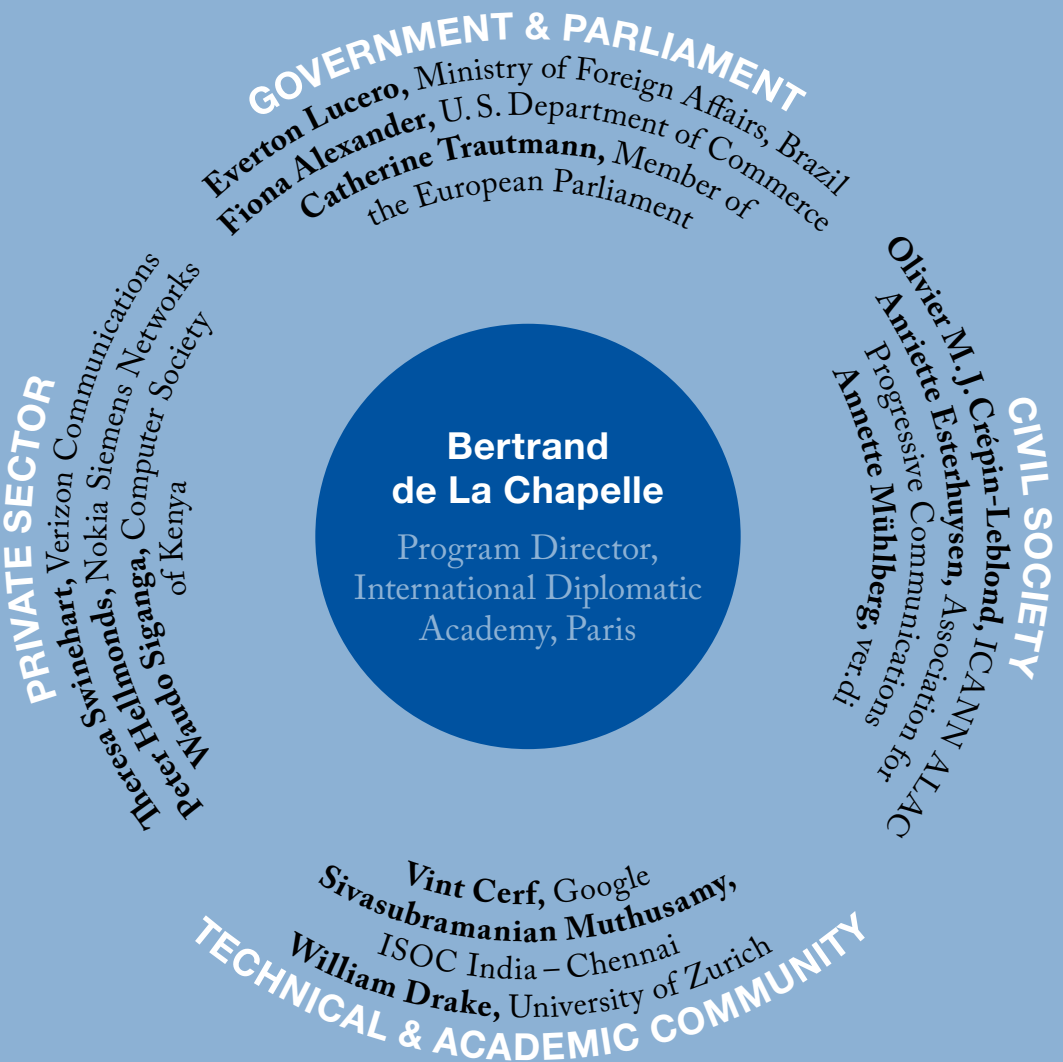
BERLIN · NAIROBI · SEPTEMBER 2011

# MIND

MULTISTAKEHOLDER INTERNET DIALOG

CO:LLABORATORY DISCUSSION PAPER SERIES NO. 1

# #2 Internet Policy Making




*A publication by the Internet & Society Co:llaboratory*

Editor · Wolfgang Kleinwächter

Internet & Society Co:llaboratory

MIND

MULTISTAKEHOLDER INTERNET DIALOG

CO:LLABORATORY DISCUSSION PAPER SERIES NO. 1

# #2 Internet Policy Making

BROADENING YOUR **MIND.**

*A publication by the Internet & Society Co:llaboratory.*
Editor · **Wolfgang Kleinwächter**

2011 IGF Nairobi Special Issue, 1st Edition
ISBN 978-3-9503139-2-5

# Contents

## STAKEHOLDER PRIVATE SECTOR



## STAKEHOLDER CIVIL SOCIETY



## STAKEHOLDER TECHNICAL & ACADEMIC COMMUNITY

# Preface

**05**

***The Co:llaboratory Steering Group***
***Dr. Max Senges, Martin G. Löhe, Dr. Philipp Müller,***
***John H. Weitzmann, Henning Lesch***

As an open collaboration platform and community of practice, the Internet & Society Co:*llaboratory* brings together experts from all areas of society to contribute to the public debate on solutions to societal questions around the internet.

With the Co:*llaboratory* Discussion Papers, we want to offer forward thinkers a platform through which to introduce radical but relevant arguments, develop these in a dialogue and impact the societal discourse. Each Co:*llaboratory* Discussion Paper presents a modern-day pamphlet. A poignant, professional, but thought-provoking proposition put forward by one author thus always takes the center of each publication. Various stakeholders from civil society, the academic and technical community, the private sector as well as government and parliament, are then invited to contribute responses.

With this edition, we want to jump-start the wider debate on multistakeholder governance. This seemingly technical issue has important ramifications for the future of our societies and our planet. Only if we find modes of governance that allow us to address the technical and philosophical challenges of our complex and interdependent online and offline lives will we be able to secure the future of humanity.

We hope that the Co:*llaboratory* Discussion Papers can contribute to a transparent, innovative and fact-based discourse about the future of the internet and society. Internet policy affects all of us, and its processes should thus involve as many stakeholders as possible.

# Editorial

07

***Wolfgang Kleinwächter***

In 2011, the global controversy around Internet governance reached the highest political level. The Internet was a key priority of the 2011 meeting of the G8 in Deauville in May 2011. "For the first time at leaders' level" says the "Deauville Declaration", the G8 agreed "on a number of key principles, including freedom, respect for privacy and intellectual property, multistakeholder governance, cyber-security and protection from crime."

Among the six principles mentioned, the principle of "multistakeholder governance" is probably the most controversial one. It goes back to the definition of Internet governance which was drafted by the UN Working Group on Internet Governance (WGIG) and adopted by 150+ heads of state during the 2nd UN World Summit on the Information Society (WSIS) in Tunis in November 2005. It says: "Internet governance is the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet."

This definition does not propose a "central Internet authority" or a "one-stakeholder leadership model" as some governments suggested during WSIS I. Instead it proposes a decentralized but inclusive and participatory concept which gives all stakeholders a place by referring to their "respective roles". It links them together in a network of shared rights, duties and responsibilities and encourages everybody to participate in transparent, open and bottom-up policy development and decision-making processes.

This innovative concept goes beyond traditional intergovernmental policy-making and allows a high degree of flexibility and diversity in its implementation. It rejects the idea that one Internet body could be the "governor of the Internet" or that one Internet governance model fits all Internet governance challenges. Incidentally, it was inspired by Kofi Annan, the former UN Secretary General, when he outlined in his meeting with WGIG members (March 2004) that "we need to develop inclusive and participatory models of governance. The medium must be made accessible and responsive to the needs of all the world's people." And he added:

"In managing, promoting and protecting [the Internet's] presence in our lives, we need to be no less creative than those who invented it. Clearly, there is a need for governance, but that does not necessarily mean that it has to be done in the traditional way, for something that is so very different."



The multistakeholder Internet governance model is one such creative innovation. Since 2005 it has become the catchword for global Internet governance. In the IGF Report to the 65th UN General Assembly in 2010, Ban Kin Moon, the present UN Secretary General, used the words "multistakeholder", "stakeholders", or "government, private sector, civil society and technical community" 57 times (on eleven pages) – in other words, the main agents in Internet governance. The OECD, the Council of Europe, the African Union and other organizations that have discussed and adopted "Internet Governance Principles" in recent years see the multistakeholder model as a key element for Internet policy-making in the years ahead. US President Obama and EU Commissioner Kroes have referred to the multistakeholder principle as the key element in future Internet policy mechanisms.

However, the multistakeholder Internet governance concept is very vague, lacks operational clarity, is open to conflicting interpretations and is often not more than just lip service. There is a broad range of ad hoc opinions on what it could or should be and there are numerous open questions: What precisely are the "respective roles" of the main stakeholders? Which procedures should be used for interaction among the various governmental and non-governmental stakeholders? What does "shared norms and principles" mean in political and legal terms? And how can a shared decision-making process among groups which have a different legal status under present international law be organized in relation to the use and future evolution of the Internet? If we accept that the Internet has triggered a global power shift, where does the power go and how is the power redistributed? How can concrete policies be made, which guarantee openness, freedom, rule of law and democracy in the Internet?

So far we have two practical platforms on which multistakeholderism is exercised: ICANN and the IGF. Both have produced encouraging results but have also revealed conceptual and procedural weaknesses. While ICANN now has quite a highly developed and recognized bottom-up policy development procedure, which includes all affected and interested constituencies, it remains unclear what exactly the role of the governments is in ICANN's PDP and how the GAC and the ICANN Board interact in decision making. Similarly, the IGF is a great success, but here, too, the procedure is unclear as to who can make final decisions when it comes to issues like IGF improvement.

The present MIND publication of the German *Internet & Society Co:llaboratory* wishes to contribute to the global debate by giving various stakeholders from government, private sector, civil society and the technical and academic community an opportunity to comment on a key article written by Bertrand de La Chapelle, who himself is labeled by the Internet community as "Mr. Multistakeholder". He is a recognized academic from the Diplomatique Academie Francaise in Paris and he has worked in all sectors: as webmaster for the civil society in the WSIS process, as ambassador for the information society in the French Foreign Office and as the director of the ICANN Board.

The MIND concept, to stimulate dialog among stakeholders, offers a chance to see the complex issue from different perspectives. As the Internet has no single authority, there is no final theory. Multistakeholderism is still a work in progress and its further development needs the involvement of all stakeholders. The printed version of this publication allowed 12 recognized experts from around the world to add their ideas. But the online version will be able to accommodate 120, 1,200 or even 12,000 additional comments. Such a broad, open and transparent dialog is needed to move further forward into the still unknown territory of cyberspace if we want to know how this "terra incognita" should be organized, managed, regulated and governed in a way which keeps the Internet free, democratic and open to all. You are invited to join.

# MULTISTAKEHOLDER GOVERNANCE

10

**The Internet is like Galileo's telescope. The Italian's invention challenged the traditional Ptolemaic vision of the universe. Likewise, the Internet, being technically borderless, reveals the limits of a Westphalian international architecture based exclusively on bordered nation-states.**

**We need a paradigm shift in policy-making, away from traditional forms of governance, towards a multi-stakeholder model. This new approach is designed to make heterogeneous governance frameworks interoperable. It can foster democracy, enrich existing representative frameworks and empower citizens in our interconnected world.**

**Bertrand de La Chapelle**

# RESPONSES

# PROPOSITION

**Bertrand de La Chapelle**

Program Director,
International Diplomatic
Academy, Paris

# MULTISTAKEHOLDER GOVERNANCE

## PRINCIPLES AND CHALLENGES OF AN INNOVATIVE POLITICAL PARADIGM



*Bertrand de La Chapelle, Program Director, International Diplomatic Academy, Paris*


### ABSTRACT

**The Internet is like Galileo's telescope. The famous Italian's invention allowed scientists to make observations that challenged the Ptolemaic vision of the universe. This ultimately led to the scientific paradigm shift[1] that was the Copernican revolution. In a similarly revolutionary manner the Internet, due to its lack of technical borders and the complex public policy issues that is raises, reveals the limits of an international "Westphalian" system based on a community of sovereign nation-states delimited by territorial borders. It calls for a new approach to policy-making for a global community of billions of people: a political paradigm shift known as "multistakeholder governance". This paper explores the principles and challenges of this new approach.**

**Multistakeholder governance is not a replacement for other modes of governance. Nor does it require or foresee the disappearance of nation-states. Necessary for cross-border issues like those related to the Internet, it leverages existing structures such as governments, civil society organizations, businesses, international organizations, etc., and provides a way of making their heterogeneous governance frameworks[2] interoperable, just like the Internet protocol enabled hundreds of thousands of heterogeneous networks to act as one unified communication platform. Multistakeholder governance can foster democracy, enrich existing representative frameworks and empower citizens in our interconnected and interdependent world.**

## INTRODUCTION

Throughout history, mankind has continually endeavored to find better and better ways of organizing ever-increasing human societies. The Internet, because of its borderless nature and the connections it enables among almost two billion people, triggers a profound restructuring of human communities and poses particular challenges in terms of policy-making within these new trans-border spaces.

On November 18, 2005, the representatives of 174 sovereign governments solemnly adopted the closing documents of the second phase of the World Summit on the Information Society (WSIS). One of them, the Tunis Agenda, contained the following definition of Internet Governance:

**"Internet Governance is the elaboration and application, by governments, civil society, the private sector and international organizations, in their respective roles, of shared principles, norms, rules, decision-making procedures and programs that shape the evolution and use of the Internet."**

For the first time, the need for the involvement of all categories of actors (aka multistakeholder governance) was officially recognized in a United Nations document, potentially making WSIS a turning point in the global approach to policy-making. This official endorsement did not, however, imply a clear and common vision of how to implement the multistakeholder approach. Worse, the wording "*in their respective roles*" was a perfect example of what diplomats usually describe as constructive ambiguity: an agreement on terms that conceal a disagreement on substance.

Six years later, a growing number of actors have been exposed to two major processes that operationalize this innovative concept: the Internet Governance Forum (IGF) and the Internet Corporation for Assigned Names and Numbers (ICANN). As a result, multistakeholder governance in Internet matters has now gained enough visibility to raise a growing amount of interest in various circles, but also opposition from actors who may feel threatened by it. And it is still young enough to be vulnerable to criticism regarding its current modalities.

In this context, the present paper intends to:

1) explain why multistakeholder governance was deemed necessary in Internet matters
2) draw some common implementation principles from the two main experiments
3) identify issues that must be addressed for this new governance paradigm to fulfill its potential

This paper is not a mere defense and illustration of a model which, to a large extent, is still under development, nor does it pretend to be exhaustive. Conceived as a support for further discussion, it is structured as a series of numbered points to facilitate comments, arguments, criticism and improvements, in the hope that a collaborative effort will further enhance this critical toolbox for Internet policy-making.

# 1.

## WHY A NEW APPROACH IS NEEDED: THE LIMITS OF THE WESTPHALIAN SYSTEM.

In the current international order, policy-making is conducted on the basis of a fundamental distinction between state-regulated activities inside national borders on the one hand, and on the other hand, trans-border interactions governed by international arrangements negotiated between governments only. This model is described as "Westphalian" in reference to the 1648 Treaty considered as the origin of national sovereignty through the principle "cujus regio, ejus religio" (the religion of the ruler is the religion of the territory). The institutional embodiment of this inter-

1 The notion of scientific paradigm shifts has been explored in the seminal book by Thomas Kuhn: "The structure of scientific revolutions". What we refer to here is the similar notion of political paradigm shift.

2 Every human group has its own internal governance framework: constitutions for States, articles of incorporation and charters for corporations, bylaws and statutes for NGOs.

national architecture is a society of independent nation-states and a network of intergovernmental organizations, including the United Nations family, the Bretton Woods financial institutions, and various regional or economic groupings. The fundamental bases of this system are national sovereignty, non-interference, territoriality of national jurisdictions and a monopoly of representation of citizens by their government at the international level.

This hierarchical and intergovernmental system was developed in a world with few countries, clear frontiers and simple interactions, mostly among governments and a few commercial actors. But dynamic tensions appear between a technically borderless Internet and bordered nations. Furthermore, separating territories becomes less important than managing "commons" and growing cross-border interactions. Both national regulations and international processes clearly encounter operational and legitimacy limits in an interconnected and interdependent world, with 190 countries of very diverse sizes, power, democratic credentials or stability. Below are some of the challenges that show the limits of the Westphalian model and require a new, more inclusive approach to addressing Internet policy issues: "multi-stakeholder governance".

### **1.1** COMMON SPACE(S).

Social media platforms are fulfilling William Gibson's vision. Beyond a technical tool for academia or business, the Internet has truly become cyberspace, a common social space, shared by nearly two billion people, and growing. But cyberspace is not a separate continent: even people not connected to the Internet are impacted by what happens on it, as the Arab Spring powerfully demonstrates. Nor is cyberspace a single space: it contains many sub-communities, from the fully public to the very private.

Unevenly distributed around the world, ever more diverse in their religious, political, moral and cultural affiliations, millions of people connect and fight, congregating in a variety of different human networks and communities, both loosely and tightly-knit. If policy-making is the process of defining rules of coexistence for the inhabitants of a given territory, what is policy-making for the Internet space(s)? How do two billion people define and adhere to common rules of coexistence? And how can a corresponding global governance framework remain viable with three, four or more billions of participants?

### **1.2** COMPLEX POLICY ISSUES.



The Internet is far from being unregulated: numerous national laws directly or indirectly impact human activities on the Internet, whether we like it or not. Moreover, most public policy issues regarding the Internet are not new and include, for instance, freedom of expression, protection of privacy and personal data, fighting criminal behavior, rules governing intellectual property, taxation, etc.

