

Name of the paper: Towards a Common Understanding of the Roles and Responsibilities of all Stakeholders in Internet Governance
Does the paper cover the topic with sufficient depth and accuracy?
Comments The paper has several strengths, and is fairly comprehensive. On balance, its overall conclusion (trilateralism) is generally acceptable.
Does the paper achieve a reasonable balance in weighing relevant matters?
Comments The quality of the paper seems overly negative towards private sector activities.
Any other comments Given concerns in other papers about undue government control, it would be worthwhile including in this paper background on, and an assessment of, different models for host country arrangements. In section 3 (p.2), we agree with the characterisation of 'governance' mechanisms as ranging from 'soft' to 'hard' and that all have a role to place in this field. However, in practice it may prove difficult to disassociate the word (if not the idea of) 'governance' from 'hard governance' (ie. binding arrangements), while non-binding and softer mechanisms (eg. policy, guidance, cooperation, coordination) are seen as something different. In section 3 (p.2), in relation to the type of governance mechanisms employed, the reference to 'the nature of the governance decision being taken' presumably refers to the nature of the outcome sought – ie. whether mandatory or voluntary, for example – rather than the nature of the decision mechanisms. If so, this is not clear. In 'NGO mechanisms' (p.3), ICANN is cited as the prime example. Given the general nature of the discussion in this paper, it would be useful for comparative purposes for WGIG to also look at other NGO models – eg. the International Standardisation Organisation (ISO) and the International Electrotechnical Commission (IEC) relevant to the sector – and possibly outside it, eg. the International Red Cross. In section 4(b) (p.4), it would be useful to note how the ITU overcomes the concern about the accuracy of standards when translated. In section 5, 'Assessing the Actor ...' (pp.4-6), it is notable the assessment does not seem to pay much attention (if any) to the WSIS outcomes criteria – ie. how productive/effective are IGOs compared with other approaches?

The start of 5(b), 'Assessing the Actor ...: NGOs' (p.5), states some parties see ICANN's NGO status as inconsistent with national sovereignty over public policy issues. This may be the view of some at present but it would be consistent with the sovereign rights of nations to decide to have certain Internet related matters handled by ICANN. That is, nations have the right to choose that self-regulatory approach if they wish. That does not mean governments may not want a mechanism by which ICANN was further required to take account of countries' views (eg. the GAC or something else).

Section 5(c), '...Government Advisory Committee' ..., is highly dismissive and does not assess the GAC's position, role or achievements in a meaningful way. Nor does it tie its criticism to any constructive proposals. The GAC's role should be analysed more objectively. The GAC's previous submission to WGIG (second meeting) could be referred to.

What is the evidence to support the assertion in Section 6(a) (p.7), that developing (and developed) countries could participate better if Internet governance policy discussion were geographically centralised? An alternative view is that moving meetings increases the opportunity for wider and larger attendance from a region than may otherwise be the case. What factors would need to be considered in choosing such a central location?

Section 7, 'Impact of the Private Sector on governance' (p.8), comes across as very negative and unbalanced against the private (or commercial¹) sector. The private-commercial sector does play a key part in the Internet's operation. Notwithstanding early and ongoing Government involvement, the private-commercial sector has played, and is playing, the central role in providing the Internet as it exists today. As such it has an intimate understanding of its operations from both a supply and demand perspective. The central role of the private-commercial sector in itself is not a reason to exclude the private sector, or subject it unthinkingly to government control. Equally, the commercial-private sector may not always operate to the benefit of consumers or wider society. In these instances, governments should be able to exercise control of public policy issues, as they do – and as is recognised in para. 49(a) of the Geneva Declaration of Principles. If, however, governments decide that free market mechanisms and self-regulation are appropriate 'governance' mechanisms, that is an appropriate decision for governments, and no less valid than implementing more intrusive arrangements. The key issue for governments here then, as the WGIG papers note, is how they exercise appropriate oversight power.

Section 9, 'Conclusion', seems reasonable, although it appears somewhat inconsistent with section 8 as currently drafted and which should be revised. We favour a 'trilateralist' approach as proposed, but note the issue is how this is given best effect. In our view, ICANN, following reform, should play an important role in this regard.

¹ This distinction is noted to accommodate entities which may be fully or partially government-owned but nevertheless operate on a commercial basis at arms length from Government.

Name of the paper:

Criteria for the term "transparency, accountability, democracy" with regard to Internet Governance arrangements

Does the paper cover the topic with sufficient depth and accuracy?

