

## *Executive Summary*

# **Internet Governance: the State of Play**

The Internet Governance Project<sup>1</sup>  
([www.InternetGovernance.org](http://www.InternetGovernance.org))

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## **I. INTRODUCTION**

### ***Mandate and background***

The 2003 World Summit on the Information Society (WSIS) gave the following mandate to the Working Group on Internet Governance (WGIG):<sup>2</sup>

- Develop a working definition of Internet governance.
- Identify the public policy issues that are relevant to Internet governance.
- Develop a common understanding of the respective roles and responsibilities of governments, existing international organizations and other forums as well as the private sector and civil society from both developing and developed countries.

As a first step toward accomplishing those objectives, the UNICT Task Force's Global Forum on Internet Governance recommended, in the words of the Deputy Secretary-General of the United Nations at the closing session, the following:

- Develop a matrix "of all issues of Internet governance addressed by multilateral institutions, including gaps and concerns, to assist the Secretary-General in moving forward the agenda on these issues."

This paper summarizes the Internet Governance Project's analysis of current Internet governance efforts. It includes: 1) a conceptual framework, described in summary form here and at greater length in the complete paper; 2) a table showing which international organizations are involved in different issue areas (Table 1); and 3) a table showing the state of agreements and disagreements in particular issue areas (Table 2).

### ***Conceptual Framework***

A conceptual framework is necessary if there is to be progress in dealing with Internet governance. Any international negotiation for collective agreement must build on prior

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<sup>1</sup> The Internet Governance Project (IGP) is an interdisciplinary consortium of academics at Syracuse University, Georgia Institute of Technology, and Institut für Politikwissenschaft der Universität Zürich. The principal investigators for this paper are John Mathiason (team leader), Milton Mueller, Hans Klein, Marc Holitscher and Lee McKnight. See <http://www.InternetGovernance.org>

<sup>2</sup> WSIS Plan of Action, 12 December 2003, p. 6-7. Document WSIS-03/GENEVA/DOC/5-E

levels of agreements. The first step is to agree on the “building blocks” of policy. Those building blocks take two forms, each of which is relevant to Internet governance:

- *Statements of Fact*: Before policy makers can make decisions about Internet governance, they must agree on what is “the Internet.” Likewise, they need to agree on a definition of “Internet governance.” Without prior agreement on the relevant facts and definitions, higher-level discussions could be hindered by implicit and possibly unrecognized differences in understandings.
- *Norms*: In order to make good decisions, policy makers then need to agree on what is “good”. Norms are standards and obligations that parties to Internet governance agree should be followed, serving as criteria to evaluate what is good and bad. Once policy makers agree on basic facts and foundational norms, it is easier for them to evaluate whether specific rules and procedures are desirable or not.

This paper proposes statements of facts relevant for Internet governance. These are not presented as definitive; final responsibility for identifying the relevant facts lies with policy makers. However, by presenting some initial definitions based on research, policy makers can be assisted in that task. This paper does not propose norms for Internet governance. Agreement on norms is a subsequent step that should be taken by the WGIG.

Key statements of fact provide answers to the following questions:

- What is the Internet?
- What is Internet governance?
- What players are engaged in what governance activities?

## II. STATEMENTS OF FACT

### ***Basic Definitions***

The report proposes three foundational definitions:

- **The Internet**: *The Internet is the global communication system formed by the interconnection of public and private networks using the Internet protocols - Internet Protocol (IP), Transmission Control Protocol (TCP), and core supporting protocols, such as DNS and packet routing protocols.*
- **Governance**: *Governance is collective action by governments and/or private entities to establish rules and procedures to coordinate, harmonize or enforce policies and to resolve disputes that involve multiple jurisdictions.*
- **Internet Governance**: *Internet governance is collective action, by governments and/or the private sector operators of the networks connected by the Internet, to establish agreements about the standards, policies, rules, and enforcement and dispute resolution procedures to apply to global internetworking activities.*

By staying close to a technical conception, this definition of the Internet makes it possible to draw clearer boundaries around Internet governance. Thus, for example, spectrum allocation, while possibly affecting the Internet, can be used by many technologies that do not use the Internet protocols and so is not part of Internet governance. Likewise, Internet governance as such cannot affect most of the international disparities in wealth

and investment that produce different levels of communications infrastructure development, but it can affect the distribution of *Internet* resources (IP addresses, top-level domain assignments) and economic arrangements among Internet service providers.