These issues may be similar to those encountered in national settings. But scale (an inherently global cross-border network), speed (as we move into real-time feeds) and the number or diversity of actors involved make the Internet a difficult space for policy-making. Furthermore, dense interconnections produce strongly non-linear effects that are difficult to anticipate, let alone remediate through traditional means. The "burn a Koran day" initiative of a lone pastor in Florida triggered, in a matter of hours, demonstrations in Pakistan that led to several deaths. Traditional policy issues take a different and complex twist on the Internet.

### **1.3** INTEGRATING NEW ACTORS.

The main transformation triggered by the Internet is the multiplication of human groups with transnational or even global influence. In the economic space, the Internet triggered and enabled globalization. Companies with larger turnovers than some countries' GDPs and with transnational networks of employees, customers and suppliers have developed. Even the youngest web start-ups immediately reach international audiences and large social media platforms attract hundreds of millions of users. Likewise, most human networks now have the means by which to spread across borders: families, associations, NGOs, diasporas, etc. can now be globally connected, increasingly in real-time, also through the almost universal dissemination of mobile phones.

Such networks do not replace traditional actors, such as states. But, in some cases, their growth has led them to become comparable in scale or even larger. They grow by accumulating members from all over the world in a fractal manner, thus making humanity more interconnected. This interconnection has probably now reached a point where humanity can be considered a complex society rather than a juxtaposition of separate national communities with limited interactions. This does not, of course, mean that everyone is connected to everyone; but that the density of links has dramatically increased. As the saying goes in complex dynamic systems theory: more is different. The global society is a patchwork of multiple overlapping communities, each eager to take part in global discussions regarding the spaces they share.

### **1.4** DIVERSITY OF STAKEHOLDERSHIPS.

Most state actors view the emergence of trans-border corporations or civil society networks as a challenge to their own power. Yet citizens, as users, suppliers or clients of such companies, may have a personal stake in their success or be concerned by their behavior. Citizens may at the same time have personal interests in issues that their own government does not prioritize or even opposes; accordingly, they may place their trust in non-governmental organizations to ensure that their views are duly taken into account in international discussions. In addition, national decision-making processes, even the most democratic ones, have the natural result of reducing the diversity of visions to a single position, which means that minority approaches are rarely taken into account in international governmental discussions.

Individuals still want their governments to represent their interests as citizens of a national community. Nation-states will neither disappear nor become irrelevant. But citizens now have other more diversified stakes in the evolution of the Internet, its ecosystem and the rules applicable to it. For a growing number of people, citizenship is one among several stakeholderships. They want the diversity of their interests and concerns to be fully taken into account in the determination of a global public interest that cannot merely be the aggregation of national public interests.

### **1.5** CONFLICTS OF JURISDICTION.

National laws remain a key instrument of policy-making. Nonetheless, uncoordinated proliferation of potentially incompatible national norms, for instance those governing privacy or freedom of expression, generates conflicts of jurisdiction. It is difficult for global platforms to respect this diversity of rules. Furthermore, activities of individuals conducted over the Internet often exhibit a cross-border nature, which brings particular difficulties in terms of enforcement. Finally, national decisions by a particular government can have direct or indirect effects on the territory of another. If sovereignty is the capacity to exercise supreme authority over a territory, the Internet is a direct challenge to the territoriality of law, one of the key components of the Westphalian model.

### **1.6** A "FRACTALIZATION" OF SOVEREIGNTY.

More significantly, the emergence of large social media platforms have led to an unexpected state of affairs: their users, irrespective of their effective physical location, become bound by Terms of Service (ToS) that establish the jurisdiction of the country of incorporation of the company, or, at best, of the country in which its data centers are located. This phenomenon amounts to a "fractalization"[3] of sovereignty, where the jurisdiction and legal frameworks of a country become de facto applicable to citizens of another one, extending the reach of the former and proportionally reducing the sovereign authority of the latter.

### **1.7** DIGITAL TERRITORIES.

The popular press often quips that if Facebook were a country, it would be the third largest in the world. But this comparison is inappropriate. Being a country

3 The term fractalization is used here as a reference to the complex mathematical objects called fractals (discovered by French mathematician Benoit Mandelbrot) that help describe dendritic structures and, for instance, the surfaces resulting from the interpenetration of two substances

requires much more than a mere collectivity of users, whatever its size. However, as long as they remain on its servers, the more than 600 million users of Facebook are first and foremost under "Facebook Law" (its ToS) with respect to freedom of expression and privacy protection, for instance. This framework represents the common rules under which a growing number of people spend increasing time interacting across borders.

Without pushing the reasoning too far, we may be witnessing the emergence of "digital territories", foreshadowing the development of a new geography for cyberspace, potentially organized around large communities on social media platforms. These platforms, trying to find common rules of coexistence for their millions of users, have a de facto policy-making role. But this role, being conducted under exclusive corporate guidance, is at best that of a benevolent ruler, rather than fully respectful of the democratic principle requiring the involvement of the governed. The tension between this new virtual geography and the physical borders that took centuries to establish is likely to grow in the years to come.

### 1.8 COMPETING INTERNATIONAL INSTITUTIONS.

If national laws encounter major challenges on the trans-border Internet, could international treaties represent an appropriate solution? In theory, yes. Several useful instruments have been developed to try and address major issues. A good example is the Budapest Convention on cybercrime that has significantly raised awareness around the world for the necessity of closer cooperation, triggered some harmonization between national legal frameworks and established clearer rules for law enforcement efforts. However, not only do such instruments take an extremely long time to develop, they are rarely universal, usually having been initiated by specialized or regional agencies. And as the Internet grows in visibility, more and more intergovernmental organizations compete for leadership, according to their respective mandates, reproducing at the global level the incoherence and potential incompatibilities existing between different national laws.

### 1.9 DEMOCRATIC ACCOUNTABILITY.

The international system is based on the principle of the sovereign equality of states. This translates in most international discussion into mechanics of consensus where the representative of one government, if sufficiently vocal and influential, has the potential to prevent the adoption of necessary measures if they are contrary to his/her perception of national interest. Unfortunately, this can give an extraordinary quasi veto power to individuals representing undemocratic governments or delegates who may even unfaithfully convey the views of their own government.



Furthermore, governmental participation in most processes is not even handled by elected officials from the executive branch, let alone by parliamentarians, but increasingly by low-level civil servants. Members of different administrations from the same country sometimes convey different points of view in different organizations and citizens have no way of knowing what their "representatives" say on their behalf behind the closed doors of intergovernmental deliberations. All in all, the existing international framework provides very weak democratic accountability for global regulatory efforts that have significant and direct impact on the daily life of world citizens. This situation predates the emergence of the Internet, but it becomes less and less acceptable when new communications tools provide opportunities for higher transparency and participation.

### 1.10 MINILATERALISM.

Recognizing this situation, many democratic countries are currently tempted to rely less on the universal institutions of the United Nations family and to retreat to more regional or like-minded fora, such as OECD, the Council of Europe or, more recently, the G8. This so-called "minilateralism" might better ensure that the principles of openness of the Internet and human rights will be respected and fostered. It is hard to decide, however, whether this can be more than a temporary patch against the limits of universal institutions. Will the approach ultimately hurt the ambition of a single universal Internet if such limited initiatives are not endorsed by a significant number of other actors? More innovative ideas are probably needed.

### 1.11 A MUTUAL RECOGNITION OF STAKEHOLDERS.

Largely because of the above, the World Summit on the Information Society, after four painstaking years, led to a mutual recognition between entities that, previously, barely respected one another. Governments recognized that businesses and civil society provide sorely needed technical expertise but also that they are increasingly needed to enforce national regulations and therefore need to be more closely involved in the development of such rules. Conversely, non-state actors accepted that governments could not be kept at bay and were unavoidable – and legitimate – stakeholders in policy-making.



As a result, the WSIS documents produced the above-mentioned definition of Internet governance, which recognizes the multistakeholder approach. And with the Internet Governance Forum (IGF), the WSIS also created a type of new laboratory in which to experiment with this approach. This laboratory now operates in addition to the pre-existing Internet Corporation for Assigned Names and Numbers (ICANN). Have ICANN and the IGF, despite their relative short existence, demonstrated the viability of the multistakeholder approach?

## 2.

## A POLITICAL PARADIGM SHIFT: PRINCIPLES AND PRACTICES FROM ICANN AND IGF.

Internet standard-setting bodies such as the IETF first established several of the principles and practices adopted by ICANN and the IGF. Today, these two organizations are nonetheless the main laboratories trying to implement the multistakeholder approach. ICANN was created in 1998 to coordinate the management of the Internet domain name system (DNS). The IGF, established in 2006 by WSIS as a dialogue space on policy issues, has held five annual meetings in Athens, Rio, Hyderabad, Sharm el Sheikh and Vilnius and its mandate has recently been extended for another period of five years.

Instead of a detailed description of the manner in which they function, itself the subject of numerous articles, this paper builds on a comparative analysis to identify common general principles of the two organizations, leaving aside the very varied working methods that result from their differing mandates. The non-exhaustive and very succinct list below is an attempt to highlight the fundamental traits of the multistakeholder approach and its striking differences with the Westphalian model.

### 2.1 OPENNESS.

Both ICANN and IGF processes are open to anybody wanting to participate, including individuals. This stands in stark contrast with the monopoly of citizen's representation by governments in traditional intergovernmental processes and their corresponding very restrictive and heavy accreditation procedures for non-state actors. Although it was never formulated as such, the multistakeholder approach rests on a fundamental principle: the right of any person to participate in governance processes dealing with issues of interest or concern to them. Most implementation modalities follow from this paradigm shift; a shift from the principle of representation to the principle of participation.

### 2.2 TRANSPARENCY.

As much as possible, sessions are webcast or audiocast and can be followed remotely, including through self-organized remote hubs in the case of the IGF. The most important sessions are even fully transcribed in real-time and archived for later access, representing again a radical departure from closed meetings in the international system. All documentation and process documents are freely accessible on the respective web sites.

### 2.3 EQUAL FOOTING.

All participants in IGF workshops and main sessions are on an equal footing, be they from government, civil society, business, technical community or international organizations. No sub-structure by constituencies has been established within the IGF, apart from the Multistakeholder Advisory Group (MAG – see below). ICANN also endorses the principle of

equal footing for its public forums and comment periods, but has established a relatively complex architecture of constituencies, supporting organizations and advisory committees in order to produce actual policies and decisions. As the name implies, advisory committees are not supposed to exercise a similar role as the rest of the participants. However, the development of the new gTLD[4] program has showed that the term "advisory" does not prevent governments in the GAC from exercising effective influence.

### 2.4 BOTTOM-UP AGENDA-SETTING.

Intergovernmental processes have very strict rules regarding how to put an issue on their Agenda, which usually requires consensus within their governing body (Council or equivalent). This often leads to important delays before an issue can be effectively addressed, if one or a few governments are opposed to it. By contrast, both ICANN and IGF have very open agenda-setting procedures, including the open call for workshops in the case of the IGF and the rules for initiating policy development processes in the case of ICANN.

### 2.5 ITERATIVE CONSULTATION PROCESSES.

Both ICANN and IGF heavily rely upon completely open consultations processes through physical meetings and calls for online comments, complemented, in the case of ICANN, by formal contributions from advisory structures (ACs) and constituencies. Synthesized by the secretariat (IGF) or staff (ICANN), such comments are iteratively integrated in successive drafts. This open call for contributions, on an equal footing, is an essential part of the multistakeholder approach, where intergovernmental organizations naturally limit the right to contribute to member governments.

### 2.6 A GOVERNANCE WORKFLOW.

The IGF is a dialogue space, a watering hole for all actors dealing with Internet-related policy issues. As such, it has no direct decision-making capacity and only contributes to a comprehensive framing of issues and a more coordinated distribution of responsibilities between different processes and actors. This decision-shaping role represents the first phase in any governance workflow and is critical for taking into account the different dimensions of an issue. ICANN, as the de facto global regulator of the domain name space, enjoys effective decision-making powers and also possesses the four other requisite competencies in the governance workflow: regime drafting, validation, implementation and enforcement.



### 2.7 SELF-ORGANIZATION.

Both organizations have developed their rules of procedure through iterative trial and error. For the annual IGF, a Multistakeholder Advisory Group (or MAG), and not a purely intergovernmental bureau, acts as a program committee on the basis of participants input. With the support of the secretariat, it structures the main sessions and schedules workshops organized by the participants themselves. Likewise, working groups within ICANN establish their own charters and supporting organizations; advisory committees do the same for their rules of procedure. This may have its drawbacks when process discussions delay the actual start of substantive work, but this approach provides a flexibility that rigid rules of procedure in many international structures do not offer.

### 2.8 LINKS WITH THE INITIAL LEGITIMATING AUTHORITY.

Both ICANN and IGF remain somehow connected to the entities that gave them their initial legitimacy. Although it is becoming increasingly autonomous, in particular since the recent Affirmation of Commitments (AoC), ICANN is still under contract with the US Department of Commerce (DoC) (which initiated and presided over its creation in 1998) as regards key IANA functions. The IGF, likewise, is still formally convened by the UN Secretary General, who appoints the chair of the MAG and validates its

4 Top Level Domains (TLDs) are the more than 200 country codes (ccTLDs like .de, .uk or .in for Germany, the UK or India) and about 20 generic extensions (gTLDs like .com or .org). An ambitious program to allow new gTLDS (like .music, .berlin or .canon) has been initiated by ICANN in 2011

members. Each annual IGF is held on UN territory. Such links remain useful in terms of legitimacy, but it is expected that the structures will ultimately stand on their own when they have sufficiently matured.

### **2.9** SELF-IMPROVEMENT.

Constant refinement of operating rules is a hallmark of multistakeholder processes, probably due to their relative newness. Every annual meeting of the IGF includes a stocktaking session to identify possible improvements for the next event. ICANN has put in place a regular review of each of its main structures and constantly updates its bylaws to reflect the corresponding changes. This can create a sense of instability but, as time passes, will hopefully lead to a more stable and perfected model.

These ongoing self-improvement measures are complemented at regular intervals by other reviews involving the original legitimating entity (the US DoC and the UN), but not conducted exclusively by it: in ICANN, an Accountability and Transparency Review is undertaken every three years by a multistakeholder panel including a representative of the US DoC; likewise, after an IGF has existed for five years, a multistakeholder group examines the potential for improvements, under the auspices of the UN Commission on Science and Technology for Development (CSTD). It is important that these reviews are conducted by fully multistakeholder groups, even though this principle has not been entirely complied with up until now.

### **2.10** FORUM – WORKING GROUPS – STEERING GROUP.

At first glance, the structures of ICANN and the IGF appear very different. But upon closer look, a common pattern, seemingly characteristic of the multistakeholder method, becomes apparent. This pattern is typified by interaction between 1) an open forum (in physical form or online) that allows anybody to join and contribute, 2) topic-based smaller working groups constituted on an ad hoc basis, and 3) a steering group to pilot the deliberation or drafting process and foster consensus.

This may seem very similar to traditional hierarchical institutions and processes. However the full openness of the forum level, the variable composition and charters of working groups and the facilitation role of the steering groups introduce very original dynamics. The MAG in the IGF, the Board and various Councils in ICANN are examples of such steering groups. The IGF has not established working groups yet because of strong resistance from certain participants. But it may do so in the future through the so-called dynamic coalitions which, in spite of their current limitations, are an indication of things to come. Within ICANN's gNSO[5], the change from rigidly structured task forces to a more open working group format was a step towards fuller multistakeholderism.

### **2.11** REPLICATION FORMAT.

The IGF was created with little more than a few lines of mandate in the Tunis Agenda, the designation of the UN Secretary General as convener and his nomination of a chair and an Executive Secretary. The subsequent development of a set of informal procedures and practices has produced an unanticipated result: the emergence of numerous national and regional IGFs loosely based on the global IGF format. ICANN's relatively complex structure does not spontaneously replicate in the same way, but many anticipate that the introduction of new Top Level Domains (gTLDs) and Internationalized Domain Names will give rise to the question of how best to scale up the model. Some sort of replication involving, for instance, the grouping of registries by categories and/or by type of script[6], may be the solution. Likewise, many new registries are likely to adopt some form of multistakeholder consultation process – similar to ICANN's – to define their second-level registration policies.

Shifting from a principle of representation to a principle of participation has produced a set of practices

5 gNSO (generic Names Supporting Organization): the structure in charge of Policy development for the generic Top Level Domains

6 Scripts are distinctively different types of writing modes, such as roman, cyrillic, chinese, arabic, japanese, korean, etc.

that now self-replicate in new structures. Examples of this are the network of national, regional and global IGFs and the potential fractal replication of the ICANN model in the internal governance of future gTLD registries. This capacity to spread and build a larger infrastructure from a relatively limited seed is similar to the way in which the Internet and the World Wide Web developed out of a few connected nodes or a single online database. This is a promising indication with regard to the growth potential of these experiments. One should, however, remain vigilant with respect to key implementation challenges and even dangers of things going astray.

# 3.

## AVOIDING IMPLEMENTATION PITFALLS.

The multistakeholder governance approach has worked efficiently in the background for many years in the ad hoc technical organizations that steered the production of standards for the Internet and the World Wide Web. However, applying this approach in the policy-making realm is a qualitatively different endeavor, and is encountering resistance from established players. It is all the more important to not be blind to potential pitfalls or limitations of the new model in order to fix them before they are exploited to discredit this innovation. Some of the challenges are listed below. In many cases, the appropriate response is not easy to find.

