

Global Administrative Law and the Search for Law in Internet Governance

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Global Administrative Law (GAL) is the attempt to grasp new forms of governance that have emerged in a globalized world. Examples include the rise of international organizations beyond their original design, the emergence of informal intergovernmental networks, the implementation of global regulatory law by domestic authorities, and hybrid public-private and purely private transnational regulatory regimes. The GAL approach seeks to assess whether these new administrative decision makers meet adequate standards of transparency, participation, reason giving and effective review to address accountability and legitimacy concerns.

The question is whether this suffices to qualify GAL as law (as the name indicates) or whether one should rename GAL into GAP – Global Administrative Practices? This question has wider implications: If GAL can be regarded as law it can claim a normative dimension in the sense that requirements such as transparency, participation, reason giving and review are necessary components of legitimate global governance. Otherwise, GA‘L’ merely amounts to an academic tool for analyzing novel governance regimes. This may still be useful in theory but would lack impact in practice.

This paper will scrutinize the L in GAL by looking at the law (if there is any) of Internet governance. The Internet Corporation for Assigned Names and Numbers (ICANN) will serve as a case study. It was founded in 1998 as a private not-for-profit, public-benefit organization. Its main function has often been described as serving as the phone book of the internet because it connects the name space of the internet (e.g. law.umich.edu) with the numerical space indicated by the IP number (e.g. 141.211.4.212). To be in charge of this crucial task has enabled ICANN to become one of the key players in Internet governance.

States, on the other hand, play only a marginal role as the global nature of the Internet renders purely national regulatory attempts moot. Classic instruments of international law such as treaties are also not up to the task of governing the Internet. The rapid technological progress tends to overtake lengthy treaty making procedures and divergent interests and policy goals render

consensus based governance approaches unrealistic. ICANN steps into this governance gap. In the absence on classic international law must ICANN adhere to the standards of GAL or is there no meaningful law at all to control those who govern the Internet?

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