

The Role of Governments in Internet Governance

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Consumers International

28 May 2013

Outline

1 Recent developments

- World Telecommunication/ICT Policy Forum (WTPF)
- Congress bill to affirm US policy on Internet governance
- ICANN GAC's Beijing Communiqué

2 The role of governments

- The role of governments in Internet governance
- Defining their role
- Redefining their role

3 What lessons can be learned?

- Operationalising the role of governments
- Institutional reform
- Conclusion

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WCIT 2012 and the amendment of the ITRs

World Conference on International Telecommunications, November 2012

- Unprecedented hype over a “UN takeover of the Internet”
- Proposals to amend International Telecoms Regulations:
 - Making ITU rules binding on non-members
 - Gaining control of Internet resource allocation
 - Revenue sharing between content hosts and telcos
- Internet proposals shuffled into a non-binding resolution
- WCIT ended in failure: only 89 countries signed so far
 - Spam and security provisions seen as an incursion
- Loss of useful provisions on telecommunications
 - Mobile roaming rules, global emergency number, accessibility



WTPF 2013

World Telecommunication/ICT Policy Forum, May 2013

- Unlike WCIT, the WTPF outputs were non-binding opinions:
 - 1 Promoting [Internet Exchange Points](#) (IXPs) as a long term solution to advance connectivity
 - 2 Fostering an enabling environment for the greater growth and development of [broadband connectivity](#)
 - 3 Supporting Capacity Building for the [deployment of IPv6](#)
 - 4 In Support of IPv6 Adoption and [Transition from IPv4](#)
 - 5 Supporting [Multi-stakeholderism](#) in Internet Governance
 - 6 On supporting operationalizing the [Enhanced Cooperation Process](#)
- Drafts were prepared by a new Informal Experts Group (IEG) in a new and initially unclear process
- All six were cleared quickly and with few amendments



Opinion 7

Operationalizing the role of Government in the multi-stakeholder framework for IG

- Brazil reintroduced a seventh opinion with contentious preambles (later removed), but uncontentious substance:
 - Calls on the ITU to provide capacity building for developing country governments to more effectively participate in multistakeholder Internet governance institutions
 - Encourages states to participate in those institutions, in addition to their discussion of relevant issues at the ITU and in the WSIS+10 process
- Chair proposed the opinion could go to the Council Working Group on Internet policy (CWG-Internet)
- Best Bits civil society network and others counter-proposed the IGF devise a process to work on the text



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My observations



- A more conciliatory United States
- No dissent from the multi-stakeholder approach (even Iran a strong supporter)
- But views on what this *actually means* differ
- Restatement of the unique role of states (most firmly by Russia)
- No signs of the ITU establishing a significant role for itself in Internet policy

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Bill HR 1580

Bill to affirm the policy of the United States regarding Internet governance



As introduced in April 2013:

It is the policy of the United States to promote a global Internet free from government control and to preserve and advance the successful multistakeholder model that governs the Internet.

As passed:

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Problems with the original bill

- No distinction stated between domestic and foreign policy
- No definition of “government control”, but on any reasonable definition it could include domestic regulation like
 - The IANA contract and DOC control of the DNS root
 - FCC regulations on network neutrality, spam, privacy
 - The Digital Millennium Copyright Act (DMCA)
 - Extrajudicial domain seizures affecting aliens
 - Regulation of trade in online gambling services
 - Laws requiring surveillance and intercept capability
- And intergovernmental policies over the Internet that the US supports like the WIPO Internet Treaties and the TPP

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Problems with the amended bill

- It remains a case of politics as theatre
- Rather than *delete* the reference to government control, why not *fix it* by specifying parameters for when it is justified
- No definition of “the successful multistakeholder model that governs the Internet”
 - Is it limited to technical community bodies like ICANN?
 - What about reforms to implement enhanced cooperation?
- The words **preserve and advance** implies that there is no need to **enhance** the model

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Background



- ICANN GAC

- Originated in 1998 to provide non-binding public policy advice to the ICANN board
- More detailed relationship prescribed in the 2002 reforms
- The board must respond to GAC advice

- New gTLD programme

- Policy development commenced in 2005 building upon pilots in 2000 and 2003
- Applicant guidebook approved in June 2011
- 1912 applications (including 116 IDNs)