### 3.1 ENSURING REALLY INCLUSIVE PARTICIPATION.

The right to participate and the open nature of multistakeholder processes do not by themselves guarantee the effective participation of relevant stakeholders. On the one hand, due to lack of awareness, funds, or time, many disadvantaged actors do not take part in the Internet Governance "traveling circus" of meetings around the world, often held in expensive venues. Proactive measures like remote participation and fellowship funds, as well as the replication of IGFs at national and regional levels, alleviate part of this problem and must be strengthened. This new approach is certainly not perfect, but the alternative is remaining in a traditional system that offers no capacity for marginalized actors, let alone individuals, to be heard.

On the other hand, very important commercial actors are not always willing to participate yet, because they are uncertain of the balance of risks and benefits, and because they may prefer the better-known route of lobbying governments directly. One of the strengths of national governments is the capacity to impose constraints of national public interest upon actors not willing to discuss them. Internet governance, on the contrary, is a form of co-regulation and demands the participation of all relevant stakeholders to be effectively balanced. One of the biggest challenges is establishing rules of good standing that compel stakeholders with a critical weight or power to participate in the definition of regimes applicable to them. ICANN's capacity to force contracted parties to respect future "consensus policies" is, for instance, what makes them participate in the policy development process (PDP).



### 3.2 FIGHTING INFORMATION OVERLOAD.

One of the drawbacks of extreme transparency is information overload. Thousands of pages of transcripts, memos, drafts, studies, minutes, etc. are available on the ICANN and IGF web sites. They will be an amazing treasure trove for future historians. But they represent an extreme work burden for the staff producing them and a herculean task for volunteers with limited available time to digest them and identify the really important points. Further improvements in support staff working methods are critical to ensure that this mass of information is organized in a more accessible manner.

### 3.3 SYNTHESIZING DISCUSSIONS.

Multistakeholder deliberations need to produce regular outcomes that chart progress, identify domains of agreement and issues to explore further. Otherwise, oral arguments, exchanged over and over again, produce an endless loop with no progress. But the elabo-

ration of such synthetic documents is a critical task. To avoid falling into typical UN-style collective resolution drafting, this task is usually left to a secretariat. But even when this support staff is perfectly neutral and trusted, part of the benefit of collaborative production of solutions is lost, and participants' buy-in is reduced. Developing new collaborative drafting methods that establish a proper balance between these two aspirations will be essential.



### 3.4 PREVENTING CAPTURE(S).

Any policy process introduces its own dynamics and establishes a particular balance of power between the different groups involved. Different risks of capture by particular groups have been suggested in the current experiments. These include the over-representation of actors from developed countries in the IGF and in the Governmental Advisory Committee (GAC) of ICANN, the overwhelming presence of major American private sector companies within the business sector, the weight of the contracted parties within ICANN, and the hidden hand or agenda of the secretariat (in the IGF) or staff (in ICANN). The dangers of imbalances are real and should not be overlooked. However, for any group, capture is always what the other groups are guilty of. The fear of capture is therefore a sound component of a multistakeholder process; it generates mutual vigilance about potential biases. It cannot however replace, albeit sometimes facilitate, the adoption of proper transparency and accountability mechanisms.

### 3.5 COMPOSING DIVERSIFIED WORKING GROUPS.

Complete equal footing of participants is appropriate for the agenda-setting and issue-shaping phases of discussions. However, the phase in which a governance regime is actually drafted, requires more structured processes and, in particular, the formation of small, sufficiently diverse working groups. Elections spontaneously suppress minority views, when the essence of multistakeholder processes is to ensure as long as possible the most comprehensive representation of the diversity of viewpoints. Defining simple, fair, transparent and relatively reproducible methods to compose such diverse working groups will be critical to helping the multistakeholder model establish its credibility.

### 3.6 THE NEUTRALITY OF STEERING GROUPS.

Contrary to very structured institutions, multistakeholder processes rely on the intense engagement of a large number of volunteers. This has many positive benefits: flexibility, commitment, expertise and reduced costs, among others. However, whenever the resulting regimes have a direct financial impact on some stakeholders, the way steering groups are constituted and the management of conflicts of interests among their members are of high importance in terms of ensuring appropriate neutrality.

Various modalities have been experimented with during the formation of the ICANN Board, and the manners in which members of the IGF MAG are designated differ between stakeholder groups. As yet, no definitive model for forming MS steering groups has emerged. However, the use of nominating committees is an important innovation, and one which complements electoral processes. The benefits and limits of the two modes of designation require more discussion than is possible in this paper. But one thing is clear: steering groups composed of volunteers that remain active stakeholders in the community make it more difficult to ensure neutrality and independence.

### 3.7 REACHING CLOSURE.

Bottom-up participatory processes are able to generate a surprising amount of consensus. But very few rules exist as regards bringing closure to discussions when complete consensus cannot be achieved and the diversity of stakeholders does not allow for voting. Decision-making rules are nonetheless necessary in order to prevent unending procrastination. The notion of "rough consensus" developed by technical standard-setting bodies is promising but it may be difficult to transpose for policy issues with strong commercial implications. A major pitfall in this context is the risk of seeing a steering group moving away from a facilitation and guidance role in an attempt to become the actual decision-maker.

### 3.8 BUILDING LEGITIMACY.

Traditional Westphalian institutions gain their legitimacy through their foundation, which involves treaties or solemn international instruments and the support of high-power governments. Multistakeholder processes have had much more modest births. The creation of the IGF, for instance, was decided almost as an afterthought, a last minute solution to avoid deadlock in the second phase of WSIS. It was launched with no budget, no rules, a small team of very dedicated individuals and a potential host. The early days of ICANN were likewise fraught with uncertainty. Neither structure has a group of formal members or signatories of their charter (the IGF doesn't even have one). They should be envisaged more as shared tools than institutions, even if they potentially grow in recognition.

Like technical specifications that become real standards only through their level of adoption, multistakeholder processes must build their legitimacy a posteriori rather than enjoying it a priori. The replication of the IGF at national and regional levels as well as the growing participation of governments in the ICANN GAC are barometers of the growing endorsement these experiments begin to enjoy. But such legitimacy is always fragile and must always be earned through constant justification in terms of relevance and utility.

The above identification of challenges is far from exhaustive. It should be considered as a mere invitation to expand the list and help find even better solutions to help the multistakeholder approach fulfill its potential.

## CONCLUSION

The Internet is like Galileo's telescope. The famous Italian's invention allowed scientists to make observations that challenged the Ptolemaic vision of the universe. This ultimately led to the scientific paradigm shift[7] that was the Copernican revolution. In a similarly revolutionary manner the Internet, due its lack of technical borders and the complex public policy issues that is raises, reveals the limits of an international "Westphalian" system based on a community of sovereign nation-states delimited by territorial borders. It calls for a new approach to policy-making for a global community of billions of people: a political paradigm shift.



Recognizing the limits of an existing political framework does not mean agreement on its replacement or how much change is needed. Alternative approaches usually compete for a while until one imposes itself by its stronger capacity to peacefully organize human societies. "Multistakeholder governance" is such an attempt to address differently the Internet-related policy issues that the traditional intergovernmental system has difficulties managing. Beyond the somewhat formidable name, lies an effort to implement a simple but revolutionary principle: the right of everyone to participate in the policy-making processes related to issues that they are concerned with. ICANN and the IGF are the two laboratories trying to translate this fundamental principle into concrete processes. Beyond the remarkable potential of this new approach, particular efforts remain necessary in order to address key implementation challenges.

Some critics of this approach consider that it weakens democracy by the role it potentially gives to major actors, particularly from the business sector, and by removing the legitimating process of elections of representatives. While this is a valid issue worthy of further developments beyond this paper, let us not forget that large corporations already have as powerful and less transparent capacities of influence through traditional lobbying and that true representative democracy is far from established in all regions of the world, thus tainting international processes that rely exclusively on governmental representation.

But this innovative approach deserves more than mere defense. Not only does the multistakeholder approach

7 The notion of scientific paradigm shifts has been explored in the seminal book by Thomas Kuhn: "The structure of scientific revolutions". What is at stake here is the similar notion of political paradigm shift.

not weaken democracy, it can actually deepen it. After all, if broader individual participation of citizens and entities in governance processes is now possible thanks to lower transportation costs and new electronic communications, why should it be prevented? Why would representation be more democratic than appropriately accountable processes enabling anyone to participate?



Conversely, many governments are afraid that multistakeholder processes weaken their legitimacy and will result in their demise. But not all scientific revolutions require the previous paradigm to be discarded entirely. Of course, Ptolemaic and Copernican visions could not coexist: either the Earth orbits the sun or the other way round. But quantum physics and relativity theory did not replace the classical Newtonian framework, which remains valid outside of atomic scales or extreme speeds. Each theory has its own range of validity.

Similarly, multistakeholder governance is not a replacement for other modes of governance. Nor does it require or foresee the disappearance of nation-states. It is particularly necessary for cross-border issues such as those related to the Internet, and it leverages existing structures such as governments, civil society organizations, businesses, international organizations, etc. It provides a way of making their heterogeneous governance frameworks[8] interoperable, much in the way that the Internet protocol enabled hundreds of thousands of heterogeneous networks to act as one unified communication platform.

Rather than being a challenge to democracy, multistakeholder governance can foster it, enriching existing representative democracy frameworks and empowering citizens in our interconnected and interdependent world. Multiplying multistakeholder forums and participatory deliberation processes and connecting them with existing governance structures is the only way to create a distributed global governance framework that is not a global government.

***Comments welcome.***

*The author can be reached at the following email address: bdelachapelle@gmail.com*

8 Every human group has its own internal governance framework: constitutions for States, articles of incorporation and charters for corporations, bylaws and statutes for NGOs.

# RESPONSES

# TOWARDS AN OPEN AND INNOVATIVE INTERNET

*Fiona Alexander, U.S. Department of Commerce*



The Internet we enjoy today – this marvelous engine of economic growth and innovation – did not develop by happenstance. It emerged as the result of the hard work of multistakeholder organizations such as the Internet Society, the Internet Engineering Task Force (IETF) and the World Wide Web Consortium (W3C). Recognizing the structure, work methods, and philosophies of these global Internet institutions and the resulting decentralized nature of the network itself, it comes as no surprise that subsequent multistakeholder governance structures closely mirror these characteristics.

These multistakeholder processes have succeeded by their very nature of openness and inclusiveness. They are most capable of attacking issues with the speed and flexibility required in the rapidly changing Internet environment. By engaging all interested parties, the open multistakeholder process encourages much broader and more creative problem solving. These attributes of speed, flexibility and decentralized problem solving stand in stark contrast to a more traditional, top-down regulatory model characterized by rigid processes, political capture by incumbents and, in so many cases, impasse or stalemate. Maintaining the openness, transparency, and user choice of today's Internet can only be sustained and advanced in a world where all stakeholders participate in relevant decision making, not one where governments, or other stakeholders, dominate.

And while multistakeholder Internet governance is often discussed in international settings, it is a model that guides the domestic policy outlook and practices in the United States. For example, at the Department of Commerce through our Internet Policy Task Force we are walking the walk of multistakeholder policy development. In conducting a comprehensive review of the nexus between privacy policy, copyright, global free flow of information, cybersecurity, and innovation in the Internet economy, we have sought broad public participation from the entire Internet community. Through pubic symposia and written consultation processes, stakeholders have shared their insights and offered ideas on how we can improve Internet policy. As we move forward with specific policy solutions, we will rely heavily on the multistakeholder model with the government acting as a facilitator or convener in an effort to develop voluntary codes of conduct.

This belief in the multistakeholder model is however not universally shared. In fact, the model is actively being challenged on a routine basis. In the last year, there have been more and more instances of restrictions on the free flow of information online, disputes between various standards bodies and even appeals from incumbent carriers in Europe for government intervention on the terms and conditions for exchanging Internet traffic. There have also been statements by international organizations and even some governments calling for more direct Internet regulation.

**Why?**

I would suggest that one of the major challenges facing the continued paradigm shift that multistakeholder Internet governance represents is how to ensure

accountability in decision-making. The traditional approach to accountability involves meeting obligations through regulation. The multistakeholder approach on the other hand involves accountability through adherence to voluntary codes of conducts or consensus-based norms. Among communities with little tradition of employing a non-regulatory solution to ensuring obligations, gaining agreement to embrace the multistakeholder approach seems revolutionary. In addition, while the concept of accountability is well known to English speakers, it lacks a corresponding term or definition in many other languages such as French.

The recent adoption of the Organization for Economic Cooperation and Development (OECD) Internet policy-making principles is an important first step to furthering global consensus on the utility of the multistakeholder model; expanding support beyond the existing core group of stakeholders will take collective action. It will require that multistakeholder processes offer meaningful roles for all stakeholders, including governments, so that everyone is satisfied that their interests are being adequately addressed. It will require that all parties come to the table in the spirit of reaching consensus and moving forward. It will also take the existing global multistakeholder institutions, like the Internet Governance Forum (IGF) and the Internet Corporation for Assigned Names and Numbers (ICANN), to measure up to the true vision of multistakeholder governance.

What is at stake is the preservation of an open and continually innovating Internet.

# MULTISTAKEHOLDERISM NEEDS FUNDAMENTAL AND DECISIVE LEGITIMATION

*Catherine Trautmann, Member of the European Parliament*



## INTRODUCTION

The world has been undergoing its deepest economic and financial crisis since 1929. Some blame this crisis, with some merit, on public policy-makers' desertion from this field, which resulted in the "hijacking" of the whole system to the detriment of the public at large. Among the reasons put forward to explain this withdrawal is the claim that the field is "too complex, with implications which escape the classic national jurisdictions". But doesn't this statement strangely echo what is also said about the Internet?

In this discussion paper, I will certainly not be advocating that public policy-makers should take control over the Internet (much in the same way that I, while believing that public authorities need to regain their part in the global management of world finance, wouldn't call for an "administered economy"). However, because of its "systemic" importance and "public service value" (the latter as coined by the Council of Europe), our duty is to make sure that the system as a whole works for the global community: that is to say that we oppose both the balkanisation and the monopolisation of the Internet. For that, we need to make sure that the rules which underpin such a system, and the processes which shape them, are as legitimate as possible. Fortunately, unlike the world of finance where calls for a "global governance" seem a far cry from where we currently stand, the Internet governance debate and practice are alive and kicking, as Bertrand's paper demonstrates.

Yet, while his account of the multistakeholder approach is precise and his opinion on the matter justifiably upbeat, I felt that, somehow, it remained a bit "traditional" in its mapping and conclusion. Indeed, as someone who's been part of this adventure from the start, I recently perceived a sort of embarrassment as the exposed limitations start to materialise. I don't believe that the only pitfalls of the multistakeholder approach lie in its implementation (as significant as this may be). Let us not make the mistake which was committed in the IPR debate, which for more than 10 years now, has been focussing on enforcement only, with few significant results. A different approach could have come up with real answers in terms of an ambitious (and, at the same time, perilous) review of the debate's substance itself. In short, maybe the very concept needs to be "re-booted" if we want it to really represent this "innovative political paradigm".

Indeed, we are currently standing at a crossroads: while until now, most stakeholders shared a more or less similar view on many core issues, this is becoming less and less the case, as is shown by the very bitter dissents on Net neutrality and IPR protection, or by the recent difficulties between the ICANN Board and the GAC with regard to the new TLDs. This situation calls for a re-examination of the very nature of the Internet, what to expect from it, and what type of governance to imagine; more importantly even, in order to remain significant, the whole process needs legitimacy and this cannot only be gained "a posteriori" (3.8). Effective multistakeholderism will at some point demand, if not an a priori legitimacy (it's a bit too late for that), at least legitimacy of a fundamental nature.

# 1.

## SEDIMENTATION OF INTERNET DEFINITIONS.

If we are to explore the legitimation paths of Internet governance processes, and in particular those of the multistakeholder approach, we first need to take another look at the Internet itself. Indeed, the criteria that dictate how its governance should be understood have to primarily take into account the way people define and experience the Internet. Bertrand himself uses several expressions to define the Internet: "cyberspace", "common social place", "platform", "digital territories"… And Sir Tim Berners-Lee repeatedly calls for an incremental effort in terms of understanding of the Web (already in 2006, he said to the BBC that "If we don't have the ability to understand the web as it's now emerging, we will end up with things that are very bad." "Web science" is a way of introducing ourselves to a multifaceted Internet. We will indeed see that there are several definition layers which as they pile up, draw an increasingly rich and complex picture, with consequences on Internet governance.

### 1.1 TECHNICAL DEFINITION.

The Internet is technically defined as a global system of interconnected computers and computer networks using TCP/IP. For this reason it is open, interoperable and non-discriminatory. The Internet relies on two main namespaces: domain names and IP addresses.

### 1.2 PRACTICAL DEFINITION.

Yet the Internet is maybe better defined by its users' practices and expectations. In that sense, directly deriving from its technical setting, it is used to receive and distribute information, content and applications of the user's choice, without any interference. The free flow of information is indeed an essential component of the "Internet way of life", even if that flow runs up against "obstacles", such as state confidentiality or IPR.

With regard to the former, while maybe not wholeheartedly supportive of Julian Assange's methods, it is fair to say that the additional transparency that the Internet brings with respect to political decisions is a definite improvement. In fact, rather than "leaks", a lot of this information should come directly from the public authorities themselves (this is the point of the "open data" movement). From that perspective, I share Bertrand's opinion on the fact that more should be done to make representative systems and diplomatic negotiations more transparent to the public (perhaps his opinion stems from personal experience? (1.9), I do, however, notice that things are already changing in the policy-making sphere (e. g., the debate around ACTA).