Comments

The definitional elements are generally reasonable and sensible.

Does the paper achieve a reasonable balance in weighing relevant matters?

Comments

See below.

Any other comments

While not mentioned in the Declaration of Principles, we agree with the paper that 'accountability' is an important additional criterion.

The definitional elements are ideal and in practice there may need to be some compromises – for example, the number of languages and documents translated, the extent of direct versus indirect participation, the level of funding provided, and the extent to which Governments need to represent national opinion of all national stakeholders.

Re 'Transparency, point 4', clarity about relationships and interaction with other bodies should be included.

Re 'Transparency, point 6', this is not clear whether it refers to budgets for the forthcoming year or accounts for the past year. Where an organisation is primarily being funded on a multilateral or multistakeholder basis, input into its budget preparations is appropriate and the budget should certainly be published and be broken down to a meaningful level.

Re 'Transparency, point 8', processes for getting items on the agenda should be clear and fair.

Re 'Accountability', point 2, after 'functioning', the words 'including achievement of stated goals and compliance with its budget,' should be added.

Re 'Democracy', point 13, it would seem appropriate to refer to diversity of gender as well.

Re 'Democracy', point 15, it is not self-evident to us that centralised meetings necessarily enhance institutional democracy, particularly in a multistakeholder context. Moving meetings around regions may in fact enhance opportunities for multistakeholder participation, particularly from the developing world. Clearly, however, developing countries can better answer this question.

Name of the paper:
Physical and secured infrastructure issues [Cluster 1a]
Does the paper cover the topic with sufficient depth and accuracy?
Comments
This paper appears to be incomplete.
Does the paper achieve a reasonable balance in weighing relevant matters?
Comments
See below.
Any other comments
<p>In relation to <u>Issues I, 'Telecommunications infrastructure, broadband access'</u>, it is unclear what the precise global 'governance' issue is here. As the paper notes, the provision of, access to infrastructure is generally a matter for commercial operators (public or private) in a jurisdiction and for national governments, or combinations of these at regional levels. In 5(b)(i) (p.3), it is implied there is little role here for IGOs.</p> <p>In Section 4 of Issue 1, 'Governance Mechanisms', it is misleading and inappropriate to equate contractual arrangements with 'governance mechanisms'. While such arrangements can clearly shape the experience of end users, they are commercial matters, not governance mechanisms. As such, in the absence of Government intervention, it is a matter for the parties concerned as to whether they involve other parties in the contractual negotiations.</p> <p>In relation to <u>Issue II, 'VOIP'</u>, the coverage is basic but probably sufficient.</p> <p>Some countries may find it too focussed on technical issues. There are other issues, for example, the appropriateness of applying 'legacy' service requirements and the jurisdictional issue, not addressed, of enforcing any service requirements given that VOIP services can be offered across borders.</p> <p>The level of coordination on VOIP standards could be queried given that it appears the H.323 VOIP standard developed by the ITU is being superseded by the SIP standard developed by the IETF. Stakeholders should be concerned about duplication of standards work and brakes on innovation.</p> <p>In relation to <u>Issue III, 'Peering and interconnection'</u>, much of the assessment is incomplete.</p> <p>The discussion of Issue III again raises the idea that because commercial contracts shape end-user experiences, some or all stakeholders should be able to participate in their conclusion. As a general principle, we do not share this view. If governments want to shape contractual arrangements, it should be done by specifying in advance the rules applicable to such contracts, not by interfering in the contracts themselves.</p> <p>In relation to <u>Issue IV, 'Spectrum policy'</u>, the coverage is basic but it is not clear this is a significant Internet governance issue.</p>

The role of other 'private sector' standards organisations (eg. IEEE) and coordination issues are not discussed. For example, to what extent does the work of public and private sector standards bodies overlap?

In relation to Issue V, 'Technical standards', the coverage is basic.

The role of standards (and other mechanisms) for promoting access for people with disability is not addressed.

The paper on IPR makes some relevant comments about standards (p.4-5) and could be usefully cross-referenced.

IANA/ICANN has a standards role in that it is the repository for Internet protocol parameters. Details can be sought from ICANN.

The assessment does not cover all institutions mentioned nor are all criteria considered – eg. whether arrangements are 'democratic'.

In relation to Issue V, Section 6, 'Coordination', the question of overlap could be explored, especially between private sector and IGO standards activities.

