

Draft WGIG Issue Paper on National policies & regulations

This paper is a 'draft working paper' reflecting the preliminary findings of the drafting team. It has been subject to review by all WGIG members, but it does not necessarily present a consensus position nor does it contain agreed language accepted by every member. The purpose of this draft is to provide a basis for the ongoing work of the group. It is therefore not to be seen as a chapter of the final WGIG report, but rather as raw material that will be used when drafting the report. This draft working paper has been published on the WGIG website for public comment, so it will evolve, taking into account input from governments and stakeholders.

1. Issue (what?)

This topic stems from paragraph 49-a) of the WSIS Declaration of Principles, adopted in December 2003: “The management of the Internet encompasses both technical and public policy issues and should involve all stakeholders and relevant intergovernmental and international organizations. In this respect it is recognized that 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”.

The complexity of issues related to the nature of the Internet and its current management model makes it impossible, a priori, to regulate the Internet at the national level or define a specific policy that is confined to the physical boundaries of a give State. The definition of an organized national policy in this expanding field seems to clash with the unavoidable development of a multinational approach of the Internet phenomenon.

This being said, a study of developing country participation in international ICT decision-making undertaken by the Commonwealth Telecommunication Organisation in 2002, which examined the ITU, WTO and ICANN, concluded that it would not be possible for developing country stakeholders – including governments, the private sector, and civil society – to participate effectively in international governance arrangements without an effective foundation in participative policy-making and regulation at the national and regional levels. As is the case with developed countries, the two go hand in hand.

The challenge of developing inclusive Internet Governance arrangements at all levels is compounded by the fact that Internet governance is not limited to technical or policy-making aspects. Social, economic and national security-related implications are involved.

What are the objectives of a national policy?

Priority objectives to develop within the context of a national policy :

- The setup of an appropriate legal and regulatory framework : is this framework more effective at the national, regional or international level?
- The development of Regulatory Agencies or other appropriate mechanisms (i.e. there may be scope for “self regulation” by industry and consumers in some governance areas within the overall legal framework)
- The protection of national culture: how can this problem be tackled whilst protecting fundamental liberties and the free circulation of information?

- The control of Internet-based transactions: how should tax regimes evolve in the context of the Internet? How should cross-boundary taxation be adapted?
- The development of national capabilities (human + infrastructure-related + procedural) that could facilitate integration within a worldwide dynamic.
- The development of local content
 - Regional and international cooperation
 - etc...

The setup of an independent regulatory body has to enable fair and healthy competition, one that benefits consumers and private sector entities. This body has to be an institution of public interest with its own legal personality and financial autonomy. Its overall telecom regulation mission may be summarized as follows:

- Provide the telecommunications sector with an efficient and transparent legal framework which promotes fair competition to the benefit of the users of telecom services and networks;
- Make legal decisions;
- Monitor competition and prevent anticompetitive practice, in particular monopolistic abuse;
- Plan, manage and control the broadcasting spectrum;
- Manage the National Numbering Scheme.

2. Attribution to category / ies

- Equitable Distribution of Resources
- Access for All
- Stable and Secure Functioning of the Internet
- Multilingualism and Content
- Other (i.e. Should national policies and regulations address all aspects of Internet governance?)

3. Assessment of risks and problems : what works, what doesn't, where are the risks

Public authorities- except for very few countries did not initially pay attention to the development of the Internet, which they used to consider at best as a technological innovation. The functioning of the Internet has been, and remains indeed ensured by technical management carried out by specific associations. Only recently the Internet has been recognized as a worldwide resource of strategic importance.

It is still accepted that a national policy is defined by public authorities in consultation with the different stakeholders, and in bilateral or multilateral cooperation with external partners.

