

Meeting Report: Exploring Next Generation Governance Models

September 10 – 11, 2009, hosted by the Berkman Center for Internet & Society's Law Lab

I. Workshop Goals

As we seek to address the challenges—and respond to the possibilities—presented by the interest of government officials in online tools and norms, we have a unique opportunity to impact the government's role in creating new forms of regulation, governance, and civic participation. This Law Lab workshop series sought to build on the O'Reilly Gov 2.0 Summit by continuing the conversation on the future of public and private governance in the digital world.

Three key themes emerged, with a focus on specific avenues for change. First, participants sought to identify areas in government where there exists both a need and a potential for data-driven, interoperable, and transparent next generation governance models. Second, the group discussed some of the core components of such new models (such as, for example, reputation, identity, security systems, mechanisms for private law setting, creation of scalable groups, and digital institutions). Finally, the group considered how these concepts might be applied to a new generation of governance models via sector-specific use cases, such as new finance mechanisms (Finance 3.0), new applications to facilitate private enterprise (Vermont Digital LLC), and new opportunities for crowdsourced online dispute resolution in public participatory platforms (cODR).

II. The Dinner *Thursday evening, September 10th.*

Play "New Governance Models: keynote video"

The event was kicked off by a series of opening remarks. First, Urs Gasser, the Executive Director of the Berkman Center and co-Principal Investigator of the Law Lab, gave a brief overview of the origins of the Law Lab, and discussed its interest in understanding how digital

governance mechanisms – ranging from reputation systems to dispute resolution schemes – might inform the creation of participatory, reliable, and effective government processes. His remarks were followed by Tim O'Reilly, the chief architect of the Gov 2.0 Summit, who helped to bridge the two events. He challenged the group to use the workshops to drill down into some of the specific challenges faced by the current Administration, and to consider actionable solutions to be taken into the policy-making arena. Tim introduced our keynote speaker, Andrew McLaughlin, the Deputy U.S. Chief Technology Officer on Internet Policy in the Office of Science and Tech Policy, who encouraged participants to think about opportunities to prove the idea that online public participation can contribute to better, and smarter, public policy. He recommended developing a coherent theory of public participation—what governance needs are being met?—before configuring a tool or platform, and then identifying areas in the federal government where there exists both political and technical leadership to experiment with those new processes.

III. The Sessions *Friday morning, September 11th.*

The agenda was structured around small group discussion regarding four related tracks, each focused on the potential impact of emerging online models in business, commerce, and social spaces on government processes. Urs Gasser and John Clippinger opened the event by describing the Law Lab's research on Net-based structures and norms—including enhanced trust, transparency, and cooperation—and how digital models, including evolvable contracts, new finance schemes, emerging security and reputation systems, and crowdsourced online dispute resolution processes might inform new models for governance.

Session 1: Transparency in Finance Systems *John Clippinger, Co-Director, Law Lab Berkman Center for Internet & Society Robert Litan, Vice President for Research and Policy, Kauffman Foundation, Senior Fellow,*

A Gov. 2.0 perspective on financial regulation suggests new

opportunities to achieve greater transparency in financial markets and to catalyze the invention of more open and competitive methods for rating securities and managing financial risk. This session focused on understanding some of these novel approaches and potential “finance 3.0” institutional arrangements and policies.

A presentation by Alex Karp, CEO of Palantir Technology, demonstrated a platform that illustrates how, by utilizing data in the public domain, complex financial instruments, such as mortgage-backed securities, can be unwound down to the individual mortgage contracts, e.g. FICA scores, balloon payments, legal documents, tranch data, ratings, institutions, etc. (For a video: <http://www.palantirtech.com/government/analysis-blog/tarp>). The example provided a very tangible illustration of how new forms of data aggregation and tools development might be used to mitigate financial risk and achieve regulatory oversight, while enhancing the capacity of individual users to understand that information.

David Blaszkowsky of the SEC’s Office of Interactive Disclosure introduced a second theme regarding the opening up of financial data to public analysis. He discussed the implications of the SEC mandate that all public companies provide their financial reporting information in the business reporting markup language, XBRL. Blaszkowsky underscored the need to put such information in a form that is useful and meaningful, and can be readily sorted and analyzed. Jesper Anderson and Toby Segaran of Free Risk provided an example of how the new availability of that data could be used to create more open and competitive approaches to the rating of securities and companies.

A final set of discussions focused on government interventions, and in particular, on a proposal to set up an independent agency to stimulate financial transparency and protect against systemic risk. John Liechty of Penn State discussed the proposed National Finance Institute (NFI), which would be a trusted repository and analytic platform responsible for the overall stability of the financial system. This proposal has resulted in the formation of a Committee to Form the National Institute of Finance and legislation that will be introduced by Senator Jack Reed

(Democrat, RI) by the year's end.

Session 2: Crowdsourced Online Dispute Resolution *Urs Gasser, Executive Director, Berkman Center for Internet & Society*

The cODR session began with two goals: (1) to discuss the conceptual foundations of crowdsourced online dispute resolution, and (2) to identify potential use cases for such an approach.

