

# A Lawyer's Reflections On Internet Governance



Stephen M. Ryan  
McDermott Will & Emery  
sryan@mwe.com

# To introduce myself ...

- Daniel Webster: “You seem to have an excellent acquaintance with the law, Sir.” Devil: “Sir, that is no fault of mine. Where I come from, we have always gotten the pick of the Bar.”
- Thackery: “Law is “a sty for fattening lawyers on the bones of honest men.”
- U.S. v. Maskenny: “They were represented by skilled and tenacious trial counsel, who generated towering columns of smoke despite the absence of useful combustibles.”
- Lord Brougham: A lawyer “is a learned gentleman who rescues your estate from your enemies and keeps it himself.”
- William Langer: “If you put a banker, a lawyer and an industrialist in a barrel and roll it down a hill, you’re always going to have yourself a son of a bitch on top.”
- Clarence Darrow: “Inside every lawyer is the wreck of a poet.”
- Emerson: “The louder he talked of his honor, the faster we counted the spoons.”

# The Current Successful Internet Governance Model Is Under Attack

- Current model primarily relies on non-governmental organizations, e.g.
  - NANOG/NOGs for operational standards;
  - IETF for protocol standards;
  - ICANN for DNS;
  - ARIN/other RIRs for IP resource policy;
  - ISOC and others for outreach.
- Some countries prefer a model that is based on government to government negotiation and control, and firm government control of internal Internet access.
- These attacks on the current Internet governance model are serious. Next venue is U.N. Internet Governance Forum in Brazil in November.
- U.S. Government will oppose these efforts, but with a weakened voice.

# North American Interests In Global Policy And Governance Debate

- Most North Americans are very comfortable with NGO governance model and skeptical of control of Internet by any international government agency;
- Profound civil liberties issues of Internet controlled by authoritarian governments, e.g.:
  - Attack on Estonia;
  - Burma crackdown;
  - Internal control of Internet by many countries.

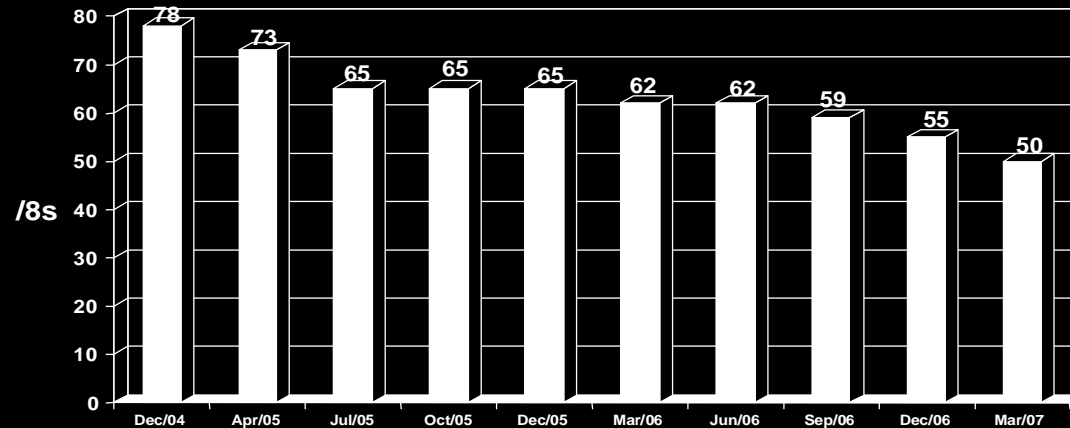
# North American Interests In Global Policy And Governance Debate, Continued

- We cannot tell Burma, China, or Cuba they must permit Internet access to their citizens; but we also cannot permit them to tell us how to ration our citizens' access.