### ***Basic Facts about the Internet***

The Internet as it exists today has several characteristics that have to be taken into account in any discussion of governance. These include the following:

- **Standards Commons** : The Internet is based on open and non-proprietary standards that can be freely adopted by anyone.
- **Private Market**: The networks interconnected through the Internet protocols are owned and operated by autonomous organizations, mostly in the private sector. Most of the investment is small scale and private. Services and interconnection are coordinated primarily on a market, contractual basis.
- **End-to-End Principle** : The Internet protocols were designed to provide a neutral, transparent channel for the widest possible variety of information services. The network's job is limited to transmitting simple data units as efficiently as possible, leaving responsibility for software applications and other higher-level functions to the devices connected to it. Most of the intelligence and responsibility is located in devices at the *ends* of the network, not in the channel itself.<sup>3</sup>
- **Global**: The Internet's methods of establishing communication are non-territorial. The routing structure is independent of political jurisdictions and connection costs are insensitive to distance and political boundaries. This has created a non-territorial arena for human interaction and thus for policy and governance.

### ***Governance Functions***

Within overall Internet governance, three distinct governance functions can be identified:

- **Technical Standardization**: This involves reaching agreement about networking protocols, software applications, and data formats, and documenting the agreements.
- **Resource Allocation and Assignment** : Some Internet resources are scarce or require exclusive use; e.g. domain names must be unique and IPv4 address numbers are scarce and must be unique. Allocation and assignment processes coordinate the distribution of these resources to users. This function also includes operational responsibilities connected to resource assignment, such as DNS root server management.
- **Public Policy**: The third governance function is policy formulation, policy enforcement and dispute resolution. Whereas the previous two governance functions concern technology, public policy governs the *conduct* of people and organizations (legal persons). Consistent with the technology-based definition of the Internet, this function refers only to behaviors directly involving services employing the Internet protocols.

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<sup>3</sup> Our use of the term “end to end” is based on paragraph 2.3 of RFC 1958, “Architectural Principles of the Internet” (June 1996).

## ***Types of Actors***

It is also important to classify the types of actors involved in Internet governance. We recognize four distinct categories:

- **State-based Institutions with Universal Membership:** The traditional building block of global governance, these are international organizations open to all recognized governments. They include the United Nations system (e.g. ITU, WIPO and the WTO).
- **State-based Institutions with Non-universal Membership:** Composed of select groups of States, these may be regional in nature or based on economic interests. Examples include the OECD, ASEAN and the Council of Europe.
- **Formal Non-state Organizations :** These are legally incorporated, private sector entities (e.g. Internet Systems Consortium, ICANN)
- **Informal Non-State Organizations :** Some private sector actors involved in Internet governance are not incorporated. The most notable example of this is the IETF.

In a few cases, national governments could also be considered “multilateral actors” because their decisions can affect the operation of the entire Internet. As one of several possible examples, United States government entities can make decisions with extraterritorial effects. The report highlights one of those cases (U.S. Department of Commerce - ICANN), but concentrates most of its attention on the multilateral actors through which most States and non-state actors work on the international aspects of the Internet.

A difference among the types of actors is the extent to which they may make authoritative decisions. In a state-based system, the most authoritative decisions are taken by universal-membership bodies, whose members are bound by the consensus agreements to which they subscribe. Limited membership organizations can only bind their members, while non-state actors’ authority is contractual or voluntary, and thus depends on whether their decisions are accepted by all parties, especially states.

## **III. STATE OF PLAY**

The current state of play in Internet governance is shown in Tables 1 and 2, which provide the matrix requested by the ICT Task Force. Table 1 shows which organizations are involved in different issue areas. Organizations are classified by type, and activities are color-coded by governance function, according to the conceptual schema outlined in Section II. Table 2 summarizes the state of agreements and disagreements in particular issue areas.

### ***Table 1: Who Are the Main Actors in Governance Today***

Table 1 shows that a large number of organizations, both State and non-State, are actively involved in Internet governance. The actors performing the first two governance functions -- standardization and resource allocation and assignment – are mostly non-state actors. In standardization, the IETF is the most prominent actor. The only major

state actor engaged in relevant standardization activities is the ITU, through its telecommunications standardization sector. Its influence on the core Internet standards is limited, however. In resource allocation and assignment, ICANN, the regional Internet registries and the root server operators are the most prominent players. The ITU has an important role in assignment and allocation of telecommunications resources, too, and the relevance of these activities to the Internet is increasing as Internet services overlap and converge with the telephone system.

