

Nominet UK response to WGIG papers published April 2005

Introduction

Nominet welcomes the opportunity to make representations to the Working Group on Internet Governance (WGIG) on papers published during the course of April 2005. We have had the benefit of reviewing a number of the published responses, including those of the ICC, the Internet Society, the OECD, APTLD, CENTR's WGIG working group, and NIC-Mexico. We also request that the WGIG refer to our earlier comments submitted in this process.

In this document, our comments focus on the following two papers:

1. "Towards a Common Understanding of the Roles and Responsibilities of all Stakeholders in Internet Governance"; and
2. Cluster One B2 Assessment Report: Domain Names Management.

General Comments

1. We are mindful that "Building a people-centred Information society is a joint effort which requires cooperation and partnership among all stakeholders"¹. In our view, one of the key strengths of the Internet to date is its distributed, decentralized nature. In this context, we believe that a "hierarchical top-down governance model"² would be inappropriate, and in all probability, ineffective.
2. We welcome the comment that "the overwhelming majority of the private sector actors have demonstrated their capability to fulfill their tasks and to make their contribution to the functioning of the Internet. With regard to the practical management there is no specific weakness in the system"³. In our view, the Internet's fast pace of change requires flexible structures which can react to changes in the environment quickly and at low cost, thus enabling growth and development. We urge the WGIG to keep in mind the phenomenal success and growth of the Internet to date (41% per year⁴), and support the view that "the first principle should be to do no harm"⁵.
3. We welcome the comments of Mr Desai that "when people say governments must be involved, nobody has argued it is governments to the exclusion of everybody else."⁶ It is stated that "Internet governance is being 'privatized'"⁷. However, in

¹ WSIS Declaration of Principles, article 20

² "ISOC Commentary on the status of the work of the Working Group on Internet Governance, April 2005"

³ Cluster One B2 Assessment Report, section 5.2

⁴ OECD Input to the United Nations Working Group on Internet Governance, April 2005

⁵ ICC comments, para 2(c).

⁶ Comments of Mr Nitin Desai, Chairman WGIG, Open Consultations Of The Third Meeting Of The Working Group on Internet Governance, 18 April 2005, morning session.

our view, Internet governance has never been exclusively in the public sector, but has been created in large part through the participation of the private sector, often in the absence of top-down regulation. The current multi-stakeholder participative models of governance seen at national levels, for example within the .uk framework, have proven successful in that they provide for direct participation from all stakeholders, in a way that is not fully seen in traditional intergovernmental organization models. We strongly endorse the comments of the ICC in this regard: "...investment and deployment of resources and capabilities by the private sector and advancing freedom of expression and promoting creativity, privacy, etc. by the civil society *is not an observer role*".

4. In our view, and in the view of other commentators such as the ICC, ISOC and the CENTR WGIG working group, existing governance models, which are open, distributed and consensus-based, have served the global Internet community well to date, and "avoid the bottlenecks inherent to centralized network architectures"⁸ as well as avoiding single points of failure, including organizational failure, or the development of "institutionalized" thinking that can arise when a single organization has a dominant function. We endorse the OECD's comment: "the Internet has flourished essentially because most countries have recognized the need to avoid introducing unnecessary regulatory burdens".

Towards a Common Understanding...

5. In section 4(a), as it applies the WSIS criteria, it is stated that "multilateralism...should not be taken to exclude multistakeholderism." Whilst we welcome this assurance, we recall Mr Allen Miller's analysis that on a strict interpretation "multilateral" and "multistakeholder" are mutually exclusive⁹. We understand that in the context of an intergovernmental organization a "multilateral agreement" means an agreement by governments. However, in the WSIS declaration, we take "multilateral... management" of the Internet¹⁰ to mean "participated in by three or more parties". We understand the WSIS wording to be wide enough to encompass models such as ICANN or the IETF.
6. It is stated that the GAC's advisory function within the ICANN framework "is not truly...multilateral"¹¹. This comment seems to imply that the current set-up requires improvement. However, if we focus instead on "what works"¹², it can be seen that the revised GAC Principles, published in April 2005, represent a major advance as a non-binding framework for the three-way relationship between governments, ccTLDs and ICANN. Moreover, if the GAC could bind the ICANN board, that power would also bring responsibility (and potential liability)

⁷ Towards a Common Understanding of the Roles and Responsibilities of all Stakeholders in Internet Governance

⁸ OECD, para 6.

⁹ expressed during the Open Consultation Session on 18 April 2005

¹⁰ WSIS Declaration of Principles, article 48.

¹¹ Towards a Common Understanding..., section 5(c)

¹² OECD, p 28, Box 7

for the GAC member states. Exposure to liability has been a useful check to avoid the system being used to limit innovation or to restrict competition, for example by not allowing connection to machines that might harm the network.

7. We take issue with the assumption at section 7, para 1, that private sector actors will serve only the “interests of specific industry sectors”. We ask the WGIG to bear in mind that many of the private sector actors are non-profit organizations (eg ICANN, ISOC, IETF, IAB and several ccTLD registries), whose corporate structures are designed to protect against capture by a particular sector. We refer to our previous submission in this regard, which sets out the ways in which we seek the input of all sections of the .uk Internet community.
8. On page 8 (3rd paragraph) the paper questions the legitimacy of industry self-regulation. However, it does acknowledge that industry self-regulation “can work quickly and flexibly”, and we believe that this is essential in the fast-changing environment of the Internet. In the context of industry self-regulation, authority derives from the effective involvement of multi-stakeholders (including, of course, governments) working within a transparent framework, rather than whether the body coordinating the process is from the public or private sector or is an IGO.

Cluster One B2 Assessment Report

9. In general, the points for improvement do not flow from the body of the text, and we question the priority of some of the factors (eg clarification of the status of .int, or updating the UDRP to reflect non-commercial users’ interest). We would ask that the issues be more fully identified and explored in the preceding text, and justifications given for the points for improvement.
10. The text from the GAC Principles in the Annex and in the body of the paper has of course been superseded by the April 2005 version. The text quoted does not in our view accurately represent the tone of the revised document, which is supportive of subsidiarity, local determination, and emphasizes the benefits of dialogue between governments and ccTLD managers. Above all, the GAC Principles state that “delegation and re-delegation is a national issue and should be resolved nationally”.
11. Like APTLD, we note that the lack of contractual relationships between ICANN and a majority of ccTLDs is classified as “one problem of concern”. However, the paper does not explain why this is a problem. We would emphasize that, whilst the IANA could be improved through operational efficiencies (which ICANN is currently seeking to address), like APTLD, we believe that existing

IANA and ccTLD arrangements have been by and large stable and satisfactory. Moreover, we continue to work with ICANN/IANA to develop our mutual relationship, for example through pressing for greater automation of the IANA function to facilitate authentication of requests.

Nominet UK
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