In relation to Issue V, Section 7, 'Overall assessment', the point being made could be clearer. Presumably it is that capacity building is required to improve the ability of some stakeholders to engage on standards issues. Presumably it is not implying standards need to be simplified so they are comprehensible to non-experts.

Name of the paper:

Issues relating to the logical infrastructure of the Internet: Multilingualization of naming systems [Cluster 1b]

Does the paper cover the topic with sufficient depth and accuracy?

Comments

Subject matter was not adequately explored and expressed in this paper.
Paper is not very clear, and in many cases does not address or answer the questions posed.

Does the paper achieve a reasonable balance in weighing relevant matters?

Comments

See below.

Any other comments

Multilingualisation of the Internet is a significant issue for many countries in improving access and useability of the Internet. (See for example, the GAC's Communiqué of 5 April 2005). It is important for WGIG to provide clear guidance in this area.

Keyword lookup systems or alternative approaches to MNS are mentioned throughout the report, but are not clearly defined or explained for lay readers.

Section 2 lists rather than describes the institutions involved, and would benefit from more explanation.

Section 3:

- Final paragraph refers to Keyword lookup systems being initiated. Some examples may be useful.

Section 4:

- Final paragraph: "the current mechanism of governance has its evident weak point...." A number of different mechanisms and institutions were mentioned previously, so it is not clear what the exact coordination weakness is. The last sentence could be clearer.

Section 5 (process):

- the assessment does not appear comprehensive in terms of institutions involved and strengths and weaknesses against the criteria.

Section 5 (role and responsibility):

- tends more to a description of what the actors are doing rather than an assessment of whether the institutions' Internet-related mechanisms are allowing stakeholders to fulfil their roles and responsibilities.

Section 6: Second paragraph: "Approaches that depend on plug-ins, for example, may easily lead to a breakdown of the global interoperability of the Internet". How and why? This statement requires more explanation given the purported significant negative consequences. As we understand it, views also differ on this matter.

Name of the paper:

Issues relating to the logical infrastructure of the Internet: IP Numbers [Cluster 1b]

Does the paper cover the topic with sufficient depth and accuracy?

Comments

See below.

Does the paper achieve a reasonable balance in weighing relevant matters?

Comments

See below.

Any other comments

WGIG should have regard to the comments on the Numbering Resource Organisation (NRO), particularly on factual matters, given its experience and expertise in this area.

Accurate data on IPv4 address usage should be sourced and referenced (top, p.2).

As NRO notes, IPv6 addresses are not technically unlimited (top, p.2, cf. p.4).

To allow WSIS to assess this matter, WGIG should get to the bottom of competing claims about the impact of different IP address allocation models impacting on routing tables and thus efficient network operation. See for example, APNIC's paper to WGIG.

The paper does not mention that on 8 April 2005, during the ICANN Board meeting in Mar del Plata, Argentina, the ICANN Board formally approved the adoption of a global policy on IANA Allocation of IPv4 address space to the Regional Internet Registries developed by the Address Supporting Organisation (ASO) and the Number Resource Organisation (NRO). See: <http://aso.icann.org/docs/aso-001-2.pdf>

On page 3 the paper argues there is no involvement of government or civil society in the general process of IP management and it is in the hands of the private sector. As far as we are aware both governments and civil society are able – and indeed encouraged – to participate in RIR policy development. Moreover, governments jointly can contribute through the GAC. Lack of government involvement appears to be due to factors other than lack of opportunity. The current model means all interested stakeholders can have a say IP address management, not just the private sector.

Claims about IPv4 address misallocation/usage should be referenced, substantiated and critiqued (p.4).

In relation to 'Improvements' (p.7), it is not clear what the first, fifth and sixth points mean and what they envisage happening, or whether they are in fact justified by the information in the body of the discussion. Notwithstanding the acknowledged success of existing arrangements and their 'multistakeholderism', it seems 'improvements' are proposed with little or no justification – and/or little idea of what they entail.

