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# ***The Coming Design Wars***

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# Governance of the Internet in Flux

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## Shifts across three planes

- Objectives
- Actors
- Venues

# Objectives

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Internet Governance



Governance *of the* Internet



Internet *as* Governance



# Objectives

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Interoperability →

efficiency & elegance →

Innovation →

Preserving and Advancing

**VALUES**

# Venues

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Standard Setting Bodies  
Interoperability →

Internet architecture  
efficiency & elegance →

Product Design  
Innovation →

Preserving and Advancing

**VALUES**

# Actors Responsible for Values/Claiming Values

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Government → Corporations

Lawyers → Technologists

Legislatures → Standard Setting Bodies → Tussle?War?



# Responsibility for Values being Distributed

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*“...while technologically and financially you are giants, morally you are pygmies”.*

*—Chairman Tom Lantos addressing Jerry Kang, CEO and Michael Callaghan, General Counsel, Yahoo! Inc., November 6, 2007*

*Protect, Respect and Remedy Framework (The Ruggie Report)*

*Global Network Initiative*

# Competing Values

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## Human Rights:

- **Standards of confidentiality and integrity of IT-systems**
- **Right to anonymity and to use encryption**

## Data Protection and Privacy Regulators

- **Privacy by Design**

*32<sup>nd</sup> International Conference of Data Protection and Privacy Commissioners Resolution on Privacy by Design, Oct. 2010; Draft EU Data Protection Regulation, Amendment 37, FTC Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policy Makers, March 2012*

# Competing Values: National Security and Safety

## Going Dark

“And if the challenges of real-time interception threaten to leave us in the dark.” *James B. Comey Director Federal Bureau of Investigation Brookings Institution Washington, D.C. October 16, 2014*

“As we celebrate the 25th anniversary of the spectacular creation that is the world wide web, we need a new deal between democratic governments and the technology companies in the area of protecting our citizens.” *Robert Hannigan, Director of GCHQ*

## And playing dirty

“According to an intelligence budget document leaked by Mr. Snowden, the N.S.A. spends more than \$250 million a year on its Sigint Enabling Project, which “actively engages the U.S. and foreign IT industries to covertly influence and/or overtly leverage their commercial products’ designs” to make them “exploitable.”” *NYTimes*



# New Alignment of Actors and New Battle Field

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## Regulators and Value Commitments on Both Sides

### Example I

Human Rights Bodies  
Data Protection &  
Privacy Regulators

v.

Law Enforcement  
National Security

### Example II

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v.

Security

All seek to influence the:

- design of technical standards;
- use of Internet Architecture; and,
- Design, deployment, and defaults of Products

# Standard Setting Bodies: IETF Mechanisms not Values

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RFC 1984: the IAB argues for strong cryptography and against export controls and escrow systems during the Crypto Wars

“The IAB and IESG would like to encourage policies that allow ready access to uniform strong cryptographic technology for all Internet users in all countries”

<http://www.ietf.org/rfc/rfc1984.txt>

RFC 3365: a formalization of the "Danvers Doctrine", consensus that strongest security should be used.

<http://www.ietf.org/rfc/rfc3365.txt>

RFC 2804: the IETF will not design standards to facilitate wiretapping

<http://www.ietf.org/rfc/rfc2804.txt>

# Facilitating Values: Standard Setting Bodies W3C

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- PICS—Platform for Internet Content Selection—active effort by civil society and companies to develop less restrictive technology to provide user control over content in context of debates over government ability to censor
- P3P—Platform for Privacy Preferences—active effort to create interoperable mechanisms for facilitating machine readable privacy disclosures to promote cross border privacy and commerce
- DNT—Do Not Track (Tracking Protection Working group) effort to facilitate seamless machine readable communication of tracking preferences by user agents to address concerns with profiling and behavioral advertising

# Today, Standard Setting Bodies are Owning Values

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## Government as Adversary

Response to attacks on technical standards (crypto)  
*and*  
attacks on corporations

Technologists are picking sides.

# Owning Values: Standard Setting Bodies

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[RFC6973](#) Privacy Considerations for Internet Protocols, 2013.

[RFC7258](#) Pervasive Monitoring Is an Attack, 2014.

# Prioritizing Values International: OECD Principles

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- For Individuals and Society:
  - Freedom of Expression, Privacy, Security, Individual Empowerment
  - Promote creativity and innovation
  - Limit Internet intermediary liability
- For network
  - Openness and Interoperability
  - Growth
  - Connectivity
- For Policy Process
  - Open and Participatory and Data Driven Policy Development
  - Self-Governance
  - Procedural Fairness: transparency, fair process, and accountability
- Give appropriate priority to enforcement efforts

# Prioritizing Values: HRC

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Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression

June 2015: Report on the legal framework governing the relationship between freedom of expression and the use of encryption to secure transactions and communications, and other technologies to transact and communicate anonymously online.

# Prioritizing Values: Technical Standards

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## RFC 2804: wiretapping requirements

- ...*divergent requirements*...*Security Privileged Value* (RFC 2223, 1997)
  - operation of the Internet and the needs of its users are best served by making sure the security properties of connections across the Internet are as well known as possible...making them as free from security loopholes as possible.
  - ...wiretapping will make affected protocol designs considerably more complex...(and)jeopardizes the security of communications...
  - Conflicts with IETF RFC 1984—commercial development of the Internet and adequate privacy for its users...requires the wide availability of strong cryptographic technology.

# Prioritizing Values Domestic: SOPA

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- Key reason for bill's demise appears to be impact on security of the domain name system
- Security of infrastructure privileged value

# Principles for Prioritizing Values?

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- **Substantive:**
  - Freedom of Expression, Privacy, Security, Individual Empowerment
  - Promote creativity and innovation
  - Limit Internet intermediary liability
  - Openness and Interoperability
  - Growth & Connectivity
- **Procedural**
  - Open and Participatory and Data Driven
  - Self-Governance
  - Transparency, fair, and accountable

# Venues for governance

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HRC

ECJ (see data retention cases)

*“...international standards body...wrong forum for designing protocol or equipment features that address...laws of individual countries” RFC 2804*



# Venues for Governance: Private/MSH Choices

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- Internet Rights & Principles Project
- GNI
- Apple, Google, etc.

# Governance through the Internet and Technology

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- Operates and feels different than law
- Borderless and seamless
- Lose moral register
- Misdirection of government aims
  - Private governance precludes public battles about government objectives
- But perhaps more meaningful protection
  - Ex ante
  - Less demanding on individual
  - Pervasive