Regarding the latter, I tend to consider favourably the fact that more people can share cultural content as freely as possible. Obviously, however, and despite recent improvements, there is still a delicate economic issue in terms of fair compensation for the artists; but there are also sound proposals being put forward (such as the global license), which could reconcile sharing data and rewarding the creators.

### 1.3 POLITICAL DEFINITION.

Is the Internet a democracy, a res publica, an oligarchy, an enlightened despotism (Bertrand's "benevolent ruler[s]" in 1.7), or rather a sort of dictatorship (of the masses)? What is Internet's "social embodiment"? Should we speak of Internet "users" or Internet "citizens", and in the latter case, does the term "Netizens" really reflect something tangible?

In the beginning, the debate surrounding multistakeholderism was focused on and fed by the two previous definitions or approaches, and there was no major dissent on which way to go. Multistakeholderism as practised currently is a product of that (ICANN as a "first age" multistakeholder process dedicated to the more technical approach, IGF more adapted to a "second age", usage-focused Internet). But things are now changing: serious debates are being conducted about where to place the cursor between security and privacy or freedom of expression; between innovation without permission and monetisation of traffic. More and more, the Internet governance debate seems to be giving rise to "traditional" patterns as regards

progressive vs. conservative policies (think of the political polarisation regarding Net neutrality, IPR protection, or "subversive" uses of the Internet …).

Should we consider this trend a step backwards, away from the cosy, consensual compromise-shaping processes which we have seen up to now in such fora? I prefer to see it as a potential improvement, a way to enlarge the circle, testing the multistakeholder method and ultimately legitimising the governance processes. While I found Bertrand's criticism of representative electoral systems a bit excessive because it doesn't take into account its many flavours (only the "first-past-the-post" method really eliminates diversity and minority voices), he is entirely correct when he writes that the "multistakeholder approach rests on a fundamental principle: the right of any person to participate in governance processes dealing with issues of interest or concern to them": this is what the Internet needs in terms of governance.

That's why sound solutions cannot merely take the shape of a political debate limited within nation-states, or even once conducted *between* nation-states (as we know, such solutions are pushed by those countries, usually not the most democratic, which would like to revert to classic intergovernmental policy-making). Since, as we've seen, the Internet is distributed, we need a process which reflects this nature and thus combines different sources of legitimacy. Even in the world of Westphalian (or post-Westphalian) relations, there are examples of "distributed" sources of legitimacy weaving in a single process which can even be binding. I am quite familiar with one of these: the European Union. Here, the institutions that form the famous decisional triangle each represent one interest: the EU itself as a regional organisation on the global scene (Commission); the citizens of the Union (European Parliament); and the member states which compose the Union (Council). This institutional set-up is allowed by gradual transfers of sovereignty, "compensated" by the principle of subsidiarity. The European Parliament alone is an interesting case-study in terms of compromise-shaping and going beyond the sole national interests. But as an MEP I know full well the difficulty of properly upholding such an approach, against the trend of pure intergovernmentalism.

From another, more individual perspective, there are also examples of participatory, "direct democracy" processes. These usually take place on the basis of relatively small groups. But the Internet itself can greatly facilitate and allow such participatory processes on a greater scale.

So the challenge in terms of consummating the innovative political paradigm is to develop a process that is open, participatory and multistakeholder, but with enough legitimacy to tackle and have a real impact on the core political debate concerning the Internet (possibly to the point of decision-making). Otherwise, it will unfortunately continue to be largely ignored or bypassed.



# 2.

## SHIFTING GLOBAL / LOCAL DYNAMICS, LEGITIMATION AND THE ROLE OF MULTI STAKEHOLDERISM.

### 2.1 GLOBAL (BORDERLESS) VS. NATIONAL/REGIONAL (BORDERED); NORM & JURISDICTION: SEVERAL COMBINATIONS.

One of the central points of Bertrand's paper is the difficulty of going beyond the antagonism that exists between "Westphalian" diplomacy and global, distributed networks.

This tension between "virtual geography" and "physical borders" is indeed likely to grow (1.4). In fact, we can already see this in cloud computing, where most governments' strategies (for those who have one) tend to stick to the physical border logic (building up "national" cloud computing capacity in order to push national users to use these, hopefully minimising the risk of conflicts of norm or jurisdiction).

As a side note, in the physical world also, there are areas where no single state has jurisdiction. Such areas include international waters, where ships are under the sole jurisdiction of their flag state, except in cer-

tain circumstances. So another dimension of the tension between physical and virtual territories, and in fact a way to circumvent it, would be to ask whether the norms which apply on the Internet are really attached to a "territory" (even virtual) or rather to individuals. Maybe this way of thinking could be explored more deeply (taking stock of the considerations regarding the Law of the Sea, where debates about governance over international waters seem similarly lively).

But to return to the approach developed in Bertrand's paper: when we speak about such conflicts (1.5), is it about the norm itself (and who defines it) or is it about the jurisdiction (within which remit the norm can be applied? Which authority has the power to implement and/or enforce?)? Let us take a closer look at some combinations:

— Single global norm with global enforcement. Here, two examples come to mind. One is Facebook's ToS (which, as Bertrand accurately described, is a "fait accompli" as a result of to the social networks' success). Another example is everything within the remit of ICANN, i. e. the overarching day-to-day management of the Domain name and IP systems. Yet such decisions, reached through a sort of multistakeholder process, are deemed "only technical" (and the distribution through registries and registrars of sub-levels of management makes the enforcement not-so-global).
— National norms with national enforcement(s): criminal and most civil infringements fall into this category.
— National norm with global enforcement: a prime example is the currently on hold US "Protect IP Act" (PIPA), which would allow American authorities disrupt, at the DNS level, any website allegedly illegal under US law, regardless of where it is hosted or by whom it is managed. This is nothing less than *digital imperialism*.
— Single global norm with national enforcement(s): there's no clear example of such a combination. Yet, couldn't this be one of the missing pieces of the Internet governance puzzle? A single global norm encasing the core principles of the Internet, established through a clear-policy making process which would then be implemented and enforced under local jurisdiction (allowing easy access to judicial or para-judicial remedies if necessary). How, though, could such a combination be defined? The Council of Europe, which already attempted conventional law-making (Convention on Cybercrime, 31 ratifications), recently held a conference entitled "Internet freedom: from principles to global treaty law?", which ended up with a draft recommendation (in which Bertrand was involved). The aim of such a recommendation seems to be the type of global norm that comes about through classic intergovernmental negotiation. But, as we are reminded, such attempts risk ending up as "minilateralism" (1.10). On the other hand, the challenge of developing such global norms seems a great opportunity in terms of testing the potential of innovative multistakeholder processes.

### 2.2 LEGITIMACY ISSUES.

Multistakeholder processes as a way to shape basic global Internet norms (which would be neither imperialistic nor a "fait accompli"), need far more than just a link with their respective "initial legitimising authorities" (2.8) in order to achieve legitimacy.

Taking the example of ICANN, we are told that "its capacity to force contracted parties to respect future consensus policies is what makes them participate in the policy development process" (3.1). It is also claimed that states enjoy more than a simple "advisory" capacity through the GAC (although many would challenge this interpretation) (2.3).

Thus, if ICANN were to one day break free from any kind of tutelage (as foreseen in 2.8), its source of legitimacy would be the fact that, as regards the critically important yet clearly limited areas for which it is responsible, it enjoys a monopoly on enforcement. This, in turn, requires an open, transparent, multistakeholder process in order to design its policies.

In fact, the reason why ICANN debates became more "political", and the sudden rediscovery by states of

their potential influence through the GAC, is for me linked to the failure of the second leg of the Tunis Agenda: enhanced cooperation. Indeed, state actors, by massively ignoring or withdrawing from the measures necessary for fulfilment of the Tunis Agenda, created both an imbalance in the IGF debates and a disturbance in the ICANN sphere when they suddenly (though understandably) tried to regain their influence. Arguably, ICANN has the competence to design the best system for extending the DNS without breaking the Internet, but perhaps not the expertise necessary for assessing the opportunities that such extensions give rise to in principle. In short: states were mostly absent from the most political multistakeholder process (IGF) but introduced politics in a theoretically technical arena (which might have stepped in a gray area).

Now, in order to prevent a vacuum, might a more political multistakeholder process legitimise the development of a single, global, Internet norm? That is to say, a norm encompassing issues at least as important as the ones ICANN deals with but with a much wider scope (possibly at the expense of the enforcement monopoly)?

### 2.3 AN ARRAY OF PRACTICAL AND MORE FUNDAMENTAL PROPOSALS TO MOVE MULTISTAKEHOLDERISM FORWARD.

I fully agree with Bertrand when he writes that all types of implementation pitfalls and limitations need to be fixed "before they are exploited to discredit this innovation" (3). All his developments on these issues are very relevant and most of them don't necessarily require a lot of political leverage to be solved. But in particular, I'd like to insist on a few points:

— Beware of the comforting centripetal movement: time and/or budget constraints could lead, in the long run, lead to MAG meetings being attended only by "usual suspects" (2.7 & 3.1). There is always the need for better promotion of meetings such as the MAG or even the IGF, as well as for being creative in finding budgetary solutions in order to bring about increases in participation. In its Resolution on "Internet governance: the next steps", the European Parliament, perhaps candidly and certainly provocatively, proposed to devolve a modest share of ICANN's treasury to sponsoring the participation of under-represented stakeholders. Another perhaps more practicable approach would be to redistribute a part of the registries' levy on some large TLDs. (e. g., the International Foundation For Online Responsibility is funded through a stipend of 10 $/year for each registered .xxx address).

— Due to the fact that the debates are likely to become more contentious, their synthesis will be increasingly difficult to draft (3.3). As a long-standing member of a political party in which, although people share a lot of common views, I witnessed a lot of very tense situations (especially when the stakes are high), I would recommend option for one of the following two approaches: either you stick to a very descriptive account (at the expense of succinctness and problematisation), or you designate the task of following up on the drafting (the Secretariat remaining supreme) to representatives of the conflicting points of view.

— Reviews (2.9): while I share the feeling that certain reviews didn't go exactly as expected (in particular, the one on the IGF), I wouldn't say that they did not work at all. All in all, it proved to be a somewhat surprising yet useful exercise to better understand where certain states stood. And such reviews are of overall value in terms of the wake-up call that they provide.

Again, to me, such fine-tuning (and the other ones mentioned in part 3 of the paper) can only be a stepping stone leading to something higher.

A step further would be to better connect multistakeholder fora with more traditional decision-making bodies (may it be parliament, government, or even the board of an ICT company): the latters' task would be to implement the principles crafted in the former (something which would rely not only on pristine synthesis as evoked above, but most importantly on political will from the participants to actually take account of such principles in the decision-making activities.

And while this may come across as oxymoronic, the question should also be asked of an ultimately decision-making (or decision-*shaping*) multistakeholder process in order to establish a single, common layer of basic norms or principles relating to the Internet.

## CONCLUSION

In order to solve global issues, increasing numbers of people from a variety of different regions are calling for global governance mechanisms. Indeed, purely diplomatic ways, which rely on state sovereignty and interstate cooperation, often lack openness and public scrutiny. The traditional, democratic legitimacy enjoyed by elected governments and parliamentarians is diluted by deliberations behind closed doors and the regular absence of political representation.

On the other hand, there are justified concerns that private interests alone cannot rule in the long run, even checked by a strong civil society. Genuine global governance needs a legitimacy of its own, and in which public authorities have a role to play.

In this context, is multistakeholderism as we currently know and practice it, high-level fine-tuning of an evolving diplomacy, or rather the beginning of something entirely new? Bertrand's paper, by comparing it to the Copernican system (hence opposed to the old, geocentric ones), seems to adopt the second opinion, and I tend to agree with him.

Of course, there is resistance from established players: not only on the part of those actors who oppose multistakeholderism as a matter of principle, but also from all those who disregard or ignore it. The latter is of more concern to me. Is their disregard because the multistakeholder approach is too innovative to them, or still not enough?

As I attempted to develop in this short paper, I see a gradation of scenarios, once the obvious and well identified improvements are applied:

— To keep multistakeholder processes non-binding or to strictly limit their areas of competence to technical issues. As it stands, this would probably be the logical evolution, but it might create frustration and demobilisation in the long run, while increasing difficulties in the gray zone between technical and political policy-making.

— To develop the links with the decision-making bodies; but if the points made are not properly synthesised, or if they lack credibility, they will not be followed-up in a satisfactory way, or maybe even not at all.

— To use these processes in order to develop a single set of basic norms or principles, to be implemented and enforced in a non-centralised way. In acting accordingly, public and private players alike would serve their own interests, provided that the process doesn't deprive them of their own competence to some extent (the cursor of subsidiary) and allows individuals to feel both empowered and properly protected by the enacted norms and principles.

In conclusion, and referring back to the initial simile: if we don't want a repetition of Galileo's fate (condemnation and abjuration), we need something that even Galileo was not able to produce in support of his discoveries: a decisive, fundamental demonstration that this new political paradigm is the only model truly suitable for the issues at stake. Internet governance cannot wait for some posterior justification another century down the road.

# IS THERE A POLITICAL WILL?

## A DISTRIBUTED GLOBAL INTERNET GOVERNANCE MECHANISM



*Everton Lucero, Ministry of Foreign Affairs, Brazil*[1]

Bertrand de La Chapelle elegantly argues that, as a result of the Internet, human communities are going through a processs of profound restructuring and that new "trans-border spaces" tend to challenge traditional policy-making means. Global processes arising from the use and management of the Internet will lead, according to La Chapelle's view, to a deepening of democracy, with greater openness, more transparency and increased legitimacy to exercise policy-making authority on a global level. The multistakeholder model, continues Bertrand, contributes to the creation of a distributed global governance framework, which is not to be regarded as promoting the formation of a single global government.

It is true that the Internet created a highly sophisticated and distributed system of power over information. When compared to radio, TV or newspapers – means of communication generally controlled by broadcasting companies with a predefined editorial mindset – the Internet stands out as a way (or many ways) of creating new avenues for communication and information, as a medium able to generate innovative networked arrangements and connections among people. In that sense, the Internet represents a true paradigm shift, and one which is yet to be grasped by the average mind. The consequences this will have on the way our civilization is structured are still entirely unpredictable.

In order to make a case around the proposed subject of "Global Internet Governance Policy Making" and contribute to the dialogue initiated by La Chapelle's article, it is necessary to step back for a moment and contemplate, from a fresh persective, the big picture with regard to current Internet governance arrangements. As a background, I propose that we consider the way our societies are organized and define rules of coexistence at international level. This task is basically undertaken through organized structures of power, around the historical nation-states.

The notion that "Code is Law", promulgated by Lawrence Lessig since 1999[2], challenges the sovereignty of nation-states to rule over the Internet, not as a result of a commitment entered into through any international treaty, but rather through the states' inability to regulate the use of the new technology, whose standards are defined in private *fora* virtually devoid of governmental influence. States are increasingly unable

1 The views presented in this text should not be understood as official positions of the Brazilian government. The author's contribution is made in his personal capacity.

2 LESSIG, Lawrence. Code and Other Laws of Cyberspace. New York: Basic Books, 1999.

to effectively monitor the countless interactions that occur in today's globally interconnected world. As a consequence, the rules they create for government at international level – traditional intergovernmental arrangements – are equally incapable of dealing with the endless range of different behaviors that on a global scale by virtue of Internet applications, protocols and the like give rise to the world over.

However, as Daniel Drezner[3] and Goldsmith and Wu[4] pointed out, one should not underestimate the ability of states to legislate over the use of the Internet in their respective territorial jurisdictions. In the context of Internet governance, nation-states appear as entities with the authority and power to act within their respective borders through national law-making and regulatory processes. In the absence of an international body that provides coordination, or at least allows for the harmonization of national laws and regulations related to Internet use and management, diverse, non-comparable, often contradictory and even irreconcilable sets of national rules may well transpire. These, in turn, could have adverse effects on the future development of Internet-related technologies.

The World Summit on the Information Society (WSIS) reaffirmed the role of states in defining public policy related to the Internet. WSIS was essentially a government-led exercise, similar to other thematic summits convened by the United Nations. Its final documents were negotiated by government envoys to the summit. The procedural rule allowing for greater participation of civil and private entities at WSIS, consacrating the "multistakeholder principle", was negotiated by government representatives during the preparatory process to the summit. multistakeholderism was, therefore, an option agreed upon by governments. In this context, it seems odd that a paragraph needed to be included at the final documents explicitting the role of governments to define public policies. Such a role has always been in the hands of government officials formally designated to take part at international negotiations and is the essence of multilateral diplomacy. Why was there a need for WSIS to safeguard the sovereignty of Nation-States to exercise their already existing competence on public policy-making?

The reasons for a reaffirmation with regard to governments' scope of influence is related to the context that gave rise to Internet governance as we see it today. Development of Internet standards and technical protocols began in the United States, a country which, from the end of the World War II, assumed center stage as regards international economics and politics. By the 1960's the US had firmly understood the importance of technological development in terms of international power and prestige. TCP/IP and related standards came about as a result of an alliance between the high-level research capabilities of US universities and the strategic interests of US government agencies, who through DARPA and NSF financed the creation and early development of the Internet. The alliance would find further support in the commercial interest of US technology-based companies, who foresaw an opportunity to benefit from the innovative digital environment in terms of creating and expanding markets. By defining the main principles and norms of what would become the global Internet governance regime, the US, hegemonic since the end of the Cold War, aspired to create market opportunities for its companies. In a moment of unrivalled unipolarity, the US also reserved for itself the ultimate decision-making power over the Internet root, an asset that it has retained until today.