Name of the paper:
Issues relating to the logical infrastructure of the Internet: Domain Names [Cluster 1b]
Does the paper cover the topic with sufficient depth and accuracy?
Comments
This paper seems to cover the relevant issues and facts.
Does the paper achieve a reasonable balance in weighing relevant matters?
Comments
Some of the interpretation is questionable, though it concludes the existing arrangements have generally worked well.
Any other comments
<p>The comment 'there has been no legal basis for the creation and delegation of the original seven gTLDs' (p.3) seems a little simplistic given the nature of the Internet's development.</p> <p>In relation to main actors (Section 5, para 1 (p.5), ICANN also has an At-Large Advisory Committee (ALAC) to facilitate civil society input (as latter mentioned on p.7).</p> <p>In relation to national sovereignty (p.6, para.1), the comment on p.7 is also appropriate: 'ccTLD management is subject to public policy of the relevant government; the ccTLD sections of the ICANN Bylaws expressly consider the supreme rule of national law...'. </p> <p>In relation to government participation in ICANN (pp.6, 7), it is our view that governments can participate directly in ICANN decision-making processes through ICANN's established policy development and consultative processes, in the same way as other stakeholders. This can therefore be considered a democratic, transparent, inclusive (and multilateral) process. Whether they choose to do so is a matter for governments. The existence of the GAC allows government to provide advice to ICANN in a collective, cooperative manner.</p> <p>In relation to multilateralism and the US DoC's role (p.6, paras 1 and 2), as in the root server paper, the DoC's role needs to be described precisely and the sources need to be referenced, preferably using primary documents. The p.6, para.1 says DoC 'oversees', p.6, para.2, says 'approves'. It is important to determine the extent to which the DoC's role is administrative as opposed to political (as the paper implies) and the basis on which it exercises its role.</p> <p>In relation to the role of governments in ccTLD management (p.7, para.5, second sentence, 'However, since the GAC...'), this discussion seems to miss the point. National governments exercise their sovereignty in relation to a ccTLD redelegation by putting in place appropriate measures at the national level and being involved in directly requesting a redelegation by ICANN, not through the GAC. Further, a ccTLD manager is subject to such laws of its jurisdiction as apply to it. This is not really an issue of the GAC's role.</p>

In relation to Verisign's market share (p.8, para.3), this figure should be referenced.

In relation to Outcomes (p.8, para.3), where it says 'the equitable distribution of resources and multilingualism are still major concerns in the current situation', it is not clear from the discussion exactly what aspect of resource allocation is a concern, let alone why.

In relation to 'Improvements', the list reads like issues for further consideration. More concrete proposals for improvements would be useful. For example, re page 8, last dot, a more precise proposal, if valid, in relation to rebalancing of stakeholder roles would be more useful.

In relation to the WHOIS database (p.9, dot 2), this issue does not seem to be discussed in the body of the paper. 'Reassessment' implies parties are not aware of privacy concerns. This is not the case. (See for example, the GAC's Communiqué of 5 April 2005). In looking at the WHOIS database, consideration also needs to be given to its benefits for law enforcement.

Re IDN (p.9, last dot), in March 2003, ICANN and a cross-section of leading IDN-implementing registries worked to develop a set of common-sense "Guidelines for the Implementation of Internationalized Domain Names." Version 1.0 of the Guidelines was published in June 2003. This is not mentioned in this paper, let alone evaluated. In its Communiqué to the recent ICANN meeting, April 2005, the GAC encouraged the ICANN Board to implement the decision (made at its meeting in July 2004) to establish a President's Advisory Committee on IDN.

Name of the paper:
Issues relating to the logical infrastructure of the Internet: Root Servers [Cluster 1b]
Does the paper cover the topic with sufficient depth and accuracy?
Comments
The coverage is generally satisfactory, but see comments below, particularly on detail.
Does the paper achieve a reasonable balance in weighing relevant matters?
Comments
See below.
Any other comments
<p>The technical limitation on the number of root servers (p.5) should be precisely explained and a reference for further reading provided.</p> <p>The GAC should be mentioned as a relevant institution and not dismissed out of hand (p.7). ICANN is obliged to provide a statement of reasons if it does not follow GAC advice. GAC's ccTLD Principle and Guidelines are directly relevant to ccTLD redelegation and thus root zone file modifications.</p> <p>Given the importance of this subject, references should be provided for key factual information in this paper (eg. on the roles of IANA/ICANN, DOC and Verisign), preferably citing primary sources.</p> <p>Discussion of the DOC and IANA/ICANN link (eg. pp.3, 6, 7) should make it clear that the current arrangements are intended to be transitional while ICANN establishes itself and once they cease the connection of concern to some parties between ICANN and the DoC would presumably not exist. The arrangement is scheduled to cease in September 2006, within 12 months of the Tunis Summit. This is a material consideration in assessing future arrangements.</p> <p>The nature of the DOC's authorisation function (pp.3, 6, 7 etc) should be precisely explained and referenced. Does it go beyond administrative checking that due process has been followed? What scope, if any, is there for political interference (as implied in dots 2 and 3 under Section 7)? For example, is the DOC able to initiate changes at its own volition or is it only able to approve ICANN proposals? What is precisely happening here is important to judgements about possible changes. If it is a purely administrative process, all things being equal, it arguably does not have a political dimension.</p> <p>A precise explanation of the relationship between DOC, ICANN and Verisign is required, along with a precise description of Verisign's role. References should be provided.</p> <p>The point of the discussion of the role of other governments in root zone file changes (bottom p.6, top p.7) is understood. However, it is not clear it is technically correct. As noted on p.7 of the Domain Names Management paper, national law prevails in the case of domain name redelegation. Thus other governments do participate in this area. As the paper notes, the matter is fundamentally handled by ICANN. The DOC gives final</p>

