

INTERNATIONALIZED OVERSIGHT OF INTERNET RESOURCE MANAGEMENT

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The World Summit on the Information Society (WSIS) Geneva Phase meetings in 2003 focused world attention on global Internet governance issue, and especially related public policy issues. With the broad participation of the Governments, United Nations bodies, international organizations, private sector and civil society, all stakeholders reached an initial consensus on the principles, objectives of Internet governance. In addition, they deepened their understanding of the roles played by all actors in the Internet governance process. Based on the strong recommendation of the United Nations Member States, Secretary-General Kofi Anan established the Working Group on Internet Governance (WGIG) to undertake further studies on Internet governance issues. The contribution of WSIS with regard to Internet governance is extensive and historic, for at least two reasons.

First, it appears that through the WSIS process and WGIG study, the technological, structural and cultural features of Internet governance have been widely recognized and accepted among the major stakeholders in the Internet society. Second, considerable consensus has been achieved on a series of specific major issues. These include the indispensable role of the current "bottom-up" public-private partnership; the importance of respecting the architectural principles of the Internet, the quality and value goodness of the existing governance structures and related institutions, and the need to improve Internet governance on the basis of the existing governance structure and mechanisms rather than to build some mechanism to replace the existing one. At the same time, there is now recognition of the existing weak points and problems hidden in current global Internet governance mechanisms, and of the need for improvements on a comparatively compact set of issues. Furthermore, differences in view points on these issues and the ways to improve them seem to be clearer than ever.

The common understanding of these matters that is reflected in the WGIG Report provides a basis for further discussion and consensus on many complex issues of Internet governance. Looking back to the debates during Geneva WSIS, one could think that the progress made to date is quite encouraging for the long-term, from the Tunisia Summit in November 2005 and beyond.

Internet governance is complex, widespread, distributed and ongoing process. The existing structure is the product of thirty years of evolution that has accompanied the great practice of the Internet with the participation of multiple stakeholders worldwide. It has facilitated the growth of the global Internet. Improvements are not simple and must be taken with care so as

not to disturb all that is good. It is not a simple task to improve it. As if we are facing a complex puzzle game, to improve the mosaic one has to find out first what is really missing.

The Internet has become a pivotal global public infrastructure, penetrating into all aspects of human life, with intricate links to public policies and public interests in each country. Accordingly, Internet resources have become global strategic resources that are tightly knit with state sovereignty and public security. Efforts to provide possible solutions to public policy issues in relation to the Internet applications also need to be built on effective Internet resource management. Therefore, the management of Internet resources is not simply a matter of technological coordination, but also carries with it important public policy issues. For this reason the basic structure supporting decision-making should be internationally recognized, authoritative, effective and clearly mandated. The management of Internet resources and related mechanisms, practices and procedures should be clearly set up with a view to addressing issues that are either in existence at present and likely to occur in the future. That is why the issue of Internet resource management has been a high priority and major focus for WGIG to study.

Requirements for Further Evolution

The Internet in its evolution has undergone "bottom-up" technological innovations, business innovations and standard definitions involving broad participation with the US Government playing a profound and promoting role in the whole process especially in the initial stage, creating an open and transparent participatory system designed to take into account the needs and interests of both the private sector and civil society. Most of the prevailing Internet-related standards and rules are derivatives of such a "bottom-up" "consensus-building" mechanism. Behind the explosive growth of the Internet, such a mechanism has served as an instrumental driving force as it stresses the roles of civil societies and the private sector. It also emphasizes the effectiveness of rules and an equal sharing of cyber information by all. This is the most valuable "Internet Culture" that provides an encouraging and stimulating environment for the fostering of innovation in technology and business and further serves as the essential source of the dramatic development of the worldwide Internet.

Nevertheless, with the growth of the Internet and its transition into a key element of the global information infrastructure, certain shortcomings lurking in its operational and management mechanisms are gradually appearing:

Different countries/regions and different groups have varying rates of economic development, language backgrounds and cultures, resulting in *de facto* inequalities in terms of timely understanding of policies and regulations related to the Internet. They also have varying capacities to participate in and oversee the rule-making and related processes in the existing

model of Internet mechanism. Therefore, the involvement of developing countries in making international public policies related to the Internet falls short of the scale at which these societies use and rely on the Internet. Over the years this situation resulted in some prevalent Internet rules and regulations which do not and cannot fully reflect broader public interests of the worldwide community and especially the interests of groups that have limited or no Internet access, or groups that lag far behind developed countries in their Internet construction capabilities.

Internet resources have become global public resources critical to the safety and interests of all countries. Therefore, given the global nature of Internet resources and for the sake of reflecting the principle of equal participation, it is no longer appropriate for the Internet Corporation for Assigned Names and Numbers (ICANN) to follow an approach in which it is empowered by a single Government for specific operations and decision-making, especially for certain critical resource management issues.