The prerogative of states to develop international public policy has remained unquestioned since the rise of the nation-state at the 17th century. The need to reaffirm it at a global UN summit is superfluous, unless the intention of that reaffirmation was to set the boundaries for government action within the newly formed Internet governance regime, by explicitly excluding

3 DREZNER, Daniel W. All Politics is Global: Explaining International Regulatory Regimes. Princeton: Princeton University Press, 2007. 234 p.

4 GOLDSMITH, Jack; WU, Tim. Who Controls the Internet? Illusions of a Borderless World. New York: Oxford University Press, 2006. 226 p.

governments from the technical management of the Internet, the development of standards and protocols, or "day-to-day technical and operational matters, that do not impact on international public policy issues."[5] The WSIS process with regard to the Internet is directly related to governments' desire to assume a central role in Internet governance. With the exception of the US Government, which has always been deeply involved in defining and guiding Internet governance schemes, the governments of the world were latecomers to this process.

The WSIS' inclusion of the paragraph was thus not a reaffirmation of governments' power to do what they have been doing for centuries, but rather recognition of the influence that non-state actors, "in their respective roles", have in the global Internet governance regime. It is this influence that gave rise to the possibility of multistakeholder arrangements, an idea that, since WSIS has been advocated by those involved in Internet governance, and that has created the scope for new players to interact on equal footing with states and intergovernmental organizations, i.e. the traditional "actors" in international relations.

But coming back to the role of governments, it is worth mentioning that in 1995, when the debate surrounding Internet governance mechanisms started to gain momentum within the United States political scene, Robert Kahn wrote[6]:

**"A key to the success of the Internet is to insure that the interested parties have a fair and equitable way of participating in its evolution, including participation in its also-evolving standards process. A proper role for governments would be to oversee this process to make sure that it remains fair and meets the wide spectrum of public needs. (…) Governments must also take responsibility for helping to resolve problems that arise because of independent decisions made by multiple countries, for example in legal, security or regulatory matters."**

Among the "stakeholders" identified by WSIS, governments are perhaps the parties least able to take action in order to fulfil the mandates and expectations associated with the assumption as to "their respective roles". By the time WSIS was called for by the United Nations, governments had started to realize the importance of the new interconnected global reality. Up until this time, governments from developing countries, in particular, had had little or no opportunity to contribute to the fledgling process of defining the contours of the Internet governance regime.



To date, with notable exceptions, governments continue to keep a low-profile when it comes to joining in existing Internet governance policy-making structures. Indeed many are somewhat reluctant to participate in relevant international-level discussions due to the lack of a proper coordination mechanism at the international level. But with the increasing use and dissemination of the Internet throughout the world, calls for the development of an appropriate coordination mechanism are growing stronger. The UN Internet Governance Forum (IGF) falls short of providing such a mechanism. During its first 5-year cycle, the IGF has been a locus for debate among all interested parties, characterized by a spirit of inclusion, transparency and openness. But it has not been able to provide a proper coordination mechanism with the potential to engage governments in defining public policies on Internet governance matters. One can argue that the IGF was never meant for such a role, and this is true. But the method by which the IGF was implemented and the lack of political will within the UN to take the initiative on the so-called "enhanced cooperation" process have clearly contributed to the underdevelopment of said process. This, in turn, is precisely why there is a lack of a scope "to enable governments, on equal footing, to carry out their roles and responsibilities in international public policy issues pertaining to the Internet (…)" (Tunis Agenda, para. 69). But the way the IGF has been implemented, together with the lack of political will

5 Tunis Agenda, par. 69 in fine.

6 KAHN, Robert. The Role of Governments in the Evolution of the Internet. In: NATIONAL ACADEMY OF ENGINEERING. Revolution in the U.S. Information Infrastrucuture. Washington: The National Academies Press, 1995. P. 13–24.

within the UN to take initiative on the so-called "enhanced cooperation" process, clearly shows a void in the process, which is precisely the lack of a space "to enable governments, on equal footing, to carry out their roles and responsibilities in international public policy issues pertaining to the Internet (…)" (Tunis Agenda, para. 69).

In the absence of an appropriate environment for governments, a wide set of regulatory aspects continue to lack proper decision-making on a global level. Even worse, important matters continue to be dealt with by limited, selective, non-transparent and non-representative groups using issues-driven approaches, groups that implement the "minilateralist" way of conducting business, to use the expression used by Bertrand de La Chapelle.

Minilateralism poses the danger of promoting the values and interests of a specific sector able to mobilize a strong lobby within "like-minded" governments in order to obtain gains for its industries, irrespective of the legitimate views and aspirations of the greater public, who are totally excluded from the decision-making process. I refer, for example, to the Anti-Counterfeit Trade Agreement (ACTA), whose negotiators, behind closed doors, agreed on rules that, to be effective, must be observed at a global scale. Other non-global arrangements such as the Council of Europe and the OECD have also initiated processes with the aim of creating much needed rules to address issues of importance for Internet governance. The Budapest Convention is worth mentioning as another example of rule-making that, to be successful, requires global acceptance. However, without a rule-making process that is perceived by everyone as being truly open, transparent and inclusive, how are other, non-participating governments around the world supposed to accept being bound by such rules? What are the origins of the legitimacy of entities such as the Council of Europe or the OECD, and how does this entitle them to create rules for global application?

Many critics of strong government involvement in the global Internet governance regime argue that governments may seek to control the Internet or may cause damage to its essence. In their view, it should remain innovation-driven and open to creative collaboration, irrespective of national boundaries or any formal structure of centralized control. The example of ICANN is often cited as an outstanding example of private-sector led, multistakeholder collaboration which works well on a global scale. No one can disagree that, in the case of ICANN, legitimacy is achieved through the participation of all stakeholders in its meetings, discussions and decision-making processes. But ICANN could enjoy greater legitimacy and acceptance if it had the conditions to stand afoot by itself as a subject capable of contracting on an international level, a privileged reserved for states and international organizations according to the common understanding of Public International Law.

ICANN is but a tiny dot in the ocean of Internet governance issues that need to be addressed at the international level. Pressing issues include combating cybercrime, protecting vital digital infrastructures, ensuring a balanced approach between intellectual property rights and the right of access to information, protecting consumer rights, promoting open data, observing an adequate balance between privacy and security, fostering cultural diversity and multilingualism, maintaining openness and promoting access and digital inclusion – all of which fall outside the official mandate of ICANN (notwithstanding its potential contribution to some of these issues through adequate policies for the management of the DNS and IP space).

The IGF, as mentioned, has been able to promote debate and improve awareness on these issues, but its ability to influence decision-makers in a coordinated manner (which would truly be a decision-shaping process) remains to be proved.

Revising the role of governments in Internet Governance issues involves redefining the rules of engagement. These new rules would allow official government representatives to contribute to the emergence of a "distributed global governance framework", within clear boundaries and, to use the words of La Chapelle, in their respective role, i.e. as global-level public policy-makers for Internet-related matters. Importantly, this role should not disrupt the globally-

accepted principles for the governance and use of the Internet. Within a multistakeholder environment, all interested parties could contribute to setting the stage for further public policy elaboration. Such a scenario could pave the way for the transformation of Internet Governance into a truly global policy-making process. In order for that to happen, all we need is political will.

# RESPONSES

# PRIVATE SECTOR ENGAGEMENT IN MULTISTAKEHOLDER INTERNET GOVERNANCE

*Theresa Swinehart[1], Verizon Communications*



The World Summit on the Information Society (WSIS) was historical in many ways. The 2005 Tunis Agenda encapsulated and confirmed at a global level that it is necessary to involve all stakeholders to shape the evolution and use of the Internet. Bertrand de La Chapelle's article ("Multistakeholder Governance") touches on a wide range of important topics relevant to multistakeholder models, lessons learned and potentials for improvements.

**It has been an evolution:**

The article observes that "…dynamic tensions appear between a technically borderless Internet and bordered nations. Furthermore, separating territories becomes less important than managing 'commons' and growing cross-border interactions. Both national regulations and international processes clearly encounter operational and legitimacy limits in an interconnected and interdependent world …". This is a topic of discussion across stakeholder groups, including governments.[2]

It is, however, worth reflecting briefly that as the Internet has evolved, so have organizations and entities playing a role in the Internet's eco-system. These include the Internet Engineering Task Force (IETF) formed in 1986, the Internet Society (ISOC) founded in 1992, and the World Wide Web Consortium (W3C) formed in 1994. These organizations have engaged in Internet policy or standards work through consensus building processes. As the Internet was evolving, so were discussions on how to address Internet policy issues. In addition, as the Internet became more important to national economies and consumers, governments around the globe began taking a stronger interest in Internet policy and governance of the Internet.

In 1997, Martin Bangemann, European Commissioner for Industrial Affairs, Information & Telecommunications Technologies, urged for a "new world order for global communications". He suggested in his speech that an International Charter should "cover issues such as global standards to ensure global interoperability, mutual recognition of authorizations and licenses, digital signatures, encryption, different aspects of content regulation, including protection against illegal and harmful content, customs, data privacy and protection", and that importantly it should be agreed at a global level and be industry-led.[3]

1 The views expressed in this article are solely those of the author.

2 Governments also face new challenges and demands: "Governments around the world are faced with new demands, new expectations and a fast-growing array of new technologies and tools." … to be efficient and effective in today's complex, interlinked and fast-changing environment, governments need to redesign their structures and processes to capitalize on a new set of actors and tools." World Economic Forum (WEF), Global Agenda Council on the Future of Government, "The Future of Government: Lessons Learned from around the World." 2011.

3 http://cordis.europa.eu/infowin/acts/ienm/newsclips/arch1997/970904at.html; http://www.europolitics.info/information-society-us-spurns-bangemann-s-charter-plan-artr158295-27.html.
For other overviews, see also Wolfgang Kleinwächter, "Internet principle hype: how softlaw is used to regulate the Internet," http://news.dot-nxt.com/2011/07/27/internet-principle-hype-anon.

Likewise in 1997, the United States issued the "Framework for Global Electronic Commerce", and the first principle in this framework noted:

**"1. The private sector should lead. The Internet should develop as a market driven arena not a regulated industry. Even where collective action is necessary, governments should encourage industry self-regulation and private sector leadership where possible."** [4]

In 1998, through the US Administration's Green Paper and White Paper, the Internet Corporation for Assigned Names and Numbers (ICANN) was formed, establishing the private sector-led multistakeholder model responsible for the technical coordination of the Internet's domain name and addressing system.

In 1999, the Global Business Dialogue on E-Commerce (GBDe) was launched in an effort to bring together business for global coordination on self-regulatory approaches for global e-commerce.[5] And in 2005, at the conclusion of the WSIS, the Internet Governance Forum (IGF) was established.

During the evolution of the above discussions, the private sector has continuously engaged and, together with other stakeholders, contributed to the realization of multistakeholder models. The IGF and ICANN serve as two global examples of models and alternatives to government-only oversight and regulation. Other models exist at regional levels and for subject areas.

While the focus of the paper "Multistakeholder Governance" is on multistakeholder governance models, it is useful to note other forms of policy setting, including for example, the Organisation for Economic Co-operation and Development (OECD) Internet Principles[6], the 2011 G8 Declaration,[7] and the US Cyberspace Policy Review.[8] These and other initiatives put forward relevant principles for the continued development of the Internet, innovation and investment, and importantly reiterate the value of multistakeholder approaches and the engagement of all stakeholders in policy development processes.

**Operationalizing multistakeholder models:**

The article "Multistakeholder Governance" notes that early multistakeholder governance approaches have worked effectively, and discusses principles and practices to apply and pitfalls to avoid when implementing newer models. These topics contribute to discussions on how to effectively operationalize various elements of multistakeholder models.

Principles and traits evident in the IGF and ICANN, including openness, transparency, equal footing, a bottom-up agenda-setting, iterative consultative processes, self-organizing, and self-improvement are of paramount importance to guarantee efficient operations. But it is equally important to avoid certain pitfalls by, for instance, ensuring inclusive participation, addressing information overload, synthesizing discussions, preventing captures, reaching closure and building legitimacy. While these are clearly not exhaustive, they are also not unique. They are, and can be, topics faced by stakeholders in other forums.

The Internet's multistakeholder models are dealing with complex issues. The Internet is a global medium that does not recognize national boundaries, and issues inherently relevant to the Internet have global implications. Policy issues involve technical and operational aspects, and solutions should not hamper innovation, investment and development, within or outside jurisdictions.[9] Additionally, the Internet has

4 http://clinton4.nara.gov/WH/New/Commerce/summary.html.

5 http://www.itas.fzk.de/deu/tadn/tadn014/gree01a.pdf.

6 Communique on Principles for Internet Policy-Making, June 2011. http://www.oecd.org/dataoecd/33/12/48387430.pdf.

7 Deauville G8 Declaration, Renewed Commitment for Freedom and Democracy, May 2011. http://www.g20-g8.com/g8-g20/g8/english/the-2011-summit/declarations-and-reports/declarations/renewed-commitment-for-freedom-and-democracy.1314.html.

8 US Cyberspace Policy Review, http://www.whitehouse.gov/assets/documents/Cyberspace_Policy_Review_final.pdf.

9 For example, according to the World Bank, for every 10 percentage-point increase in high-speed Internet connections, there is an increase in economic growth of 1.3 percentage points. World Bank Report, Information and Communications for Development, 2009.

contributed to the rapid development of new business models and opportunities. User bases reflect a wide range of demographic and geographic stakeholders, and technology has empowered users and provided new mechanisms for engagement.

It is the complexity of the issues and the wide range of stakeholder interests that adds to the challenges faced by multistakeholder models. In this regard, it is the responsibility of the institutions to operationalize well, and for stakeholders to engage, contribute towards improvements, and "walk the talk" of engagement.

Legitimacy may be afforded to an organization, but it must also come from the diverse range of stakeholders across geographic boundaries. Multistakeholder organizations in the Internet's eco-system will continue to evolve and need review mechanisms that allow them to continue to improve in what is a constantly changing environment.[10]

The multistakeholder models in the Internet's ecosystem have important mechanisms in place to enable engagement that supports their work and outputs. Bertrand de La Chapelle's article provides an important overview of a wide range of topics relevant to multistakeholder Internet governance. The models that are emerging are part of an evolution. The engagement of relevant stakeholders, cultural values and geopolitical factors needs to be embraced in the management and operations of these multistakeholder models. In order to operate effectively, there must be effective transparency, cultural and stakeholder awareness, strong consensus building, clear processes and procedures, and appropriate operational support.

The responsibility for achieving this lies not only with those working to make engagement and participation in these models easier for stakeholders. The responsibility also lies with the stakeholders themselves, including those from the private sector, who need to engage and participate in substantive work, and to further contribute to operationalizing multistakeholder models.



10 For example, the Affirmation of Commitments by the US Department of Commerce and the ICANN is unique in that it recognizes that ICANN will evolve and need to adapt to fulfill its limited role, and in this regard outlines key areas for review that involve all stakeholders. Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers, http://www.ntia.doc.gov/files/ntia/publications/affirmation_of_commitments_2009.pdf.

# POLITEIA OF THE INTERNET

*Peter Hellmonds, Nokia Siemens Networks*[1]




## ABSTRACT

The multistakeholder model of governance introduced within the framework of the Internet governance debate is a welcome addition to more traditional forms of governance. It enhances transparency and inclusiveness, thus helping decision-makers to adequately take into account the different viewpoints on the issues, and provides for an exchange of viewpoints between the different stakeholder groups that other single-constituent organizations lack.


## INTRODUCTION

**"Rather than being a challenge to democracy, multistakeholder governance can foster it, enriching existing representative democracy frameworks and empowering citizens in our interconnected and interdependent world."**

*Bertrand de La Chapelle*

For the last couple of years we have worked on finding the right approach to Internet governance. Bertrand brings us an interesting perspective on the multistakeholder governance model which, in the words of Nitin Desai, former chairman of the Internet Governance Forum, began as an "experiment" conducted within the WSIS. In Bertrand's view the specific public policy challenges of Internet governance are best served by a new model of governance whose legitimacy is based on equal representation of members from different stakeholder groups, as opposed to state and state actors alone. He claims that the shift to this new model is akin to a paradigm shift, changing the way we view the world.

The Internet Governance Forum started out in Athens in 2006 as an experiment in multistakeholder discussion and non-binding consensus finding, following the decision by the World Summit on the Information Society (WSIS) in Tunis 2005. And Athens, as the cradle of democracy, provided a fitting background for the launch of this experiment. Here, Plato and Aristotle once discussed the merits of the various forms of government, and we may recall how Aristotle described in Book VIII of the Nicomachean Ethics the merits of the different kinds of "constitutions", or forms of government, and how every good form of government deteriorates into its negative counterpart because human nature causes people to put their own interests first. And because, in practice, all ideal forms of government would sooner or later deteriorate into their negative counterparts, he concludes that of the various options, "[d]emocracy is the least bad of the deviations," because in essence the various self-interests of the people are tempered by the self-interest of everyone else.