authorisation to the change to the root zone file, the exact nature of which is unclear – and therefore an issue. These arrangements are set out in published legal documents – ICANN’s bylaws and agreements - and are subject to the rule of law. It is an over-generalisation to say they ‘fundamentally based on trust’.

Section 6, ‘Co-ordination’, is very general and needs to be better thought out and expressed. ICANN does, in fact, provide a key coordination mechanism across a range of issues – as noted in the section itself (ie. domain names, IP addresses, protocols). Current activities requiring ICANN coordination in relation to the root server system include security and IDN. This can be checked with ICANN.

In relation to Section 7, dot points 2 and 3, ‘Overall assessment’, the body of the paper does not really draw out where there are public policy (as opposed to pure technical) issues involved in root zone file changes. There is an assumption the process is or can be politicised, but this does not seem to be demonstrated. It appears to us that if documented processes are followed, modifications are purely technical issues. Most of the problems we are aware of appear to relate to debates at the national level as to who has the authority to request a change, leading to difficulties for IANA/ICANN. Examples to the contrary should be cited. This is not to say there is not an issue of principle. Again, it should be kept in mind this matter arises because of the current arrangements which is scheduled to cease.

In relation to proposed changes to the root server architecture (dot points 6 and 7), the rationale and the process envisaged are unclear and the implications (including for existing operators’ investments) seem to be unconsidered.

The precise meaning of dot points 8 and 9, Section 7 should be clarified.

Name of the paper:

Issues relating to the use of the Internet [Cluster 2]

Does the paper cover the topic with sufficient depth and accuracy?

Comments

The discussion and analysis is basic in many places – eg. critical infrastructure, ISP liability. There are some good ideas for moving forward but there could be more concrete ideas on how to deal with the issues.

Does the paper achieve a reasonable balance in weighing relevant matters?

Comments

See below.

Any other comments

Spam (Annex, pp. 5-7)

Australia considers spam a key issue and one where WGIG and WSIS can make a valuable contribution.

We generally endorse the proposals of ‘future handling of spam’ (p.7). We agree spam needs to be addressed using a multilayered approach. We note many of these are in train to varying degrees.

There would be benefit, however, if the proposals were made less abstract and more substantive and practical. For example, should there be wider enactment of national anti-spam globally and wider agreement on cross-border enforcement cooperation? In what ways, in particular, can the work of the OECD and the London Action Plan be built upon?

We agree cooperation and coordination between the OECD, APEC and ITU should be improved, but WGIG should give concrete suggestions how? For example, should they work to establish a harmonised policy on dealing with spam, which can then be implemented and enforced nationally or cooperatively between countries?

Cybercrime (Annex, pp.7-9)

Again, we are generally supportive of the WGIG proposals in this area.

Although it is enforcement rather than a policy institution, it may be useful for the paper to briefly explain what function Interpol plays in this area. According to its website, Interpol does have an IT/cybercrime function (see <http://www.interpol.int/Public/TechnologyCrime/default.asp>).

Again, it would be beneficial if the WGIG could be more concrete in its proposals in this area. For example, is it proposing all countries put in place harmonised anti-cybercrime laws and agreements to cooperate on enforcement? What obstacles to such cooperation

does it see?

Network security (Annex, pp. 9-10)

The paper seems to give rise to the conclusion that there is no simple 'governance' solution in this area, but that education, capacity building and coordination are required. If this is the case, the point needs to be made clearly.

Critical infrastructure protection (Annex, pp.10-11)

The paper is very cursory on this matter.