Due to the lack of empowerment from Governments other than the US, weaknesses like low efficiencies and poor decision-making capabilities are apparent in the handling of many public policy issues that require strengthened cross-border coordination. One case in point is Internationalized Domain Names (IDN), which is still a pending issue after several years of discussion and is without any effective decision in sight in spite of years of efforts and attempts to have international policy coordination on this front. Meanwhile, because other countries are unable to partake in decision-making for the formidable Internet this naturally gives rise to misgivings in some of those countries, which in turn, to some extent, restrict the applications of the Internet (e.g., applications of high security requirements) in those countries. All this has, to a certain extent, constrained the development of the Internet.

In the ICANN decision-making process there is extremely low Government participation. This feature has its advantages and disadvantages. On the negative side, for some issues concerning public interests, ICANN cannot help being biased to unduly favor the private sectors. For example, the process of adding new Generic Top Level Domains (gTLDs) was not transparent enough, and the decision-making for it was not scientifically justified. This meant that, although it benefited the private sector it was not possible for the general public to express its needs through the voice of their Governments and, therefore, not possible for the general public to benefit from it in a real sense.

According to the ICANN mandate, ICANN is neither a policy-maker nor an international coordinator. It is restricted to remaining a small private corporate body with responsibility for technical coordination functions to keep the Internet operating steadily. However, since there is no international mechanism or body accredited by all countries designed to take charge of authorizations and global public policy-making in this field, ICANN by default has had to step

beyond its mandate to be saddled with such responsibilities. These responsibilities include providing international coordination, management and a decision-making mechanism for important Internet matters which affect public policies. Such a contradiction between ICANN's positioning and its mandates does not foster the expansion of Internet across the globe.

The wide application of the Internet has caused or exacerbated new cross-border tensions. Some of these include individual privacy rights versus social openness; information security versus information freedom; information sharing versus IPR protection; as well as the head-on collision between cultures; cross-border hacker attacks, computer viruses, harmful web information, cyber crimes etc. These tensions impact peace and social security, and increase the global digital divide and intensify conflicts and contradictions brought about by the unbalanced world development. All these indicate that the Internet at present is more acutely in need of strengthened international coordination and cooperation than ever, which is the one and only way which can lead toward practical and effective solutions to these complex public policy issues.

A private body like ICANN that is only empowered by a single Government cannot possess the breadth or sense of legitimacy necessary to carry out all of the functions listed above. Therefore, the continued absence of a legitimately empowered internationalized mechanism capable of effective decision-making is likely to severely impede the sense of safety, and stability associated with the Internet and impact further development of the Internet.

WSIS: An Opportunity for a Timely Improvement

WSIS has provided an important opportunity for rectifying the weaknesses hidden in the current Global Internet governance Mechanism. The 2003 Geneva Summit's Declaration of Principles and Plan of Action demonstrate a shared belief by the international community that the Internet has become a mighty tool for safeguarding world peace, reducing poverty and relieving backwardness as well as promoting common prosperity and progress in the world. The United Nations and all Governments are required, obligated and entitled to be involved in the management of Internet at the decision-making level in such fields as the making of international public policies, resource management and international coordination and collaboration, and they should join hands with all stakeholders to guarantee a further prosperous and securely sustainable, universal Internet. WGIG was responsible for taking hold of the opportunities offered by WSIS, recognizing existing problems hidden in the Internet governance mechanisms, and presenting effective recommendations for their reasonable improvement.

The development of the Internet should incorporate the routine participation of multiple stakeholders. Currently, all stakeholders including Governments, intergovernmental organizations, international organizations, private sectors and civil societies are broadly represented in the public policy field. This participation by all actors should be guaranteed in the future through any improved global Internet governance mechanism.

Considering the breadth and depth of the Internet's reach as well as its pivotal role in the information society, public policies for global Internet governance should not only take account of the interests of the Internet community, but also the needs of communities that are still outside the Internet or have only limited access. Naturally, the most legitimate representatives of the public interests at present are each Government and by the United Nations, acting as the most authoritative and widely-representative intergovernmental organization recognized by all nations. It can provide a proper platform to settle issues of public policies concerning global Internet governance.

Multilateralism is the Key

As to the management of Internet resources in particular, this is an issue of great significance to the development and security of the Internet. Due to historical reasons, there has been no globally authoritative body in charge of decision-making related to Internet resource management where the globally authoritative body had broad participation by all countries. Instead, the US Department of Commerce just approves changes to the root zone file. Over many years it has never proposed changes on its own, and so far it has never refused a recommendation from the Internet Assigned Numbers Authority (IANA) for a change. In this case, why this issue is considered so important? Why not just leave it to the US Government for the future period?