When we talk about models of governance on the Internet, we do talk about how to create a mechanism by which the interests of the "netizens", the citizens

1 The author of this article writes in his personal capacity and shares his own personal observations, which may or may not be the same as those of his employer.

who utilize the so-called "cyberspace" for their social and commercial interactions, can best be preserved. And one of the main questions is whether citizens or netizens should look for their elected parliamentarians and professional ministry officials or seek to find their representation in the multistakeholder model and thus more directly influence the discourse in the manner of a global "politeia". Looking at the distinctive nature of the Internet, there are two important observations: first, that the borders of the physical world do not have the same equivalent on the Internet, and second, that the citizens active on the Internet are sometimes better informed and better organized than the elected representatives or the professional executives charged with overseeing the interests of their constituencies.

In the past, there were two main constraints preventing a more direct participation of citizens and requiring the utilization of elected representatives: distance and (lack of) expertise. With cyberspace spanning the entire globe the distances go beyond those traditionally being managed by national representatives. And the issues are quite technical and complex at times, with voluminous papers needing to be digested. Therefore, experts are needed with the global breadth and deep technical knowledge and we have to consider how best to assure that the right policy choices are being made in this environment. On the one hand, the Internet itself provides two remedies against the distance and the expertise problems: first of all, as long as you are connected to the Internet (with a decent access speed), you can theoretically participate live in all discussions and deliberations online, thus obviating the need for an elected representative to cover the distances and to be physically present at meetings. Secondly, the Internet itself provides for extensive access to knowledge, especially when the agencies involved transparently provide their documentation online, and there are perhaps more experts in the various technical communities than in the official government authorities.

However, is this sufficient to proclaim that we no longer need representatives to defend our interests on the Internet and in Internet governance? Perhaps not. Not every citizen has the time or technical background or even the inclination to follow and participate in every debate concerning his interests. Hence, there is still a certain need for some sort of representation. But clearly, with many of the issues on the Internet being, by their very nature, transnational, the dominance of national representatives or legislators imposing the narrow interests of their constituencies on the governance of the global Internet is not likely to be workable; not on a national and especially not on a global scale.

However, simply allowing "interested" parties, whether multistakeholders or not, to follow their own self-interest in discussing the Internet governance issues is problematic. Indeed, it could pose a risk by allowing the few minorities with a clear monetary or other specific interest to throw enough resources behind their issues, thus forcing the silent majorities into situations that may not be in their true best interest. These silent majorities may not be sufficiently informed or incentivized to muster the resources required to protect their own interests, especially in light of the time, money and effort that effective participation requires. There is a real risk that a certain issue, decision-making body or organization could be "captured" by those parties with the most to lose or win. And this risk of capture can not be alleviated by pointing to the option for anyone affected to participate in the meetings themselves. It is simply not far to think that telling the billions of netizens to participate in open meetings would be the right remedy against that risk of capture. Because even if the meetings took place online only, i. e. if they would not be offering any advantage to those physically present over those participating remotely, strong imbalances in terms of levels of expertise and knowledge and the time that is required to acquaint oneself with the issues, would still provide an upper hand to special interest groups with sufficient resources.

So, the netizens will need to have trusted experts who can represent their interests in such discussion fora and decision-making bodies. And here comes the real paradigm shift. In today's online world, trust is not vested per se in elected or appointed government officials; rather it is earned in online communities where opinion leaders of the Internet age discuss their views

publicly and transparently with their online "constituencies". While this solves the problem of expertise and trust, it still does not solve the problem of the lack of real political legitimacy.

It is for reasons of legitimacy that the multistakeholder governance model can only supplement and enhance, but not replace more traditional forms of governance. The ordinary citizen will continue to look for their parliamentarians, ministers and other government officials for guidance and representation of their interests on the political scene. At the same time, parliamentarians and governments alike have realized that they have a lot to gain from the opportunities of the Internet age in terms of organizing discussions and debates, gaining input on policy formulation, seeking commentary for draft regulations and so on. The many national and regional Internet governance forums that have sprung up and also the various international fora such as the recent e-G8 meeting are examples that show how governments take the views of the various constituencies into account.

From here, let us turn to the different roles assigned to the various stakeholder groups in the WSIS process. The key part of the final WSIS documents was the admission of the multistakeholder model, in which each stakeholder group participates "in their respective roles." This terminology appears in paragraph 71 of the Tunis Agenda for the Information Society (2005), which describes how the UN Secretary General should start a process of enhanced cooperation, involving "all stakeholders in their respective roles."

However, the different roles of the various stakeholder groups had already been described at the Geneva phase two years earlier. The Geneva Declaration of Principles (2003), in the paragraphs relating to Internet governance, contains the key to understanding the various roles of the different stakeholders and how they should cooperate. On the one hand, the Geneva Declaration clearly says: "The international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations." It does not say, however, that all stakeholders would operate on an equal footing. Instead, according to paragraph 49, different stakeholder groups play different roles: "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." With this, the States asserted their sovereignty in international organizations and decision-making bodies. "The private sector has had, and should continue to have, an important role in the development of the Internet, both in the technical and economic fields." As much as the private sector would like to claim the leading role for the development of the Internet, it has only been accorded "an important role", as a shared responsibility with others. The remaining sections accord to civil society an important role especially at community level. They also grant facilitator roles to intergovernmental and international organizations in terms of coordinating Internet-related public policy issues and the development of Internet-related technical standards and relevant policies.

Finally, there is a distinction between the multistakeholder model applied by the Internet Governance Forum and those multistakeholder models that operate on the same level as other institutions and organizations. While the Internet Governance Forum derives its legitimacy from being an inclusive discussion forum created by the community of states that assembled at the WSIS, it is clear that the IGF was not meant to be a decision-making body or an implementation agency. With the exception of transcripts and the summary of proceedings, the IGF does not publish formal outcomes. Its processes are therefore of a more informative nature. For policy makers and decision-makers from the organizations and institutions, attending the open deliberations conducted on an equal footing is beneficial in that it improves their understanding of the issues and underlying sentiments. This, in turn, should enable them to make better decisions in their day to day work. On the other hand, those organizations charged with implementing policies, overseeing the operation of the network, and assuring security and accountability, may need other forms of organization and legitimacy. For some organizations, the multistakeholder model could be a

welcome and workable method of organization. In other organisations, however, for instance where quick decision-making is required, such a model could prove to be too cumbersome.

In conclusion, the multistakeholder model of governance is a welcome addition to the policy formulation process, allowing all viewpoints to be heard. Yet, as a means for making decisions and for implementing policies, there need to be additional sources of legitimacy and methods of organization, depending on the task at hand. The right balance needs to be found between inclusiveness, transparency and effectiveness of action.

# INTERNET GOVERNANCE AND CAPACITY BUILDING: A VIEW FROM THE DEVELOPING WORLD

*Waudo Siganga, Computer Society of Kenya*



In some of the African countries the concept of international multistakeholder engagement that came with the World Summit on Information Technology (WSIS) in 2002/3 was at first difficult to grasp. Traditionally international engagement has been the preserve, as noted by de La Chapelle in his paper, of governments and inter-governmental agencies. Since the 2003 Geneva meeting was billed as a "Summit", it was taken as convocation of heads of state and other high ranking persons from the political sphere. There was thus a perceived culture shock when it emerged that the political and governmental dignitaries would be sharing round tables with, amongst others, mere mortals from the private sector. And to further confound matters, the security personnel manning the entrances to the rooms where the round table meetings were held appeared unconcerned about participants arriving without entourages and about security aspects. I was to attend one round table on behalf of the private sector. With me was a colleague from the Far East who was a CEO of a major corporation. However, the rather robust "welcome" at the doors of multistakeholder meeting room caused my colleague to quickly decide against entering and I never set eyes on him again.

Historically, the private sector in the developing world maintained a tradition of non-participation with regard to policy formulation. This was due to the pre-liberalized, monopoly-driven world in which people lived, where the government was the major investor in telecommunications. Over time the private sector evolved in accordance with the circumstances, ultimately becoming a grouping that consumed, rather than co-formulated policy. Multistakeholder participation thus served to confuse both the government and the private sector in equal measure. It was obvious from the start that bringing the private sector to the table would require time, effort and re-orientation. To this day, developing country private sector participation in multistakeholder policy-making (including Internet Governance at the international level) remains conspicuously low.

I observed some of the early confusion generated by the multistakeholder model at 2 prep-coms for the Tunis meeting, one in Accra and the other in Cairo. During these two meetings, there were concerted efforts, and even report outcomes, to formulate an "Africa" position to the then heated debate on Internet Governance. The efforts to have a "continental position" and later on "national Positions" were in themselves an indicator that the multistakeholder paradigm was not properly understood. Positions based on geography were the traditional way of doing things. This traditional way is exclusionary as it ignores the importance of dissenting and minority views.

The wording used for the creation of the Internet Governance Forum (IGF) in the Tunis Agenda also served to heighten confusion, due, perhaps, to its exhibiting what de La Chapelle refers to as "constructive ambiguity". On first appearance, the formulation "In their respective roles" suggested that Internet Governance was primarily about the status quo continuing. After all, since governments were traditionally the sole participants at inter-governmental meet-

ings to discuss policy, policy discussion could be regarded as their "respective role". The definition of Internet Governance was perhaps not clear enough in explaining that the concept was new.

I must point out, however, that despite generalizing in the observations above as regards "developing countries" and "Africa", these regions are not necessarily analogous in their reactions to and relationships with the multistakeholder model. Each country and region has its idiosyncratic characteristics. For example in some, there is higher Internet Governance participation and awareness than in others. The observations are nevertheless meant to illustrate what could be considered common trends rather than the specific circumstances of a country/region.

At this point I would like to move away from the historical perspective and consider the current status and projections of multistakeholder governance of the Internet in Africa. The potential pitfalls articulated by de La Chapelle provide good foundation for this analysis:

### 1. ENSURING TRULY INCLUSIVE PARTICIPATION.

Some of the observations made by de La Chapelle are accentuated in the developing countries. Participation, particularly from non-governmental actors, is relatively poor due to "lack of awareness, funds, or time", not just with regard to taking part in the international "travelling circus" but also with respect to gatherings at national and regional levels. The point made by de La Chapelle that private sector players are unwilling to participate due to the perceived lack of a business proposition cannot be over-emphasized. If the IGF process (and ICANN by extension) is to reach out to these players, extra effort must be directed towards linking their day-to-day business requirements to the outcomes of the participatory process. An additional difficulty is the previously mentioned historical disinclination of private sector players to participate in public policy formulation. Bringing such players on board will thus, for the most part, require a culture shift.

### 2. COMBATING INFORMATION OVERLOAD.

As far as private sector players in the developing countries are concerned, this has a direct bearing on the business benefits of participation. Perusing the documentation that accompanies Internet Governance processes has a cost, and unless this cost can be directly translated into benefits, the private sector may be unwilling to participate.

### 3. SYNTHESIZING DISCUSSIONS.

With particular reference to the IGF, the issue of "outcomes" has been, to say the least, controversial. And yet on the opposite scale, the business community takes the idea of activities in which regular outcomes and progress can be charted seriously. The mere fact the IGF is a non-decision-making mechanism is enough to extinguish enthusiasm for participation.

### 4. PREVENTING CAPTURES.

This would be of real concern to private sector players from developing countries. These players know that on the international stage of policy-making, government has a head-start due to historical reasons. Large corporate from the developed world also have a comparative head-start. The developing world private sector players probably do not participate in the processes as they feel un-comfortable lining up with those from large corporations in the west who understand the issues better.

### 5. COMPOSING DIVERSIFIED WORKING GROUPS.

The model described here by de La Chapelle, and which is a pre-requisite of equal footing participation by all, is a complex one and not easy to achieve, least of all in a developing country. For example, how does one hold elections for a group comprised of disparate groups like government, civil society and business? Multistakeholder working groups that come about are therefore highly unlikely to boast an ideal composition.

The few existing examples have demonstrated that these groups usually feature a dominant contingent – e.g., government or civil society – that drives the process.

### 6. THE NEUTRALITY OF STEERING GROUPS.

De La Chapelle observes that at international level (IGF and ICANN) no perfect method has been developed for forming steering groups. If this issue is still controversial on an international level, it goes without saying that it is an even worse problem on local levels in Africa and other developing countries. This has a knock-on effect in that it discourages those who perceive the process of forming these steering committees as unfair, from participating.

### 7. REACHING CLOSURE.

This point, as with two earlier points, relates to the lack of business benefits and to synthesizing discussions. Business people in particular have a penchant and necessity to participate in activity that has definitive closure. This is because the activity needs to be measured and monitored. De La Chapelle observes that the nature of multistakeholder discussion is such that it makes attaining closure difficult. This poses a major problem in the developing world, in terms of encouraging participation among actors from the business worlds.

### 8. BUILDING LEGITIMACY.

The importance that developing countries lend to legitimacy in the multistakeholder processes in Internet Governance cannot be over-emphasized. In their, eyes, everything needs to fit into a tidy pigeon hole and, so far, multistakeholder Internet Governance cannot be said to have overly achieved this. For example during the Vilnius IGF meeting, I met some participants from Africa who had basic questions such as: "Who runs the IGF?" "Who funds it?" etc. In most cases multistakeholder participation, especially in a format with no decision-making role, is an abstract proposition that is not easy for some players from the developing world to comprehend. They would far prefer a process anchored in some international treaty and which clearly defines decision-making powers. I have also observed questions relating to legitimacy being raised at the localized levels of national and regional IGFs. Those involved question, for instance, question whether the success that these regional efforts have enjoyed so far is not due in part to the novelty of the process, and whether enthusiasm might not wither as the question of legitimacy becomes ever more salient.



## CONCLUSION

Certain attributes of the impact or otherwise of the multistakeholder model in Internet Governance can be said to relate to the developing world, and to Africa in particular; this despite the fact that each country and region falling under this category displays its own particularities and nuances. Some countries have a higher level of awareness and participation than others, but it can be argued that the aforementioned pitfalls with regard to implementation of the model apply universally to this group of countries. Overall, the challenges facing the adoption of the multistakeholder model of Internet Governance in the West are amplified when the model is applied to the developing world – and to Africa in particular. One of the major challenges is the lack of adequate participation and, unless remedial measures such as capacity building (particularly as regards non-traditional actors like the private sector) are undertaken, Internet Governance will remain a preserve of the few.

# RESPONSES

# A LONG WAY TO GO

## CIVIL SOCIETY PARTICIPATION IN INTERNET GOVERNANCE



*Anriette Esterhuysen, Association for Progressive Communications*

### INTRODUCTION

Bertrand de La Chapelle presents a thoughtful reflection on multistakeholder governance as a means of deepening democracy. As always with his writing, he touches on history, political science and social behaviour. His views are grounded in his personal experiences of ICANN and the IGF which gives them a sense of authenticity and immediacy, but also presents certain challenges which I will discuss below.

Bertrand's paper intends to:

1) explain why multistakeholder governance was deemed necessary in Internet matters
2) draw some lessons and implementation principles from the two main experiments
3) identify issues that need to be addressed for multistakeholder governance to fulfill its potential

My comments will respond to each of these three tasks, and will conclude with a few general reflections.

## 1.

### WHY MULTISTAKEHOLDER GOVERNANCE WAS DEEMED NECESSARY IN INTERNET MATTERS.

Bertrand responds to this question with historical narrative (the story of the WSIS) and analysis (reflections on the internet and the changing nature of governance in an inter-connected world, particularly in relation to the cross-border nature of the internet). All his reflections are relevant, but what is missing is both simple, and important.

#### 1.1 THE INTERNET IS NOT A SINGLE, FINITE ENTITY – IG AS AN ECOSYSTEM.

What we think of as "the internet" is a complex net of interconnected platforms, protocols and institutions. Bertrand does elaborate on the complexity of stakeholderships, jurisdiction, and competing or conflicting international institutions, but he still presents the internet as an integrated entity that exists in a kind of "online parallel universe".

*NOTE:*

*I want to gratefully acknowledge the input of three colleagues, Avri Doria, Joy Liddicoat and Valeria Betancourt. However, the opinions expressed are mine alone, and should not be seen to represent theirs, or that of APC as a network.*

In reality the online world is inextricably linked to the physical world and therefore internet governance has to be understood as a governance ecosystem that involves offline and online processes. Solutions to deepening democracy in internet governance cannot therefore be found solely in bodies or processes dedicated to internet specific decision-making. I am not arguing that Bertrand ignores the inter-connectedness of online and offline policy and regulation as he does address it, but, he does not factor these connections sufficiently in his discussion of multistakeholder participation in deepening democracy in internet governance.

### 1.2 THE INTERNET HAS EVOLVED AS A PUBLIC SPACE, BUT IT IS NOT PUBLICLY OWNED OR CONTROLLED.

Therefore its governance has to involve multiple processes, and stakeholders. The internet evolved through the efforts of multiple stakeholders from the public sector (research, education and the military), technical community, business, civil society and users. It exists in our day-to-day lives as a public space. But, it is not publicly owned, or controlled.

In the words of one of my colleagues, Valeria Betancourt[1]:

**"Internet governance is one of the battle fields in which both the structural/material and the symbolic conditions for accessing the internet are in dispute". This makes its governance particularly complex, and does require new approaches.[2]**

# 2.

## LESSONS AND IMPLEMENTATION PRINCIPLES FROM THE TWO MAIN EXPERIMENTS: ICANN AND THE IGF.

### 2.1 WHY DOES IT ALL SOUND SO EASY?

Somehow this section, while using a relevant set of criteria (e.g. openness, transparency, agenda-setting etc.), makes multistakeholder governance sound much more straightforward than it has been in my experience. The examples presented (IGF and ICANN) are substantially different. Bertrand does discuss this difference in **2.6 Decision-shaping vs. decision-making.** But he does not really address the resulting differences in the implications of being able to participate, or not participate, from the perspective of different stakeholders.