ISP liability and exemption (Annex, pp.11-12)

Regarding the ISP liability/exemptions (pages 11-12), there appear to be some inaccuracies in the statements made and we note that:

- Multilateral fora have looked at this issue in relation to copyright (including software, music, film, literary works and artistic works) which was partly addressed in the Agreed Statement to Article 8 of the WIPO Copyright Treaty.
- There are a number of bilaterals that deal with this issue in significant detail, including the AUSFTA.
- Issues relating to ISP liability/exemptions are commonly dealt with in intellectual property law and laws relating to telecommunications.

National policies and regulation (Annex, p. 12)

It is not clear what the original international 'Internet governance' issue was here, or whether there is, in fact, an issue. While it may be useful to mention this matter in the final report, it may also be useful to point out there is not really a 'governance' issue if this is the case.

Name of the paper:
Competition policy, liberalization, privatization, regulations [Cluster 3]
Does the paper cover the topic with sufficient depth and accuracy?
Comments
This paper has a number of strengths, in particular it draws out the important advances in access that have resulted around the world from market liberalisation and competition, particularly in terms of providing a platform for Internet investment and provision.
Does the paper achieve a reasonable balance in weighing relevant matters?
Comments
See below.
Any other comments
<p>The range of institutions covered (p.1) is too limited. National governments are key actors, along with regional groups (eg. the EU, APEC). The OECD has made a particularly important contribution. ICANN also has an important pro-competitive role, for example, in relation to the domain name system.</p> <p>It is not clear what is meant by 'the privatisation of content' (p.3, dot 2) or whether the assertion is correct.</p> <p>In relation to 'Coordination' (p.9), it would help if the 'very interesting coordination issues' were identified clearly. As several relevant institutions are not discussed, the discussion of coordination cannot be complete. The discussion should draw out likely overlaps and conflicts between institutions.</p> <p>In relation to 'Improvements' (p.9), proposals 1 and 2 are rather abstract and difficult to understand. They should be better explained and/or made more concrete. Proposals 3 and 4 are fairly general. Again they should be made precise.</p>

Name of the paper:
E-Commerce, Taxation, Trade [Cluster 3]
Does the paper cover the topic with sufficient depth and accuracy?
Comments
This paper seems generally sound.
Does the paper achieve a reasonable balance in weighing relevant matters?
Comments
See below.
Any other comments
As with previous paper, in relation to 'Improvements' (p7), proposals 1 and 2 are rather abstract and difficult to understand. They should be better explained and/or made more concrete. Proposals 3 and 4 are fairly general; again they should be made precise.
We are still considering this paper, and may provide further comment.

Name of the paper:
Intellectual Property Rights (IPR) [Cluster 3]
Does the paper cover the topic with sufficient depth and accuracy?
Comments Our view is that WGIG's Intellectual Property paper would be a more useful contribution to the WSIS process with some additional work.
Does the paper achieve a reasonable balance in weighing relevant matters?
Comments We have some concerns as to the paper's balance. See below.
Any other comments Sections 2 and 4 appear largely accurate in identifying and describing the relevant institutions and operational mechanisms. The definition of IPR in section 2, however, could include a specific reference to the IP regulatory scheme ensuring reasonable access to IP material. Thematically, however, the paper appears to set up an unhelpful and perhaps outdated dichotomy between a "traditional" approach to IP rights, and a proposed alternate approach taking into account certain questions and challenges thrown up by digital technologies such as the internet. This is unhelpful for a number of reasons, including because it implies among other things that IP rights of relevance to the digital environment are somehow different from other IP rights, and should be applied on a differential basis. In general terms, this is not the case in Australia, where most IP rights, and copyright in particular, are applied on a technology neutral basis (ie irrespective of the storage or transmission media used). From an IP policy perspective, consistency of application including technological neutrality is generally considered desirable. The paper also appears to takes little account of the fact that the impact of digital challenges on the regulation of IP rights has been under discussion in the literature and addressed by policy makers in Australia and within organisations such as WIPO for a number of years. Several of the statements made in the paper regarding IPR are contentious. These include the proposed definition of IPR, a number of the statements made regarding the role of WIPO and other international organisations, and statements in the coordination section. A number of areas in the paper appear outdated. For example, the discussion in the 'Relationship to the Internet' (section 3) does not appear to include any discussion of the recent WIPO Internet Treaties. In particular, there is no discussion in the copyright areas of the impact of the recent WIPO Copyright Treaty (WCT) and the WIPO Performers and Phonograms Treaty (WPPT), both of which Australia is in the process of implementing. The first dot point of section 6 (p.7) also appears problematic as it seems to be going beyond WGIG's Internet-focussed mandate in saying that: 'The issue of determining the most

appropriate, effective and beneficial approach to governing IPR in the global information society (*not just eg. Internet-related copyright issues, but IPR in relation to all knowledge resources ranging from traditional knowledge to genetic engineering*) appears to lie 'above and beyond' the mandates of the two organizations with direct responsibilities for governing IPR i.e. WIPO and the WTO' (emphasis added).