# IPv4 Depletion



## Central Pool Devolution



Source: Number Resource Organization – [www.nro.net](http://www.nro.net)



Stephen M. Ryan  
McDermott Will & Emery  
[sryan@mwe.com](mailto:sryan@mwe.com)

# Closer to Home:

## How Serious Is The Problem of IPv4 Depletion and Slow Rate of IPv6 Adoption?

- Serious concern for stability and growth of Internet;
- U.S. economy (and many other countries) are dependent on successful Internet operations;
- Transition crunch could trigger greater level of government controls;
- Need to run IPv4 and IPv6 in tandem will cause cost, technical and political problems;
- ARIN Board has said adopt IPv6 now or stop growing!

# Debate Regarding Internet Policy Governance Will Be Injected Into IPv4 Depletion Issues

- Some policy proposals urge abandonment of RFC 2008, 2050, which is current legal premise of IP resource allocation. Premise: No ownership of IP resources by individuals.



# RFC 2050 Contemplates Reclamation of Unused Resources

“IP addresses are valid as long as the criteria continues to be met. The IANA reserves the right to invalidate any IP assignments once it is determined the requirement for the address space no longer exists. In the event of address invalidation, reasonable efforts will be made by the appropriate registry to inform the organization that the addresses have been returned to the free pool of IPv4 address space.”

-RFC 2050, sec. 3.1

# RFC 2050 Limits Transfers – Requires Need and Approval

“The transfer of IP addresses from one party to another must be approved by the regional registries. The party trying to obtain the IP address must meet the same criteria as if they were requesting an IP address directly from the IR.”

-RFC 2050, sec. 4.7

# RFC 2050 Allows Fees for Services

“[R]egional registries may charge some fee for services rendered, generally in relation to the cost of providing those services.”

-RFC 2050, sec. 4.1

# RFC 2050 Allows Revocation for False Information

“If any assignment is found to be based on false information, the registry may invalidate the request and return the assigned addresses back to the pool of free addresses for later assignment.”

-RFC 2050, sec. 4.4

# Debate Regarding Internet Policy Governance Will Be Injected Into IPv4 Depletion Issues

- Some now urge allocation on “political” basis of “equality” between regions, not based on demonstrated need.
- Policy proposals designed to appeal to “equality” between regions for allocation threaten current, long term consensus on global IP policies that have remained consistent for 10-15 years.

# Global Proposals For “Sale” Of IPv4

- Some proposals suggest encouraging the creation of a “market” to redistribute allocated IPv4 addresses.
- This would present a change from current system.

# Some Issues That Must Be Resolved Before Adopting Market Policies

- Current legal regime that treats IP numbers as community resource would need to be scrapped; transition must be carefully planned; Lloyd George: “It is dangerous to leap a chasm in two bounds.”
- “Market” could inappropriately reward legacy holders.
- “Market” could lead to flow of IPv4 resources from third world to first world countries.

# Some Issues That Must Be Resolved Before Adopting Market Policies, Continued:

- “Market” might not benefit true underprivileged. Might provide biggest benefits to favored groups. (Government-favored telecom companies in Africa or Latin America?)
- Will countries like China and Korea permit “export” of IPv4 blocks allocated to them by actions of a market? Or is the flow going to be restricted outward from such countries?



# Some “Political” Aspects Of Legacy Address Issue

- In retrospect, with 20/20 rear vision, some legacy allocations were larger than they needed to be, and still are not fully utilized or routed. Current assumption: some portions of these unrouted resources can be recovered and redistributed to maximize IPv4 life.
- U.S. Government has led the way in agreeing to return unneeded IPv4 resources.

# ARIN's New Legacy Registration Services Agreement ("RSA")

Those who received resources pre-ARIN/pre-other RIRs, and currently are legacy address holders, can lock in contractual guarantees of ARIN services (or possible future services), such as in-addr and whois listing, ability to transfer, etc.

# Standard ARIN RSA And Legacy RSA Differ Significantly

- Legacy RSA terms, i.e.:
  - Grandfather right to use resources even if not yet currently utilized;
  - Low, low annual renewal fee designed to keep POC current;
  - Fees waived for long period if unrouted space returned;
  - Limits ARIN rights to adopt future policies limiting legacy contract holder rights.

Try It – You Will Like It!