With regard to the first question, four threads of discussion emerged. First, participants pointed out that the conception of "dispute," particularly in the online context, is rapidly changing; we need a more open and durable definition. A consensus emerged that a dispute can be broadly conceived as an instance where trust is broken. Second, the group critically discussed the need for and feasibility of crowdsourced conflict resolution mechanisms in the Gov 2.0 context. The discussion highlighted legitimacy gains through increased participation and considered the potential (but by no means guaranteed) for increased accuracy of outcomes (e.g. "wisdom of the crowds": Under what conditions is a crowd actually wise? Are they subject to groupthink? Are crowds more suitable than experts in situations that require mediation?). Third, basic design challenges – and principles – of such systems were reviewed. In particular, the importance of irrational factors in decision-making was pointed out by participants. A key takeaway from this portion of the debate centered on the need for greater visibility in social and transactional relationships, in order to establish a space where trust can develop and disputes can be effectively resolved. Fourth, various frames of reference and offline-world analogies for crowd-sourcing mechanisms were considered and contrasted, including jury systems, deliberative discussion forums, performance-based reputation systems, and expert knowledge pools. Overall, the participants agreed that crowd theory offers some guidance to these questions, but that more research and experimentation are needed to discover the best practices for crowdsourced ODR.

With regard to use cases, several participants suggested potential

scenarios where crowdsourced ODR could be employed. Health insurance claims were raised as a particularly topical example; others included areas of private law (referring, inter alia, to the Google Book Settlement and possible conflicts over pricing schemes), the new Open Trust Frameworks, and the government's Peer-to-Patent Project. It was agreed that the most viable candidates for a crowdsourced approach are the kinds of disputes that involve clear rules and don't require the attention of a hands-on mediator.

Session 3: Digital Organizations and Private Law *Oliver Goodenough, Co-Director, Law Lab, Berkman Center for Internet & Society*

This session focused on the migration of institutions and organizations—whether business, civic, or charitable—into the digital space. Oliver Goodenough began by describing the Vermont Project, which seeks to capitalize on the digital formation, management, and governance of corporations and LLCs which is now possible within the State of Vermont. What kinds of opportunities for innovation does such a development afford? Does it provide a roadmap for change in other states or government arenas? The alpha version of the software for managing a Digital LLC is in development, and seeks to capitalize on the role of the Net in creating new markets for transactions and stimulating collaborative, peer-related productions.

Charles Armstrong, the Director of One Click Orgs, discussed his similar effort to provide a web platform to enable civil society associations to form and run online. Key aims echo the priorities of the Digital LLC project, in that flexibility and ease of use are paramount: all governance-related interactions occur online, constitutions are online, and the formation, management, and formal registering are all done online.

Both Monika Cheney, Executive Director of the Gruter Institute, and Erin O'Hara, author of *The Law Market*, considered the legal implications of these types of new mechanisms and "cloud institutions." How might law evolve to support these new institutions?

Can law and jurisdictional support be divorced from geography? Monika laid out a possible roadmap for adoptions in places where poor local institutions for business formation stifle innovation and growth. Erin cautioned that private law still requires a public law backdrop; that is, for new forms of entrepreneurship and digital mechanisms to succeed, governments must allow sufficient evolution in traditional understandings of jurisdiction. Furthermore, with new disputes arising every day regarding issues of venue and jurisdiction in the online space, government must be prepared to develop dispute resolution systems that are grounded in trust, cooperation, and transparency.

Session 4: Transparency in Finance Systems *John Clippinger, Co-Director, Law Lab Berkman Center for Internet & Society*

A goal of Gov. 2.0 is to engage online public participation in all aspects of governance; trust, therefore, is a key consideration. The final session focused on identity/authentication layers for online platforms, especially in the government context. Government, non-profit, and industry participants alike discussed a wide range of experiments focused on enabling reciprocal trust between the government and the governed. In his opening remarks, Drummond Reed, Executive Director of the I-Card Foundation, described government support for the development of a robust identity/authentication layer for the Net, such as the Open Trust Framework.

Another government participant, Bruce McConnell, touched on the importance of government attention to cybersecurity objectives in three areas: securing the .gov domain, screening and credentialing, and protecting critical infrastructure. Casey Coleman, CIO of GSA considered how government agencies might effectively utilize a cloud computing platform for offering basic services.

Private sector participants helped to flesh out relevant lessons learned from the business context regarding data protection and privacy. One participant urged companies to develop better policies and practices to enhance user awareness of the implications of their privacy policy choices. Another suggested that the government shift to a "risk

management model” of privacy and fraud, which may encourage greater uptake by the private sector in providing authentication services.

A final theme focused on the idea of a mandating a identity or privacy agent who could act on behalf of users of certain platforms; however, this kind of built-in trusted advocate model still represents a user experience challenge. For government application, perhaps brand reputation and trust would be more practical than explicit, transparent user interface displays or government assurances. This point was contested by some participants, who argued that there were many instances in the private sector when company concern over brand integrity fails to protect consumer interests.

IV. Final Plenary: Next Steps: CloudLaw and Open Governance Platform

The final plenary session included a report out by rapporteurs from each working session, and focused on summarizing key findings and areas for future work emerging from the workshops. There was a great deal of interest among participants in continuing to collectively focus on the themes emerging from the Gov 2.0 Summit and the Law Lab discussions, and to respond to the challenge of identifying where there is a need and potential in government for next generation governance models.

Proposals for next steps included continued multi-sectoral exploration of the service layers of such models, including new reputation, identity, security, and dispute resolution systems. Future efforts could also include collaboration between different actors, including academics, non-profit and business representatives, and government officials, to evolve these mechanisms, by continuing the conversation, developing research, and directly responding to the implementation challenges raised in the meetings. Such a process might include specific workshops and research efforts aimed at informing future design and government application. Participants voiced a general interest in bringing new understanding of governance and digital institutions to government. Such common interests across sectors,

shaped by ongoing dialogue, could inform innovative experiments, research, and end products.