In addition to this concern, Australia disagrees with the view taken in this paragraph. We consider that none of the issues described lie 'above and beyond' the mandates of WIPO or the WTO - they are in fact the international bodies having specific competence to deal with these issues and there is ample opportunity through WIPO's processes for all sectors of society to have an input into these issues. For example, traditional knowledge issues are undergoing thorough discussion in WIPO at the moment and it is difficult to see how the judgement that such issues lie 'above and beyond' WIPO's mandate can be justified. Although there will be always be vigorous debate about whether WIPO and the WTO have on all occasions provided a solution that is an 'appropriate, beneficial and effective method of governing IPR' such results are within the mandates of those organisations and it must be kept in mind that the solutions reached are those negotiated by States with input from NGOs.

Name of the paper:

Developmental Aspects of Internet Governance [Cluster 4]

Has the issue as it applies to the question of Internet Governance been adequately identified?

Comments:

This paper focuses only on one, albeit important, area of development, access to infrastructure and services in high-cost and/or low-income areas. WGIG's fourth cluster gives a longer list of issues in this area:

- Affordable & universal access
- Education, human capacity building
- Internet leased line costs
- National infrastructure development
- Cultural and linguistic diversity
- Social dimensions and inclusion
- Open-source and free software
- Content accessibility

(See: <http://www.wgig.org/docs/Clusters.pdf>). There is no discussion of special access needs for people with disability. However, given this long list and WGIG's short timeframe to report, it would seem unrealistic to expect all these issues to be addressed fully in the time available. We therefore suggest WGIG focus on priorities, or attempt a generalised discussion.

Does the paper cover the topic with sufficient depth and accuracy?

Comments

Generally the particular issue covered here is covered in sufficient detail.

Any other comments

Australia considers the issue of improving access discussed in this paper is important both nationally and internationally. In Australia providing access is given high priority. In Australia, access to ICTs – radio, television, fixed and mobile telephony, narrow and broadband Internet – is largely on a commercial basis and by the private sector. Where there are barriers to commercial provision, the government undertakes a range of measures. For example, there is a legislated and transparent universal service obligation (USO) in relation to fixed telephony, regulation to provide access to a minimum dial-up Internet speed, and a legislated digital data service obligation (DDSO) guaranteeing access on request to an ISDN-type digital data service. In relation to newer services like mobile telephony, Internet and broadband, the Government has placed greater emphasis on direct, transparent budget funding. This includes, for example, funding to provide public Internet access centres, to extend mobile telephony coverage to small communities and to improve the affordability of satellite mobile services and broadband service in remote areas.

We tend not to see access as an international Internet 'hard' governance issue. We see this issue more as one of national development and regulation. Access also relates to a range of ICT infrastructure, other than infrastructure used solely for the Internet, raising questions about whether it is sensible to discuss it solely within the context of Internet

governance. As such this issue has close links with the WSIS work on financing mechanisms (as demonstrated by pp. 3-5 of the paper). That this is not essentially an international Internet 'hard' governance issue is recognised by the paper (p.4, last para). At the international level, Australia is generally in favour of the 'soft' mechanisms outlined in the paper, while recognising coordination could be improved. Liberalisation, competition and private sector investment also have an important role to place in promoting access in all areas.

Section 2: This is very brief and for lay readers would benefit from spelling out acronyms and abbreviations and explaining what kind of role the institutions have in providing affordable and universal access. Also explaining which ones exercise more control/influence than others would be useful.