Table 1 also shows that the third type of governance function – public policy – is mostly performed by state actors. Among state actors there is a clear segmentation of organizations by issue area. In the areas of commerce and intellectual property, states have had to confront the implications of the Internet for pre-existing agreements, but the range of issues is clearly growing as these implications are becoming clearer. Some non-state actors play significant roles here. Most notable is ICANN, whose policy activities span several issue areas. In some cases, voluntary standards promoted by non-state actors attempt to address policy problems that states have been unable to solve, such as the content rating standards of the World Wide Web Consortium and their use by the Internet Content Rating Association.

### ***Table 2: The Extent of Agreements Reached***

Table 2 describes the extent to which governance has been agreed upon, either in terms of the responsible actors or the types of principles, norms, rules and procedures to be followed. Table 2 shows that agreements are broad but not deep. They cover many areas, but usually do not extend much beyond general norms to include specific rules and procedures to implement and enforce the agreements.

Governance is fragmented. Many agreements are sector-specific and tend to neglect linkages with other areas. Where there are significant agreements, they are often realized in non-universal organizations like the OECD, so they are limited in their application. In other areas, the absence of an agreement about implementation leaves international organizations without the ability to ensure consistency in the application of agreed norms and procedures by national governments.

Agreements that have been negotiated in isolated issue-areas often conflict with norms or rules developed in other issue-areas. Two key examples are copyright and trademark protection agreements that clash with free expression and fair use norms, and Whois data access rules and procedures developed in ICANN that conflict with privacy norms and rules at the national and international level. While this lack of harmonization often occurs across issue-areas, the problem is more critical with the Internet because it raises global governance problems that cannot be resolved by national means alone. It is, therefore, important for a broader dialogue about Internet governance to take place in a global forum that would permit the appropriate linkages to be made in interdependent issue-areas.

Governance is also vulnerable. The absence of agreements on fundamental definitions, facts and norms, coupled with the fact that much governance takes place in non-state

venues that have not been endorsed by states, means that the ability of standard-setting and resource allocation bodies, whose work until now has maintained a well-functioning Internet, may become increasingly compromised unless the governance issue is addressed.

Two factors may inhibit deeper agreements about Internet governance. First, policy bodies have not formally recognized and accepted the non-territorial nature of the Internet. Traditional international agreements are based on the assumption of territorial jurisdiction, and this foundational condition simply does not hold here. There is no consensus on, and in most forums no real discussion of, the nature of the Internet as a globalized channel of communication.

ICANN's private sector-based, contractual approach to Internet governance was originally put forward as a solution to the problem of non-territoriality. As a method of translating norms into binding rules and procedures ICANN's contracts have worked, but as noted in Table 2, there are still fundamental disagreements about the ICANN regime. One of the most important is the supervisory and contractual authority over ICANN and the DNS root zone held unilaterally by the U.S. Government.

Second, consensus is also inhibited by the lack of recognition, acceptance and understanding of the end to end principle. Absent basic agreement here, it is unlikely that solid consensus in many policy domains can be reached. If, for example, it is agreed that the Internet should continue to conform to the end-to-end principle, the focus of policy would be on the senders and recipients of messages rather than the channel itself. If, on the other hand, governments believe that control and other policy mechanisms should be built into the underlying Internet code, the focus of policy might be on that.

## **IV. RECOMMENDATIONS**

This analysis suggests a number of recommendations for the Working Group on Internet Governance.

First, the WGIG should decide on the relevant statements of fact. This paper has proposed definitions of the Internet, Internet governance, and several other facts. In this analysis, the assumption has been made that the Internet should be defined precisely in terms of the use of specific protocols for global interconnection. The full paper elaborates more on the pros and cons of this focused definition. The WGIG needs to decide whether to adopt these, replace them with other definitions, or modify them.

Second, the WGIG should look beyond statements of fact to *norms*. One of the most pressing normative issues concerns the end to end principle. There is an emerging consensus reflected at the March 24, 2004 ICT Task Force Global Forum and other meetings, that the end-to-end principle is responsible for much of the success of the Internet and should not be disturbed. This norm, however, has not been formally accepted and its implications for governance structure have not yet been agreed. The lack of

agreement about the implications of the non-territorial nature of the Internet is another key normative issue. Internet governance must decide first whether internetworking should conform to the end-to-end principle, and whether its structure and governance should continue to be globalized. If those norms are accepted, then the focus of policy and governance will be on the senders and recipients of messages rather than the channel itself.

Finally, the Group should consider the roles of the various stakeholders in the Internet. In a state-based international system, it will be important find a foundation of legitimacy for non-state actors in governance, giving them both authority and accountability. The Group should consider how the implications of clear agreements on definitions, facts and norms could best be reflected in international agreements that could take into account the unique characteristics of the Internet.