GAC Communiqué

- Developed in private and issued on 11 April 2013
- Demands many changes to the new gTLD process developed through ICANN's multi-stakeholder processes
 - Reject .shenzhen, .persiangulf, .guangzhou, .amazon, .patagonia, .date, .spa, .yun, .thai, .zulu, .wine, .vin
 - New safeguards for all gTLDs on privacy, security, cybercrime
 - Special safeguards and limited access to certain categories of gTLDs including children, environment, health, finance, IP
 - No exclusive access to gTLDs named for generic terms like .cars, .book, .music
 - Special rights for the Red Cross and IOC
 - Not allow singular and plurals of the same gTLD
- Chair suggests governments may pull out if advice not taken



Problems with the communiqué

Substance

- There are some good points in the GAC advice
 - There *may* be an expectation that domains relating to regulated industries have been vetted
 - In any case, it is good to have (some) such domains
- But imposing limits on the use of .gripe, .fail, .sucks, .wtf?

Process

- Advice should have come much earlier in the policy development process
- A separate process was defined for the filing of objections
- Public comments on the communiqué remain open until 4 June

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Is there a role for governments at the national level?

- Many government interventions *already happen* at the national level and with *civil society's support*:
 - Network neutrality rules to stop operators from discriminating
 - Providing incentives to promote migration to IPv6
 - Enforceable standards for the protection of personal data
 - Extending universal service policies to include Internet access

Conclusion

Government intervention isn't *always* good, but it *sometimes* is

- When it fails, we look to governance through another mechanism (norms, code) or at another level (local, global)



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Is there a role for governments at the global level?

- Other global mechanisms – norms, code, markets – may fail
 - Norms are only enforceable through mob justice (Anonymous)
 - Code is not legitimate and does not promote positive rights
 - Markets are imperfect due to network effects and externalities
- Governments must be involved at the global level in two cases:
 - Where their interventions at the national level cause spillovers
 - To hold others to account for infringing universal human rights

Example

United States global seizure or takedown of content (under DMCA) or domains (eg. rojodirecta.com/.org legal under Spanish law)



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Respective roles of stakeholders

- ① Policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues.
- ② The private sector has had, and should continue to have, an important role in the development of the Internet, both in the technical and economic fields.
- ③ Civil society has also played an important role on Internet matters, especially at community level, and should continue to play such a role.
- ④ Intergovernmental organizations have had, and should continue to have, a facilitating role in the coordination of Internet-related public policy issues.
- ⑤ International organizations have also had and should continue to have an important role in the development of Internet-related technical standards and relevant policies.

What does this mean in practice?

Bad examples of governments in multi-stakeholder environments

ITU, the GAC Communiqué, US surveillance and takedowns, IP and free flow provisions of the TPP, WTO, APEC...

A mixed example – OECD CSISAC

Communiqué on Principles for Internet Policy-Making rejected by CSISAC but quietly came back to life as Internet Policy-Making Principles and now being promoted as a global framework

Good examples

Article 10 Kenyan constitution, Brazilian Internet Steering Committee (CGL.br), Aarhus Convention

How do government approaches differ?

Despite lip service paid, the OECD governments are the *least* supportive of multi-stakeholderism.

- Excluding certain topics

- ① Security

- Wikileaks financial blockade and prosecutions
 - Surveillance (PATRIOT Act, Wiretap Act, CISA, CALEA)

- ② Intellectual property

- Public (France) or private (US) graduated response
- Opposing non-binding policy recommendations for the IGF
- Opposing UN funding for the IGF and limiting their support
- Shifting policy discussions to less inclusive fora
 - G8, ACTA, Trans-Pacific Partnership (TPP)



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Should the respective roles of stakeholders be redefined?

Yes



Will they be?

No



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Revisiting the Brazilian proposal

Operationalise

1. (*verb*) put into operation or use.

- **Operationalising** doesn't just involve capacity building around participation in existing institutions.
- Also requires:
 - Mapping how multi-stakeholder principles are institutionalised
 - Making appropriate institutional reforms
 - Providing the means of funding
- We should also operationalise the participation of **not just governments** but **all stakeholders** in a multi-stakeholder framework



The IGF's forgotten role

Tunis Agenda 72

- (c) Interface with appropriate intergovernmental organizations and other institutions on matters under their purview.
- (g) Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations.
- (i) Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet governance processes.

