environmental Law	149
a)	Justification for Comparison	149
b)	Aarhus Convention—Background and Contents	150
2.	Access to Information	151
2.1	Modalities of Publication of Information.....	152
2.2	Passive Authentication.....	153
2.3	People Entitled to Be Informed	155
2.4	Extent of the Obligation to Inform.....	155
2.5	Exceptions to the Obligation to Inform.....	156
2.6	Time Limit.....	159
2.7	Language (Translating Efforts).....	160
2.8	Charges for Supplying Information.....	161
2.9	Establishment of the Necessary Requirements for the Requested Information	162
3.	Participation and Involvement of Civil Society	162
3.1	Participation Procedures.....	163
a)	Overview	163
b)	Decision-Making Processes	164
c)	Development of Plans, Programs and Policies.....	166
d)	Preparation of Law, Rules and Legally Binding Norms.....	167
3.2	Exceptions to the Right of Participation.....	168
3.3	People Entitled to Participate	168
3.4	Form of Participation.....	169
3.5	Time Frame for Participation	170
3.6	Taking Account of the Results of Public Participation.....	170
4.	Recognition and Support of the Bodies Promoting Internet Governance	171
5.	Access to Jurisdiction	171
6.	Outlook	172

VI. Regulatory Issues 175

A. Introduction..... 175

B. Critical Resources and Access 176

 1. Internet Governance and Critical Resources..... 176

 1.1 Notion of “Critical Resources”..... 177

 1.2 Technical Occurrence of Critical Resources 178

 a) Overview 178

 b) Root Servers..... 179

 c) Backbone Structures 180

 d) Broadband Access..... 180

 e) Internet System of Names and Numbers 181

 1.3 Protection of Scarce Resources in International Law..... 181

 a) Allocation of Water Resources..... 182

 b) Avoidance of Technical Risks 183

 c) Protection against Cyber-Attacks..... 183

 d) Resolution of Interstate Conflicts..... 184

 e) Prohibition of Child Labor..... 185

 f) Access to Cultural Expressions..... 185

 g) Preliminary Evaluation..... 186

 2. Transition from IPv4 to IPv6 in Particular 186

 2.1 Introduction 186

 2.2 Transition from IPv4 to IPv6..... 187

 2.3 Technical Framework 189

 a) Problem of Restricted Capacity..... 189

 b) Technical Standards..... 190

 c) Interoperability and Security..... 191

 2.4 Specific Issues Regarding the Transition Period..... 193

 a) Time Factor 193

 b) Compatibility..... 194

 2.5 Challenges for IPv6 Deployment 196

 a) Allocation of “Critical Resources”..... 196

 b) Open Technical Access..... 196

 c) Administration of Scarce Resources 197

 d) Availability of Resources—Financing Mechanisms 199

 2.6 Outlook 202

 3. Access 202

 3.1 Introduction 202

 3.2 Net Neutrality 203

 3.3 Access and Development 205

C. Protection of Civil Liberties and Humanization of Internet Governance	207
1. Notion and Functions of Human Rights	207
2. Existing Legal Framework for Human Rights	209
2.1 Global Level	209
2.2 Regional Level	212
3. Characteristics of Human Rights Protection	213
3.1 Contents of Human Rights	213
a) Dignity, Integrity and Equality	213
b) Freedom of Expression and Information	214
c) Privacy	215
3.2 Scope of Human Rights Application	216
3.3 Human Rights Transition from the Traditional to the New Online World	218
4. New Approaches for a Comprehensive Human Rights Architecture	219
4.1 Ongoing Activities	219
a) Context of the WSIS	219
b) Private Bodies	223
4.2 Perspectives for a Humanization of Internet Governance	224
a) General Developments	224
b) Specific Initiatives	225
c) Long-term Expectations	229
D. Security: Assuring Safety, Trust, and Reliability	231
1. Safety	231
1.1 Security Threats	231
1.2 Regulatory Framework	233
2. Trust and Reliability	237
2.1 Privacy	237
a) Meaning and Functions of Privacy	237
b) Regulatory Framework	239
c) Relation between Security and Privacy	240
d) Future Approaches	241
2.2 Data Security	245
a) General Guidelines	245
b) Cryptography	246
c) Electronic Signature	247

Contents

E. Bridging the Digital Divide	248
1. Introduction	248
2. Digital Divide Problematic	249
2.1 Factual Situation	249
2.2 Relevant Aspects of the Digital Divide	250
3. Financing Strategies	252
3.1 Financing Needs	252
3.2 Political Initiatives	254
a) Monterrey Consensus	254
b) World Summits on the Information Society	257
3.3 Financial Mechanisms	259
3.4 Financing Strategies' Legal Framework	261
4. Outlook	264
VII. Concluding Observations	267
Index	273