

Table 2. State of agreements, disagreements and gaps in issue areas

Issue Area	Issue	Agreements	Disagreements	Gaps	
Human Rights	Privacy	ICANN Registrar Accreditation contract secures public, anonymous access, individually and in bulk, to registrants' personal contact data in the Whois database	Concern that Whois access contradicts national and international privacy norms and some national laws.	There is no clear international standard of what constitutes privacy on the Internet.	
		General Assembly resolution 45/95 of 14 December 1990 on Guidelines for the Regulation of Computerized Personal Data Files	Issue is dealt with through State party reports to the Human Rights Committee. Often seen in the context of racism and child pornography.		
		EU Directive on Protection of Personal Data (1995)	US Safe Harbor Exception		
		OECD Guidelines for the Protection of Privacy and Transborder Flows of Personal Data (1980)			
	Content Regulation and Freedom of Expression	Optional Protocol to the Convention on the Rights of the Child (2002) (prohibits child pornography over the Web)			How to enforce this has not been discussed.
		Durban Declaration of the World Conference Against Racism (2001) expresses concern about use of the Internet for racist content, also recognizes value of Internet and new media in educating against racism.			
		Covenant on Civil and Political Rights Articles 17 and 19			General Comments on Articles 17 and 19 do not deal specifically with the Internet
		Commission on Human Rights resolution 2003/42 Calls upon States to refrain from imposing restrictions on Internet which are not consistent with the provisions of article 19, paragraph 3, of the International Covenant on Civil and Political Rights	CHR comment on Article 10, paragraph 2: exceptions may be made if lawful and necessary in a democratic society for national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of confidential information, or for maintaining the authority and impartiality of the judiciary. The Declaration leaves it for states to determine which elements can be restricted.		The concept of fair use has not been discussed. No ICANN policy on what TLD strings are permissible or prohibited
		Council of Europe Declaration on Freedom of Communication on the Internet adopted by the Committee of Ministers on 28 May 2003			
		ICANN and WIPO Uniform Domain Name Dispute Resolution Policy (UDRP)	Inconsistent UDRP decisions regarding use of trademarked names for criticism and commentary		
		Internet Content Rating Association	Voluntary private, self-adopted standard; low levels of adoption		
	Intellectual Property Rights	Copyright	WIPO Copyright Treaty (WCT) 1996	Regulation of webcasting Eligibility of databases for protection	Liability of ISPs for copyright infringement by users is not resolved.
			WIPO Performances and Phonograms Treaty (WPPT) 1996	"there remains wide disagreement among countries regarding issues such as 'moral rights,' 'fair use,' duration of copyright, protection in data, rights in sound recordings, exhaustion of rights, work-for-hire arrangement and, most recently, circumvention of encryption technologies and Internet service provider liability." (P. Yu, 2001)	In general, IPR protection treaties have been drawn up with little consideration of their impact on free expression or fair use
Trademark		WIPO Joint Recommendation Concerning the Protection of Marks, and Other Industrial Property Rights in Signs on the Internet (agreed in 2001, but not considered to be law)			
		ICANN-WIPO UDRP for domain name trademark conflicts.	Prodecure widely criticized as biased towards trademark owners. Disagreements about scope of protection - inclusion of country codes, nonproprietary pharmaceutical names, and names of international organizations supported by WIPO, opposed by civil society, business and ICANN GNSO		
		Anticybersquatting Consumer Protection Act (US law with extraterritorial application)			
Other IPR issues		WTO Trade-Related Aspects of Intellectual Property (TRIPS)	The TRIPS Council continues to hold the view expressed in the Council's earlier Progress Report (paragraph 12 of document IP/C/18) that the novelty and complexity of the intellectual property issues arising in connection with electronic commerce are such that continued further study is required by the international community to better understand the issues involved.		In general, IPR protection treaties have been drawn up with little consideration of their impact on free expression or fair use
		WIPO Substantive Patent Law Treaty under negotiation; would promote software patents that might have impact on the Internet			Impact of patent protection on Internet interoperability not being considered