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Enhanced cooperation

- Our mandate to make this happen is *enhanced cooperation*
 - Defined in the Tunis Agenda as a
process towards enhanced cooperation involving all stakeholders, proceeding as quickly as possible and responsive to innovation ... [which would] enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet
- WGIG came up with four options, none were taken up at WSIS
- India came up with the CIRP – similar format to the OECD
- This week, a multi-stakeholder CSTD working group examines the mandate anew



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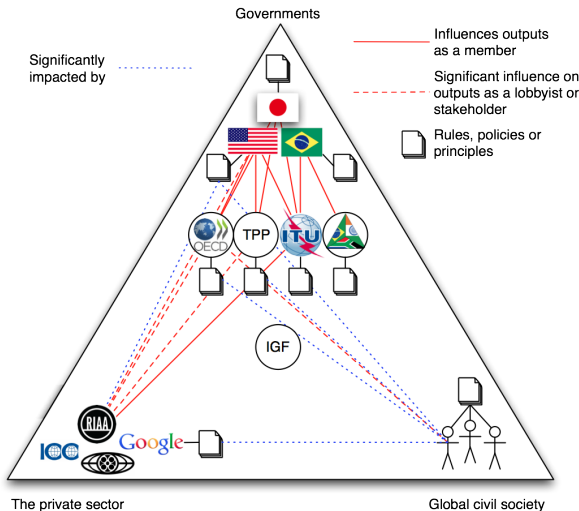


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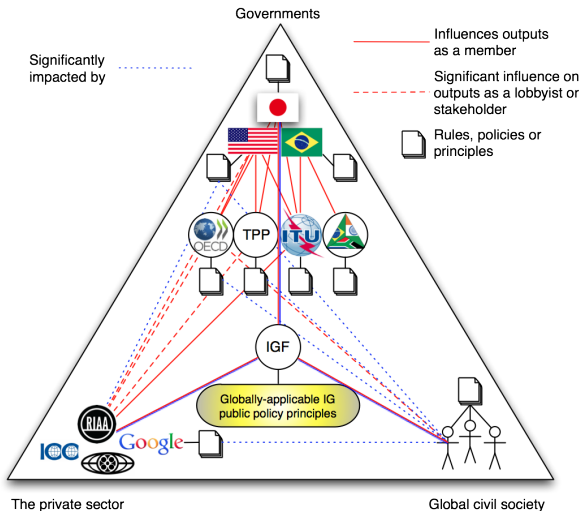
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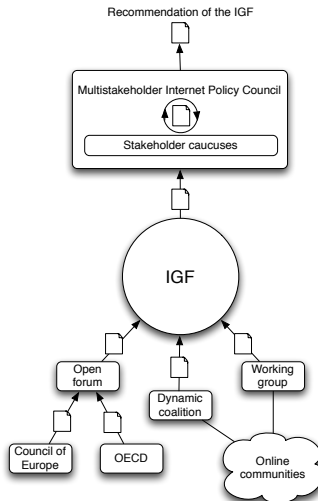
Some suggestions – at macro level



Some suggestions – at macro level



Some suggestions – at micro level



Other options

- US revives the proposal from Sweden to open up the Council Working Group on Internet Policy (CWG-Internet)
- Committee on Internet Related Policies redux
- Multi-stakeholder opinions or messages from the IGF
- _____ your ideas go here

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Summary

- The run-down of recent developments:
 - WTPF suggests **ITU is not the future** for Internet Governance
 - Bill HR 1580 shows the US acknowledges **a role for government(s?)**
 - The Beijing Communiqué shows governments **don't yet have a good fit** into the multi-stakeholder model
- The way forward:
 - Operationalising the role of governments involving **mapping, capacity building, institutional reform** and **funding**
 - The CSTD Working Group on Enhanced Cooperation and the IGF have the **opportunity to pave the way**



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Links and contacts

- My email
 - jeremy@ciroap.org
- My IGF blog
 - <http://igfwatch.org>
- Best Bits – A civil society network on Internet governance and Internet rights
 - <http://bestbits.net>
- A2Knetwork.org – a smaller network for consumers in the digital age
 - <http://A2Knetwork.org>