Section 3: In relation to the WTO Reference Paper on Basic Telecommunications preventing signatories putting in place effective universal service/access arrangements (p. 2-3, 8-9), Australia considers that the WTO Paper does provide adequate space for countries to put in place such arrangements. This is evidenced by the arrangements Australia has put in place (see above) as well as those implemented by other signatories. The WTO Paper indicates any member has the right to define the kind of USO it wishes to maintain. It then sets out criteria applying to those arrangements. The paper requires the USO arrangements be transparent, non-discriminatory, competitively neutral and not overly burdensome for the type of service defined. We consider these principles to be reasonable and appropriate. It is also worth noting that the Telecommunications Annex to the GATS also provides some flexibility for developing countries in relation to the development.

Towards a working definition of the Internet

This section provides some further comments on the question of a definition of Internet governance.

Background

The chairman of WGIG, Mr Desai, annexed the following working definition of Internet governance to his statement to Prepcom-2 on 24 February 2005:

First *descriptive* sentence:

Internet governance means the collective rules, procedures, and related programs intended to shape social actors' expectations, practices, and interactions concerning Internet infrastructure and transactions and content.

Second *prescriptive* sentence:

Internet governance should be multilateral, transparent and democratic, with the full and balanced involvement of governments, the private sector, civil society and international organizations. It should encompass both technical and public policy aspects, ensure an equitable distribution of resources, facilitate access for all, and maintain the stable and secure functioning of the Internet, taking into account multilingualism.

Australian comments

- Australia notes the proposed definition draws heavily on that proposed by Mr Zhao, Director, TSB, ITU, in his paper 'ITU and Internet Governance', prepared for the 12-14 December 2004 ITU Council Working Group on WSIS (p.7, section 4.1).
- The current descriptive sentence does not cover the means by which 'rules, procedures and programs' are themselves formulated. These overarching processes themselves would seem to be a key aspect of Internet governance.
- The current descriptive sentence is not clear as to whether it is talking about Internet governance at the regional or national level as well as the international level. We consider the focus should be international (or global if preferred).
- The current descriptive sentence focuses on Internet governance being a collection of 'mechanisms' ('rules, procedures, and related programs') intended to produce an intermediary outcome ('expectations, practices, and interactions'). An alternative approach might be to consider Internet governance as a final objective that is achieved using certain means. That is, the focus would shift from the means to the overall outcome.
- Governance involves ongoing processes and this nuance should be captured. There should be a reference to 'processes'. We consider 'procedures', while in itself meaningful in the context of the definition, is too narrow.
- 'Institutions' are also as key component in Internet governance and should be referenced.

- It is not clear to us what is precisely meant by 'programs'. To us, a program is a structured, planned initiative of an organisation, usually a government, to achieve an outcome over time and usually involving expenditure. We believe this is what is meant in this context. If so, it is not clear to us that such programs are an essential part of Internet governance, particularly 'hard' governance. While programs can be mechanisms by which governments achieve their own 'policy outcomes', they are not necessarily part of Internet governance. Such a concept is more relevant to the discussion of 'financing mechanisms'. Another interpretation is that 'programs' refers to 'software programs', on the basis that the operation and use of the Internet can be significantly determined by the rules built into software. While we do not believe this is the intended meaning here, such an interpretation appears to have been put forward by at least one party at the second WGIG meeting. Given the scope for confusion here, this matter should be clarified. If this is the intended meaning, we would need to consider its implications further.
- We find the expression, 'social actors', ambiguous and awkward (eg. Are firms 'social' actors, particularly when operating in the economic as opposed to 'social sphere?'). 'People's' or 'stakeholders' may be sufficient.
- We do not believe the use of 'infrastructure' in the definition is appropriate. First, we believe the issue is the 'expectations, practices and interactions' in relation to the technical operation of the Internet *per se* as a layer above infrastructure itself. Second, to refer to 'infrastructure' can be interpreted to refer to the provision of facilities themselves. While this has been raised as an Internet governance issue in terms of universal access or service in high-cost and/or low income areas, we would argue it is essentially a national investment issues, not a governance issue.
- While we believe the sentiment behind 'transactions' is correct, it begs the question of whether all Internet use will technically be 'transactional' in the general sense of the word. 'Transaction' generally connotes two or more parties engaging in a consensual activity, usually relating to business. While negative Internet activities like spamming, phishing and hacking may be transactional in a broad sense, most people would not consider them as such. 'Use' may be a better, more general term.
- On the basis of the above comments, we would suggest for consideration an alternative wording for the definition along the following lines:

Internet governance, at the international level, is the process by which a stable, effective, efficient and secure Internet is achieved through the development and operation of institutions, processes, rules and procedures that shape people's expectations, practices and interactions concerning the Internet's operation, use and content.