The core issue concerning Internet resource management that really needs oversight from outside the whole system of management---namely the centralized review and final approval of requests for additions, deletions or modifications to the root zone file record by an authoritative body---is a “thousands tons hanging on a thread” kind of issue. Approved changes are first applied to the “Distribution Master Server”, and then automatically propagated throughout the root server system and mirror servers distributed worldwide. According to US law, the single Government that is holding this function is empowered to change the root zone file record. That is why many Governments, as the most responsible body vis-à-vis their citizens, are worried and focused on this tiny piece in the complicated system of Internet governance. While there are many Governments having substantial concern about the safety and security for their citizens, the potential threat to the universality of the Internet speaks for itself.

For a universally accessible, stable and robust Internet, we cannot avoid focusing on this small piece of centralized empowerment. If the Government of the very country that originally created, nurtured and shared the Internet with its neighbors in the global village, with an excellent historical record for management of the Internet during the past 30 years, still cannot make all countries feel comfortable about the unilateral management of the root zone file changes, it is obvious that this issue cannot be passed over without extensive thought. To deal with the core function in global Internet governance by relying solely on "trust" or a "guess" that "the single Government would not do any harm to the universal Internet" seems far from satisfactory. All sovereign states in the world would believe that their citizens' interests are appropriately protected only when there is basis in international law. It thus is quite clear that "multilateralism" is very missing piece in the puzzle.

The Need for an Intergovernmental Oversight Institution

In its Report, "The WGIG recognized that any organizational form for the governance function/oversight function should adhere to the following principles:

- No single Government should have a pre-eminent role in relation to international Internet governance.
- The organizational form for the governance function will be multilateral, transparent and democratic, with the full involvement of Governments, private sector, civil society and international organizations.
- The organizational form for the governance function will involve all stakeholders and relevant intergovernmental and international organizations within their respective roles."

These principles are in line with the spirit of WSIS and provide a basis for achieving worldwide consensus on this issue. One of the four models suggested in the Report calls for the establishment of a Global Internet Council (GIC). In this approach, the role and position of the US Department of Commerce would be replaced by an intergovernmental mechanism under the framework of the United Nations. That is to say, the Governments of all sovereign states together with the US Government would bear the responsibility of the management of Internet resources and public policy setting, with extensive involvement of private sector and civil society. Thus, it is suggested to expand the body that empowers ICANN, from the US Department of Commerce only, to an integrated body including all Governments.

This reform would not do any harm to the normal operation and functioning of the Internet. For example, the specific task of allocating and managing Internet resources, such as IP address allocation and domain name assignment, would still be executed by the institutional system with ICANN as the umbrella, but it does not mean that ICANN would not "root-and-branch" reforms gradually. The above-mentioned intergovernmental mechanism under the

framework of the United Nations should clearly define the responsibilities and obligations with ICANN through a Memorandum of Understanding or a contract.

Transparency is the Key

This is reasonable solution. Only under such a framework could all sovereign states feel that they are not being treated unevenly in comparison with the single country that holds the oversight function. Under such a scheme, all Governments hold the function of authorization to ICANN, which would be always accountable to the international society. Nevertheless, there is some concern that this new institution would gradually grow into a new bureaucracy and would interfere in many issues that do not need political interference at all. For example, how would one suggest that there is assurance that a multi-governmental oversight activity does not turn into a top-down policy making apparatus? If a group of Government representatives takes up the function carried out today by the US Department of Commerce, would they continue to treat the Internet and root zone policy as a "bottom-up" process? How would it be possible to avoid the politicization of the decisions of the new multi-governmental institution? When Governments get involved, external factors often enter into positions and decisions taken, and, Government control of the process may slow the innovation and evolution that has characterized the Internet to date, etc.

A number of tools could be employed to ensure that an international oversight institute does not "over perform" its duty. First, there should be international regulation defining what is in and what is beyond the scope of this GIC. In this regulation, all characteristic features that have guided the successful practice of global Internet growth should be stated and agreed upon by the international society, e.g. the Internet and root zone policy can only be a bottom-up process, the oversight institute has no right to make decision on issues which have not been discussed in the bottom-up process and have no consensus, etc.. The globally agreed regulation would make the process adequately transparent and open, putting it under the supervision of the international society.

Second, the existing institutions would resist any excessive political interference, if any should arise, from the GIC. Third, in case of anything really serious happening, it is always possible to put the matter on the table of United Nations to be discussed openly in the international society forum. As for the technical innovation and evolution processes that have characterized the Internet to date, it seems beyond the scope of this oversight function. Furthermore, such a framework would encourage all root server operators of ccTLDs to establish formal obligatory relations with ICANN, thus to make the root server system more robust and reliable, which would be greatly beneficial to the global security of Internet.

Conclusion

In my personal view, this would be the workable solution that does not require big changes in current Internet governance mechanisms. The model proposed here would protect and improve the continuing existence of the universally accessible, robust and reliable Internet in our life.