Resource and knowledge constraints need more mention. ICANN is complex, and participating effectively requires substantial commitments of time and resources. How can civil society keep up? Even developing country governments find it hard to participate effectively in the GAC, and in the IGF. There are internet related companies active in ICANN that have more internet policy experts on staff than there are in the entire administrations of most African governments. Differences in the resources to participate also impacts on the constant "self-improvement" of these processes, which Bertrand highlights. Not all stakeholders have the capacity, or time, to participate.

1 Based in Ecuador, Valeria is the manager of the Association for Progressive Communications' (APC) Communications and Information Policy Programme.

2 Telecoms and regulation is, or was, much simpler. Service providers were once publicly owned and it was assumed that they would operate in the public interest. Currently most operators are private actors. The role of policy and regulation is to promote and protect the public interest, and create a level playing field among different operators. This does not always produce the desired result as operators are powerful and ready and able to litigate to promote their interests. Regulators battle to keep up with technology trends and legal challenges, and, in many countries they lack the independence and institutional capacity they need to act in the public interest rather than the interest of the financially and politically powerful. However, from a "stakeholder" perspective the accountabilities are clear. The regulator can be held accountable and pressured to, for example, reduce the cost of mobile telephony through rulings on matters such as interconnection charges between rival operators. Conflict of interest is fairly well understood, even if not always effectively prevented. The "public interest" in telecoms regulation is also well understood through concepts such as universal service and access, under-served areas, affordability, reliability, consumer rights, protection of privacy, to mention a few. Civil society, while not nearly involved enough in telecoms policy regulation, has a clear role to play in promoting universal access, protecting the interests of groups with special needs such as rural populations and people living with disability. In other words, even if not perfect, the "respective roles" of different stakeholders are relatively clear, and relatively fixed. In internet governance this is not always the case.

This inevitably skews improvement in the direction of those who are invested AND who have the resources. This point is discussed in more detail below (Issue 3).

Knowledge constraints are equally important. The less informed individuals and institutions are not able to fully participate in internet governance fora. Coordinated efforts are needed to make internet governance decision shaping and making spaces **accessible,** not just open, participative, inclusive and transparent. This applies not only to civil society, but also to governments and business from developing countries. This lack of "access", be it real or perceived (and it is both) impacts on the legitimacy of multistakeholder processes.

In general this section overlooks the ongoing, and intense, "enhanced cooperation" debate. Whatever one's stance on ICANN, or your definition of the term "enhanced cooperation", that Bertrand ignores that ICANN is contentious and that it lacks legitimacy in the eyes of many actors from all stakeholder groups is surprising. It is important to discuss this when reflecting on multistakeholder governance. Often governments' criticisms of ICANN are perceived as being based in resistance to multistakeholder participation. Civil society critique is perceived as being anti-business.

This is a crude picture. Unpacking it can help get beyond the surface of multistakeholder participation and enable one to delve into the real politics of power and interest which intersects with multistakeholder processes in internet governance. Personally, as a civil society actor, I find it disappointing that ICANN is presented as a successful instance of multistakeholder governance. It is an interesting, and challenging example, but is it successful? Many developing country government and business stakeholders have repeatedly expressed the view that they are not able to participate effectively. And it is not a body whose decisions civil society has been able to influence very successfully.

Bertrand's most interesting reflection in this section is the one he closes with:

"Shifting from a principle of representation to a principle of participation has produced a set of practices that now self-replicate in new structures. Examples of this are the network of national, regional and global IGFs and the potential fractal replication of the ICANN model in the internal governance of future gTLD registries. This capacity to spread and build a larger infrastructure from a relatively limited seed is similar to the way in which the Internet and the World Wide Web developed out of a few connected nodes or a single online database. This is a promising indication with regard to the growth potential of these experiments. One should, however, remain vigilant with respect to key implementation challenges and even dangers of things going astray."



# 3.

## ISSUES THAT NEED TO BE ADDRESSED FOR "MULTISTAKEHOLDER MODELS[3]" TO FULFILL THEIR POTENTIAL.

Bertrand mentions important issues such as ensuring inclusive participation; fighting information overload; synthesizing discussion; preventing capture; building legitimacy, among others.

His remarks on inclusive participation cannot be over emphasised. They are vitally important:

**"The right to participate and the open nature of multistakeholder processes do not by themselves guarantee the effective participation of relevant stakeholders. On the one hand, due to lack of awareness, funds, or time, many disadvantaged actors do not take part in the Internet Governance 'traveling circus' of meetings around the world, often held in expensive venues. Proactive measures like remote participation and fellowship funds, as well as the replication of IGFs at national and regional levels, alleviate part of this problem and must be strengthened. This new approach is certainly not perfect, but the alternative is remaining in a tradi-**

3 I am deliberately not using the term "multistakeholderism" used by Bertrand in his heading. Reasons are outlined in the "general comments" section below.

**tional system that offers no capacity for marginalized actors, let alone individuals, to be heard."**

On "building legitimacy" he might be over-simplifying. The process of legitimacy for a dialogue forum such as the IGF and for a decision-making forum such as ICANN are fundamentally different. Replication is not enough. Legitimacy will depend not just on the "foundation" of the process, as Bertrand rightly points out, although this foundation is not irrelevant. Perhaps the simplification is possible because Bertrand does not talk about accountability. A body that makes decisions that are supposed to be in the public interest needs to be held accountable for the implications of those decisions, and for how they were made. The questions of who can hold such institutions accountable, and how they can do so, are key to ensuring legitimacy.

Another important factor that he overlooks in relation to legitimacy is how these "new" multistakeholder governance institutions or processes relate to existing international agreements and standards such as the Universal Declaration of Human Rights, and linked covenants on civil and political and social, cultural and economic rights. These founding human rights agreements are as fundamental to issues of critical internet resources and internet governance as the IP name and numbering system itself.

The world, of which the internet is a part, is not an equal place. There are vast differences in access to resources and power, between countries, and within countries. Governance bodies and processes need to recognise these differences, and try to redress them to achieve legitimacy over time and, as Bertrand says in his first sentence, if they are to fulfill his notion of the project of world history which is the continual endeavor "to find better and better ways of organizing ever-increasing human societies."

## GENERAL REFLECTIONS

### STAKEHOLDERSHIPS AND POWER

Bertrand advances the discussion of stakeholdership and multistakeholder participation. But this discussion does not adequately reflect significant differences between stakeholder groups, nor the differentials in their access to resources, influence, and ultimately, political and economic power. Large multi-national internet companies have the resources to influence policy-makers, to litigate against them if they don't like the policies they make, to make their own de facto policies. As Bertrand says, they can be said to run "digital territories" governed by the terms of service agreements they draw up. Agreements which few users read, and which serve the primary purpose of protecting the interests of the company.

Smaller internet businesses do not have this power. Some types of internet businesses such as internet service providers are increasingly under threat by the erosion of network neutrality and the rise of companies that provide internet content, infrastructure and services. Small and medium sized businesses frequently do not have the resources to engage in or resist government interference with their services or to bring diverse perspectives to internet governance and multistakeholder processes.

Governments still retain primary power at national level and make laws that greatly impact on people's use of the internet (e. g. the right to anonymity, freedom from censorship and secure online transactions). Often government decisions in global forums are influenced by powerful commercial lobbies "at home". This is particularly evident in the case of intellectual property rights regulation and enforcement.

Civil society and consumer interest groups try to introduce balance, and public interest in internet governance processes, but, internet policy is an area where there is still limited public awareness and, particularly in developing countries, few civil society watchdogs.

Simply bringing all these actors into common "governance" spaces does not diffuse the differences in power and does not guarantee a level playing field.

It would be interesting to reflect on how soft power has been increasingly become key in influencing the global internet governance arena. Bertrand does touch on this. Is soft power changing the configuration of weight that the diverse stakeholders have in internet

governance decision making processes? And, if this is the case, what are the public interest implications?

## MULTISTAKEHOLDERISM VERSUS MULTISTAKEHOLDER PARTICIPATION

Bertrand like so many others in the IG space makes use of the term "multistakeholderism" as if it is an established philosophical approach, based on commonly understood principles. I do not believe multistakeholder participation, as outlined in the WSIS principles, has reached that stage. Nor do I think we should strive for such a stage.

What we should be striving for is represented by the other concept Bertrand uses: deepening democracy. Multistakeholder participation is an essential tool for better, more inclusive internet governance, and, if the circumstances are right, it can deepen democracy. But it is also fraught with contestation. Bertrand cuts to the core of some of these in his mention of the ambiguity of "in their respective roles". But unfortunately he does not develop this idea sufficiently.

Multistakeholder governance processes and institutions need to unpack the "in their respective roles" idea if it is to work. Questions that need to be addressed include:

— Does the role of governments which, if they are playing this role well, involve furthering the cultural, social and economic and civil and political rights of its citizens, mean that they require different levels of access to those of other stakeholder groups in global multistakeholder internet governance?

— Should the participation of business be through chambers of commerce or industry bodies such as associations of publishers and internet service providers, or, can individual companies also participate in their own right?

— When it comes to the public interest, what weight is given to diverse civil society views, and who decides? For example, does a civil society group that claims to protect public morality by countering certain types of online content have equal claim to be representing the public interest as a coalition promoting freedom from censorship on the internet?

— Should the modalities of participation not recognise that civil society, which represents the most diverse and multiple interest groups, including the least powerful sectors of society, require additional voice and support?

— Are "respective roles" fixed, or do they change depending on the issue at stake? For example, in some types of decisions, business entities can have common claim to the broader public interest (e.g. discussions on freedom of expression) while in others they might be representing the narrower interests of the specific profitability of some of its sectors (e.g. in the case on discussions of intellectual property enforcement). This diversity of roles and interests is what makes multistakeholder models rich, and necessary, but it also means that they have to be approached thoughtfully, with consideration to the types of decisions being made. Are there some respects in which "respective roles" are fixed?

— Are respective roles in governance to be matched by respective roles in accountability?

Public policy is supposed to be grounded in the public interest. But, the public interest is contested terrain with multiple actors claiming custodianship.

Multistakeholder participation in internet policymaking has a long way to go if it is to really deepen democracy. We need to consider competing rights, and responsibilities. We need principles, and procedures that are grounded in international human rights standards and public interest principles[4]. We need to address conflicts of interest between and within stakeholders, and also the differences in their accountabilities for the consequences of the decisions that are made.

4 What constitutes public interest principles will of course be, contested, and, the IGF is the ideal space for this type of debate.

Bertrand's paper is an important contribution to this process. We need more discussion, debate and critique. Multistakeholder models of participation and governance need to be deepened themselves to fulfill their potential to "deepen democracy".

# BOTTOM UP VS. TOP DOWN:
## ICANN'S AT LARGE IN INTERNET GOVERNANCE

*Olivier M. J. Crépin-Leblond, ICANN ALAC*



Bertrand de La Chapelle's [BDC11] article about Multistakeholder Governance addresses many points, ranging from the limits of the Westphalian system of democracy to the lessons learnt from the principles and practices of ICANN and the IGF, while also touching on implementation pitfalls.

We are currently witnessing a true paradigm shift. And this shift is, at times, confrontational, in that the multistakeholder Internet has become a very strong political force through the catalytic effect it has had on social networking, the very force behind multistakeholder governance. Internet social networking has proved very good at adapting to situations, and demonstrated great resilience. But rather than focussing on the strength of the Internet's political force, let us look at several challenges which a multistakeholder system of democracy would face, and which BDC11 has touched on.

My analysis is based on the experience I have gathered in my current volunteer position as Chair of the At-Large Advisory Committee (ALAC). The ALAC is a 15 member committee which acts on behalf of the wider At-Large community which is divided in 5 Regional At-Large Organisations (RALOs). The At-Large community of ICANN endeavors to act in the best interests of the 2.1 billion Internet users. The ALAC can comment on everything and anything ICANN-related. It can provide advice directly to the ICANN Board. At-Large members can take part in cross-community working groups. Under certain conditions, the ALAC can also comment on external proceedings which might affect ICANN and, if so, would also affect Internet users in the broader sense. The mode of governance in At-Large is purely bottom-up and involves collecting the thoughts "at the edge" and promoting input from the grassroots. It is a microcosm of a multistakeholder bottom-up model nested in the wider multistakeholder organization that ICANN is. It is an experiment within an experiment that operates in the real world, a prototype in multistakeholder policy-making with the potential to affect millions of Internet users worldwide. With its sphere of responsibility as a part of ICANN, the At-Large community is faced with all of the challenges which BDC11 describes, and more!

### THE ESSENTIALS

Whilst a multistakeholder system of governance might appear to be a panacea for governance in an increasingly complex world, it is not without its real challenges and quirks. There are two main ingredients to keep track of.

### COMMUNICATION IS THE KEY

None of the bottom-up multistakeholder models of governance would be possible without ubiquitous telecommunications. This circumstance is an essential catalyst as regards effective participation. Telecommunications have been the key enabler of effective bottom-up multistakeholder models of governance. As a result, the public defence of omnipresent telecommunications constituted by a user-centric Inter-

net and easily accessible and open mobile communications is of paramount importance. Without that freedom, this tool for democracy can be turned to tools for capture and a possible descent into a world run by despotic, non-democratic regimes. Without telecommunications, global outreach would be impossible, or at least seriously hindered. This is noticeable in At-Large, where participants from countries with less than satisfactory telecommunications are hindered from presenting their ideas to participants elsewhere.

## KNOWING THE LIMITS OF WORKING WITH VOLUNTEERS

Working with volunteers has its own challenges. On paper, once a list of volunteers is established, it is assumed that these volunteers will all participate to perpetuity in the same manner and to the same extent. But this is never the case. Most volunteers have a life that will always take precedence over their volunteering activity, whether it is their private life, or their work. As a result, volunteers often have limited time availability, need to be reimbursed with any expenses directly incurred by their volunteer activities and cannot be motivated by the traditional carrot (monetary incentive of a job) and stick (the threat of being fired) method. As Brafman and Beckstrom [BB06] explain in their book, *The Starfish and the Spider,* volunteers work out of the conviction that their work is useful and will benefit the whole organisation. Volunteer work is based on a system of recognition comprising a mix of social recognition, ideology, a sense of personal achievement and passion on the part volunteers.

But as mentioned above, this system has its limits. Key volunteers will sometimes be unavailable to work at the most crucial moment of a project's timeline. Volunteers will begin project work eagerly but drag their feet after a while as the novelty factor wears off. Volunteers will more likely be abundant in "fun" projects and sparse in more complex cumbersome ones. A big danger in volunteer organisations is also that volunteers will occasionally suffer from burn-out. Ironically, it will often be the most active volunteers who risk burn-out, thus leaving a void in the multistakeholder process. A volunteer organisation is a very complex ecosystem in itself: strong yet very fragile.

## THE GRAIN OF SAND

The above challenges relating to volunteers have the potential to very quickly throw grain of sand into the cogs of the theoretical aims explained by BDC11:

"3.1 Ensuring really inclusive participation", does not only mean ensuring it at the beginning of a project, but throughout that project's life. But as a result of differing skill-sets, knowledge, or even cultural backgrounds, this can be very difficult to achieve. Some cultures are more inclined to be outspoken than others. Working methods differ greatly. Misunderstandings between cultures are commonplace. Global governance has brought back the Tower of Babel. And then there is the undeniable fact that the earth is round, which means that for participants from some regions, involvement is more difficult due to the antisocial conference call hours they are subjected to.

"3.2 Fighting information overload" is the major reason for burn-out among volunteers. It is therefore vitally important to find a system to classify that information, channel it and manage it.

"3.4 Preventing capture", is jeopardised as soon as volunteers start dropping off due to burn-out or to a hostile working environment. Employees might remain at work in a hostile environment but only the most masochists of volunteers will stay. Capture is therefore a possible consequence of a hostile environment. For that reason, it is important to make the work environment as agreeable as possible at all times.

"3.5 Composing diversified groups" is immediately affected when volunteers drop out of action. Any unresolved drop-out has the potential to leave a void in terms of the group's diversity.

But perhaps the most complex of challenges in volunteer-based bottom-up work is the notion of "The neutrality of Steering Groups" explained in BDC11's Section 3.6. As mentioned earlier, an element of ide-

ology and passion is required in volunteers for them to take part in bottom-up governance processes which are as demanding as the ICANN processes. How is it then possible to ensure that volunteer dedication to the cause or task on the table is fully motivated by the overwhelming will to do "good" by all actors, in other words, by the common will to act in the public interest? Debates amongst volunteers at ICANN question the notion of the "public interest". What is the "public interest"? What if the volunteer actors of a multistakeholder system were to act in their own personal interest? How would this be detected? How would this affect the neutrality of Steering Groups?

ICANN is often the target of harsh criticism and claims that steering groups are not neutral and that actors in the ICANN ecosystem are more inclined to act for their own interest than the public interest. This will no doubt need to be addressed during the continuous improvement process which BDC11 refers to in his section 2.9.