What works :

We may consider the system to be working by default

What doesn't work :

- A monopoly situation in decision-making processes involving the entire community. This raises the question of legitimacy

- Not taking into account some essential matters which are of interest to many countries:
 - Making the internationalised Domain Names System (IDN) operational, which would allow many of us to make significant use of domain names through plural databases instead of the ASCII database.
 - The balanced distribution of IP addresses

Where are the risks :

- Virtual partitioning: certain States, for reasons related to national sovereignty or other ideologies, could be willing to protect their culture at any cost. In doing so they run the risk of confining their own populations to gigantic virtual partitions.
- Control of the Internet: some government authorities could be tempted to commit hosts and access providers to criminal and civil responsibility of the servers content. Such attitude could lead to a disastrous preventive censorship. Bearing in mind that, in some countries, the Internet is the only medium through which civil society can express itself and share information, the scope of this potential pressure can easily be imagined.
- Abuse of power: some powerful States could be tempted to take advantage of their privileged position to take control of the regular functioning of the Internet in developing countries
- In the absence of inclusive discussions allowing equitable distribution of common resources, it is impossible to find a common denominator or reach a consensus. When the majority of the world's population is left aside, the risks of creating misunderstanding and disruption are usually high.

4. Actors (who, with whom?)

Partners to involve at the national level:

- Ministries in charge of Information and Telecommunication Technologies
- Regulatory Agencies
- Universities and research centres
- Telecommunication companies
- Telecom and Internet Service Providers
- Civil Society organizations: local authorities and Non-Governmental Organizations concerned with people's inclusion

Partners to involve at the regional and international level:

- International Telecommunications Union
- World Intellectual Property Rights (WIPO)
- World Trade Organization (WTO)
- Regional and sub-regional organizations: African Telecommunications Union, Commission of the African Union, Commission of the European Union, North American Free Trade Agreement (NAFTA), Association of Southeast Asian Nations (ASEAN), etc.
- African Information Society Initiative (AISI)
- Large projects: New Partnership for Africa's Development (NEPAD), etc.

National, regional and international standardization bodies:

- European Telecommunications Standards Institute : ETSI

- International Telecommunications Union : ITU - T
- Internet Engineering Task Force: IETF
- Asynchronous Transfer Mode Forum: ATM Forum
- National Standardisation Agencies
- etc.

5. Forums (where?)

The reference model in terms of shared management of worldwide resources is probably the telecommunication model of the International Telecommunications Union. Every country runs a specific national regulatory system and the ITU ensures a certain amount of coordination at the international level. The ITU is mainly concerned with the transmission, emission, and reception of information but not with its content. In principle, the ITU is not in charge of questions related to content.

The Internet is currently managed by ICANN (Internet Corporation for Assigned Names and Numbers), which is going through profound changes geared towards a wider implication of different partners with consultative roles. These include:

- Governments through the 'Governmental Advisory Committee' (GAC) which provides opinions on the management of national ccTLDs
- Internet users, through the At-large membership representing individuals and businesses.

who participates

- As regards the International Telecommunications Union, the stakeholders are mainly Governments
- As regards ICANN, the involvement of different partners is more developed, although still considered insufficient by Governments
- In both cases, an important part of actors involved in the development of the Internet are still excluded from decision-making mechanisms.

6. Governance mechanisms (how?)

Between the two models mentioned above (ITU and ICANN), a variety of consultation frameworks launched by recognized experts have suggested hybrid solutions, based in most cases on an approach that would include Government representatives, private sector, and civil society.

In general, these solutions propose:

- The introduction of linguistic diversity in the Domain Names System (DNS)
- A more equitable allocation of IP addresses
- The setup of legal and dispute resolution frameworks
- Respect for civil liberties

The representation of all partners involved in the development of the Internet (Governments, private sector and civil society) is a prerequisite for a smooth transition from the current temporary status towards a more stable long-term solution.

objectives of the rules system

One objective of the rules system for national policies is to harmonise as far as possible rules that apply to the internet with rules that apply to the local regulations. One should not gain nor lose rights merely by going online.

And therein lies in the tension inherent in the issue. It's hard to see any government tolerating a massive disruption to the legal regime by the internet. On the other hand, because the internet is a global digital medium, there will be different legal treatments required.