International Economic Relations	Trade and e-commerce	Doha Ministerial Declaration of WTO (2001) Members will maintain their current practice of not imposing customs duties on electronic transmissions until the Fifth Session. UNCITRAL Model Law adopted, but not converted into national legislation and differences among adopters already notable Hague Conference's Proposed Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Law	Institutional arrangements not agreed. There were disagreements about how to classify digitized products, as services (covered under GATS) or as products (covered under GATT). Also issue of domestic regulation of e-commerce and its effect on trade. Disagreements about extent of coverage (limited or wider) Failed to achieve consensus on global convention on international jurisdiction; recently narrowed its scope	Model Law is not mandatory Does not cover contracts concluded for personal, family or household purposes does not deal with consumer protection
	Consumer Protection	2000 OECD Guidelines for Consumer Protection in the Context of Ecommerce, 2003 OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders APEC Voluntary Guidelines for the Online Environment		No universal agreement on how to deal with consumer protection issues, other than to use national means.
	Competition Policy	ICANN Registry -registrar split ICANN registry contract	Many country code TLDs do not adopt the same vertical separation of registry and registrar Most ccTLDs reject ICANN contract; disparity between gTLD and ccTLD obligations	No regular, nondiscriminatory TLD addition process defined Registry contracts individually negotiated, no uniform contract defined
		EU competition authority review of ISP mergers		No uniform standards and criteria for assessing and acting upon market power in Internet service markets
	Taxation	OECD Technical Advisory Group's on Tax in partnership with business agreed, with the clear principle that source taxation should be nondiscriminatory. Thus, income derived from a particular country should ideally be taxed as if it were earned by a resident of that country.	Disagreement on how to determine who should tax business profits (where business is located). Does the Internet as a new business channel alter the character of a product to such a degree that it must be considered a wholly new product, and therefore treated as unique for tax purposes, or does digitizing a product not alter the purpose of the product and therefore the digitized version should be treated the same for tax purposes as that delivered in physical form. Also, differences about where to take (place of supply or place of consumption) and difficulties of defining that in an Internet context. In WTO, whether application of VAT on Internet transactions was discriminatory or not.	United Nations Model Double Taxation Convention between Developed and Developing Countries last revised in 1999 does not contain provisions regarding e-commerce or the Internet (and revisions have been based on OECD revisions).
Enforcement Of Order	Network and Information System Security	2002 OECD Guidelines on the Security of Information Systems and Networks UN General Assembly Resolution 58/199 on a Global Culture of Security, A general normative declaration calling for "international cooperation, when appropriate, to secure critical information infrastructures" ITU Plenipotentiary 2002 Resolution 130. A general normative declaration about "Strengthening the role of ITU in information and communication network security" and enhancing cooperation		
	Crime	Council of Europe Cybercrime Convention (hacking, child pornography, copyright circumvention, surveillance capabilities, mutual legal assistance and extradition)	Concerns about dual criminality. Only six countries (all from Eastern Europe) are Party to the Convention, presumably because of conflicts with national law.	
		UN Convention on Organized Crime Article 29 cites need for training in "Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology"	The Convention is controversial, particularly in extending cross border surveillance, and offers very weak support for human rights and privacy. Civil liberties NGOs have argued that it provides too much authority to national judicial authorities.	
		G8 Lyon Group on Transnational Organized Crime, 2001 recommendations	Civil liberties concerns	
	Authentication and Identity	DNS Whois database accuracy (ICANN)	Relationship between accuracy and privacy. Who will bear the costs of authenticating registrants?	Current accuracy policies made without reference to privacy rules and norms
		Model Law on Electronic Signatures adopted by General Assembly in 2001 (Res. 56/80)		No link to Internet standards
		IETF DNSSEC standard (Permits authentication of the validity of a domain name)	Who will manage the private key for the DNS Root Zone?	
		RIRs securing access to IP address Whois information. Secure BGP ITU PKI Standards		
Cyber-terrorism	G8 Lyon Group 2001 Recommendations; G8 Justice and Interior Ministers 2002 Statement on Data availability to Protect Public Safety	Civil liberties concerns	Existing terrorism conventions do not deal with cyber-terrorism	
Spam	General consensus that SPAM is bad ASTA, OECD, ITU conferences and studies Many forms of national legislation	Whether issue should be dealt with through technical measures, charging arrangements or legal and policy functions.		

Operational Policies for the Internet	Global Resource Management	E.164 code assignment and .int TLD administration (ITU)	Who should operate the root zone for ENUM? Should there be a single global root for ENUM?	
		DNS root server administration (ICANN, ISC, others) BIND software	US Government oversight over ICANN and DNS root zone file modifications	No procedure for authorizing and implementing change in Root Server operators No defined method, schedule or criteria for adding new TLDs
		Country code TLD administration	Relationship of ccTLDs to ICANN ccNSO; Authority of national governments over ccTLD delegations	
		IP address administration (ICANN, RIRs) Provider based address allocation based on need for route aggregation		
		Internationalized Domain Names IDN technical standard (IETF)	Speed and desirability of rapid IDN implementation via new TLDs not agreed within ICANN	
	Interconnection	ITU Recommendation D.50	Settlements based on traffic balance vs. status quo based on negotiated contracts in free market	
		ITU standards for PSTN – Internet interoperability		
		Informal coordination among ISPs via NANOG		