## FINANCIAL COMPENSATION

Of course, one way of easing the ability of volunteers to spend more time working in the organisation is to bring incentives into the equation. Financial compensation for volunteer time is a possible option, and one that would relieve some volunteers of their concerns about the effect on their livelihood of dedicating time to non-paid activities instead of to paid work. This would be especially important for volunteers taking on positions of responsibility which, by definition, require a high proportion of their time. But then, when does a volunteer stop being a volunteer (non-paid) and start being an employee (paid)? Does the main criterion for a volunteer's involvement in a bottom-up system, "ideology", risk being replaced by the notion of a "career"? Many are therefore vehemently opposed to the idea, even amongst the volunteers that make up the At-Large community.

## CONCLUSION

Rather than engaging in a paradigm shift involving swapping a traditional Westphalian System with a pure bottom-up multistakeholder model in the manner one flicks a switch, the path might lie, at least in the short term, in introducing the bottom-up multistakeholder model on a step by step basis, the aim being to constitute a merged hybrid system. BB06 also pointed towards this path for commercial organisations. Civil society and governments should engage in a dialogue where a bottom-up process interfaces with the rigid top-down decision-making process of governments. Rather than risking a head-on collision, such dialogue would encourage those involved to focus on reducing friction by defending the line that both groups are acting in the "public interest". Perhaps this is where the answer lies: the bottom-up multistakeholder process shining a light of transparency on government processes, forcing accountability at all levels of government, and with the governments themselves providing catalysis, reach, competence, support and a framework for the bottom-up multistakeholder model to thrive in.



**References:**

[BB06] Brafman, O; Beckstrom, R;
"The Starfish and the Spider: The Unstoppable Power of Leaderless Organizations"; 2006.

[BDC11] de La Chapelle, B;
"Multistakeholder Governance: Principles and Challenges of an Innovative Political Paradigm", in this issue.

# MULTISTAKEHOLDER GOVERNANCE IN THE PUBLIC INTEREST

*Annette Mühlberg, ver.di*



Multistakeholderism is the right solution in view of the extremely complex circumstances. Shaping a global information and communications infrastructure in the interest of the common good is a true challenge and raises numerous public policy issues – technically, legally and socially. To cover all interdisciplinary aspects and truly serve the public interest, the multistakeholder approach is a very useful tool – both for fact-finding and for decision making processes (as demonstrated by the global discussion fora of the Internet Governance Forum, IGF, or by globally acting organizations such as the Internet Corporation for Assigned Names and Numbers, ICANN).

Governments should not be afraid of these procedures. On the contrary, far too often – and due to a lack of knowledge and money – they depend on company lobbyists who run their own agenda by giving advice on public policy making and "helping" governments to write laws. On a national basis, governments can make use of the advice of multistakeholder fora. On a cross-border level, as Bertrand de La Chapelle points out, multistakeholder governance is a way to achieve interoperability not only in technical architectures, but also between the cultures of different regions and the heterogeneous governance frameworks of state constitutions, articles of incorporation and charters for corporations, as well as between bylaws and statutes for NGOs.

Governments have an important role to play in making sure that the multistakeholder processes serve the public interest and are not imbalanced, i. e. that they do not give too much power to those who have the money and happen to be able to speak and write English (as it is still the case in ICANN). The principle of equal footing needs active implementation. Civil society works on a volunteer basis and therefore depends heavily on well-structured and transparent procedures. It also requires funding for those who cannot afford costly meetings, especially in an international framework.

The tensions and challenges created by a technically borderless Internet in a world of bordered nations are enormous. Because of the normative character of technical standards and procedures, their creation by only a few global players has tremendous effects on the social, ethical and legal standards of all regions of the world. There is thus a clear need for the development of global guiding principles with respect to the technological architecture and the legal framework of the Internet – based on a type of interdisciplinary technology assessment.

The effectiveness of multistakeholder governance, in terms of defining the important issues at stake and developing principles and public policy strategies, was demonstrated at the World Summit on the Internet (WSIS) and at the following IGFs. And it is there that the important task of "translating" the Universal Declaration of Human Rights (UDHR) for use in an information age began. It is essential that this continue, on global, regional and national levels.

The collaborative multistakeholder spirit is spreading with Internet Governance Fora taking place in all regions of the world. National IGFs provide input on

policy making at regional and global levels. And governments, too, create multistakeholder fora, an example of which is the Internet Enquête Commission of the German Federal Parliament (Bundestag). Half of the members of this forum are politicians from all parliamentary parties, with the other half consisting of Internet experts from civil society, the technical community and the private sector. But even in these multistakeholder for a, the principle of equal footing has to be enforced anew every day. IT-Lobbyists are strong, and everyone knows that those who have money have power – if only to employ a large number of people to write extensive policy recommendations destined for the political circuit.

# RESPONSES

**STAKEHOLDER**

**Technical & Academic Community**

# MULTISTAKEHOLDERISM:
## INTERNAL LIMITATIONS AND EXTERNAL LIMITS

*William Drake, University of Zurich*



There is no question that the growth and institutionalization of multistakeholderism has been one of the most significant phenomena in global Internet governance. Among other benefits, it has created a sense of ownership and buy-in among the non-state agents that develop and use the Internet, it has promoted collective learning and capacity building around the world, and it has resulted in better and more sustainable governance frameworks for critical Internet resources than anything purely intergovernmental cooperation could have produced. The stakeholders who have been in the trenches arguing for multistakeholderism naturally feel committed to its further elaboration and defense against critics in government and beyond.

At the same time though, it is important to avoid letting enthusiasm cloud our vision and overestimating the significance of what has been achieved. On the one hand, there are more than a few "bugs in the system" that would require a good deal of work to correct, and the prospects for that happening are unclear. On the other hand, there is no evidence of any movement toward a generalization of multistakeholderism beyond the institutional environments within which it already exists. Indeed, a substantial chunk of the actual decision-making that shapes the Internet and its use at both the national and global levels remains outside the ambit of the model of multistakeholderism that is summarized interestingly by Bertrand de La Chapelle in this issue.[1] As such, that model is best conceived of as a critically important component of the distributed institutional architecture of Internet governance, rather than as the embodiment of a "paradigm shift," at least in the sense in which that term is conventionally understood in the natural and social sciences.

Below I will briefly expand on these two points – the internal limitations of the model as it has been operationalized in the Internet Governance Forum (IGF) and the Internet Corporation for Assigned Names and Numbers (ICANN), and the external limits of its reach across the realm of Internet governance.

### INTERNAL LIMITATIONS

Advocating and participating in multistakeholder processes requires some comfort with liminality, and perhaps even schizophrenia. One becomes abundantly aware of their shortcomings, the gaps between

1 There are different models of multistakeholder participation that can be viewed as ranging along a continuum. The weakest, which could be called Type 1, involves non-state agents participating in government-led delegations, usually without the capacity to articulate their own views. Type 2 involves non-state agents directly representing themselves in intergovernmental settings, usually with restrictions on speaking and document submission privileges (although working groups and such may be more permissive). Type 3 involves non-state agents participating as equal peers with government and other representatives, typically in transnational processes. This is the key feature of the model described by Bertrand, although he adds other elements that go beyond participation rights, e. g. openness, transparency, bottom-up agenda-setting, iterative consultation processes, and so on. Perhaps this model should be thought of as a Type 4, or "strong multistakeholderism."

rhetoric and reality, and the difficulty of achieving consensus on substantial improvements. In the IGF, under-institutionalization leads to bouts of procedural "ad hocery", and participants remain deeply divided over whether anything beyond an annual conference of undirected dialog is desirable and feasible. In ICANN, people spend an inordinate amount of their time and energy engaged in heated battles over all matters large and small, and are condemned to seemingly endless cycles of collective navel gazing and organizational reform. Nevertheless, they remain mindful that, to paraphrase Winston Churchill, multistakeholderism is the worst form of Internet governance, except for all the others. So despite any frustrations they may have, they are compelled to defend these processes from attacks by some governments, international organization secretariats, and other nonparticipants.

As a sufferer of this particular affliction, I would be hesitant to provide ammunition for any such attacks. Luckily enough, most of the problems encountered by multistakeholder practices have been widely debated already, so raising them in order to caution against irrational exuberance should be anodyne enough. Five in particular merit mention here.

First, the scope of stakeholder participation remains too narrow. While there has been much debate in recent years about the "democratic deficit" in multilateral institutions, multistakeholderism unquestionably faces its own challenges with respect to participation and accountability. Many of us make jokes about the "traveling circus" of "usual suspects" flying around the world to meetings, or some similar formulation, but the awkward humor reflects an awareness of the implications. The on-site presence of only those who have the financial support, expertise, and interest required raises normative and operational issues that cannot be offset fully by even the excellent remote participation facilitation in the IGF and ICANN. It goes without saying that the overwhelming majority of the world's two billion users remain uninvolved, as do the many more non-users who may be affected by patterns of Internet usage in the political, economic, and social spheres. But participation is also very limited among those who one might have expected and hoped to engage, e. g. technology entrepreneurs, small and medium sized businesses, civil society advocacy or service provision organizations, and so on. While these problems are common to most global governance arrangements, and the IGF and ICANN have worked to promote outreach within their respective constraints, inadequate participation does impact on both the character of debate and the external acceptance of the processes.

Second, the problem of participation is especially acute in relation to the developing world. With respect to governments, there is an unfortunate tendency among some stakeholders and observers to view them all as comprising a singular anti-multistakeholder, pro-intergovernmental camp. And to be fair, this could be an easy mistake to make if one were to focus only on the official positions and leadership statements of the Group of 77 and China. But in other contexts it is clear that there are a wide variety of interests and positions in play. To simplify radically: one group of governments does participate in and support the IGF and ICANN to varying degrees, but would prefer institutional reforms that would enhance their influence. Another group of governments, which includes those of many least developed countries, simply does not place global Internet governance high on their list of competing priorities, and/or lacks the wherewithal to participate. And a third group simply refuses on political grounds to participate and then criticizes the IGF and ICANN as illegitimate because they do not participate. Proponents of multistakeholderism need to differentiate between these groups and to define outreach strategies that are suited to each case. Some steps have been taken along this path, but not enough.

It may be even more important to work with and support nongovernmental stakeholders in the developing world. By themselves, the urgings of agents from the industrialized world seem unlikely to change hearts and minds and entice many developing country governments to embrace policy spaces they maintain are stacked against them. It could be a different matter if their own national business, technical, and civil society communities were more robust and ready to engage in a manner that reduced perceived and real

asymmetries. Of course, some governments, or at least their diplomatic representatives, may not want to see the emergence of vital non-state sectors that could have independent preferences and challenge their monopoly control over international policy engagements. Whether this requires outreach strategies that are qualitatively or just quantitatively different is an open question.

Third, there is a need to reduce the often yawning gap between nominal and effective participation. For newbies of all sorts and many developing country agents in particular, showing up can mean being greeted by unfamiliar and unfathomable agendas, procedures, and dynamics. A conducive environment is needed if people are to move up the learning curve, make their voices heard, and see that their views have been taken into account, even if they have not prevailed. Linguistic barriers have been a frequently cited problem and in consequence translation services have become more common, but language-related differences in cultural outlook and style of interaction remain an issue. ICANN in particular has a rather conflictual organizational culture in which one must prove oneself through a history of quality interventions in order to be taken seriously. Challenging peer-to-peer dialogs can present difficulties for people accustomed to enjoying a certain status and respect based on their positions, home organizations, or geopolitical sensibilities. Often, face-to-face meetings are simply moments in long-running and complex processes that have evolved in multiple online and offline settings. This can make it difficult for a "newbie" of any sort, and especially one from a different background, to just jump in at point T-20 and figure everything out. And the background information and documentation needed to engage fully is often presented in a manner that can seem opaque and disempowering in comparison to what one receives for an intergovernmental meeting. In short, as long as there is a lack of more effective measures to facilitate new attendees' movement into the stream, the nominal outreach objective of holding meetings around the world will remain insufficiently realized.

Fourth, as in many intergovernmental or private sector policy spaces, multistakeholder processes are inevitably configured by asymmetries among agents in terms of wealth, power, access to information, connections, and influence. Charges of organizational capture by dark forces are a leitmotif of many global policy discussions, but multistakeholder processes seem unique in the extent to which seemingly everyone believes (or at least publicly professes) that they are the victim rather than the victor in this. It is unclear whether that is a sign of organizational sickness or health. In any event, they say where you stand is where you sit, and as one who sits primarily with civil society, I could argue at some length that in any realistic portrayal we and the values we promote usually come out at the bottom of the influence hierarchy.



What is needed are institutional rules and procedures that ensure that all views get a full and fair hearing, and that decisions favoring one set of interests over another are transparently made, explained, and open to some measure of review. One might add that these concerns may apply not only to relations among governments and stakeholders, but also within the stakeholder groups themselves. As in the wider environment, some groups may at times be characterized by inadequate "inreach," or their internal levels of democratic engagement, transparency, and accountability. Here too there may be varying degrees of division into insiders and outsiders, either as an unintended and undesired consequence of differential capacities, or as a strategic choice by agents with private agendas, insufficient trust of their peers and open processes, or simply a firm conviction that they know best. This is an awkward matter that is rarely discussed openly, but it can happen, and it matters.

Finally, a fifth limitation concerns the governments that routinely profess to be the ardent champions of multistakeholderism. While the industrialized democracies' professed support has been vitally important in fending off ill-conceived intergovernmental gambits, they have often proved reluctant to "put their money where their mouth is," financially and/or politically. In the case of the IGF, the lack of financial contributions from all but a few governments for necessary secretariat functions and travel support clearly has hampered the process. So has the

lack of political support for reasonable enhancements that would allow the IGF to become a more vital and important process capable of attracting broader participation (which need not entail the painstaking negotiation of recommendations). This has helped to leave us with just an entertaining annual meeting that is unable to make concrete contributions to Internet governance and increased global buy-in thereto.

In ICANN the problems are solely political. Here we have bottom-up community policy development processes resulting in actual governance decisions, but the key governments say they cannot participate in these and can only issue 11th hour advice/instructions to the Board of Directors, usually to stop what everyone has been working on for years until governments can think about it and be lobbied more by trademark interests and law enforcement. When that did not prove sufficient with regard to the new gTLD program, we received transatlantic communications urging the US government to abuse its contractual relations and bring ICANN to heel, and a hastily arranged February 2011 summit in Brussels to negotiate over a "scorecard" of Government Advisory Committee demands. When all this failed to satisfy, we got strident 12th hour objections and warnings from governments not to proceed at the June 2011 Singapore ICANN meeting, where the Board nevertheless went ahead and approved the program. And all of this has been unfolding against the backdrop of various ill-conceived and dangerous proposals in the US Congress to abuse US legal control over key parts of the domain name industry in the service of intellectual property interests, and threats of lawsuits by the same interests against ICANN. All of which makes one wonder whether the governmental commitment to multistakeholderism comes with a caveat, namely "as long as you do what we want."

## EXTERNAL LIMITS

In parallel, the governments that extol the wonders of multistakeholderism a la the IGF and ICANN have shown rather limited desire to extend it to other realms of Internet governance. At the national level, Internet governance policies are typically worked out through traditional executive, legislative, judicial, and regulatory processes in which stakeholders may at times provide inputs to government decision-makers via various channels (or in nondemocratic regimes, through state diktats). Not much peer-based, bottom-up, "Type 4" decision making there. Moreover, it should be recalled that in some cases, nominally national policies serve as de facto global governance mechanisms that unilaterally project ordering beyond borders.

At the international level, there has been one very positive development. In light of the dialogs in the World Summit on the Information Society and the IGF, the Organization for Economic Cooperation and Development (OECD) decided in 2008 to open its Internet-related meetings to the technical community and civil society, both of which now participate in parallel with the longstanding business representatives and are making significant contributions. This "Type 2" participation is probably as much as one can hope for in an intergovernmental setting, but it does have its limitations. For example, when civil society representatives declined to endorse a communiqué on Internet policy-making principles that was agreed at a June 2011 OECD meeting, subsequent government statements praised the document and its multistakeholder support without noting this little detail.

Aside from the OECD, there are no signs of movement toward increased multistakeholderism of any sort in other relevant intergovernmental organizations. This is true whether one looks at the World Intellectual Property Organization; the World Trade Organization; the United Nations Economic, Social and Cultural Organization; the United Nations Conference on International Trade Law; the European Union; the Group of 7/8; or any of the other bodies that have or claim to have a role in Internet governance. Some have long-standing "Type 2" provisions for the participation of business or civil society (usually not both), and the Council of Europe has launched some open projects and meetings and has been vocally supportive of the IGF, but there is no general trend toward a broadening or deepening of multistakeholder participation.

A particularly notable example in this regard concerns the ITU, which inter alia has a purely intergovernmental Dedicated Group on International Internet-Related Public Policy Issues. During 2007–2009, the ITU Council's Working Group on Participation of Stakeholders in ITU Activities undertook an assessment in accordance with a 2006 Plenipotentiary Conference Resolution. The question of whether to allow the participation of civil society and other uninvolved agents gave rise to almost otherworldly debates in which member governments listed a range of reasons why multistakeholderism would disrupt the organization's work, be of little value, impose unbearable financial burdens, and so on. As such, it was decided that the existing framework for becoming a (normal, paying) Sector Member or Associate – which has resulted in almost zero civil society participation – would be sufficient. Argentina and Switzerland put forth constructive proposals, but otherwise there was rather little support for opening the organization up, including from the most vocal governmental proponents of multistakeholderism in the IGF and ICANN.

Similarly, there are no signs of movement toward increased multistakeholderism in private sector global Internet governance mechanisms. Industry associations that negotiate shared rules of the game for issues like standards, security, electronic commerce, data protection and so on are not being encouraged to open their doors to other stakeholders, nor are they putting out the welcome mat of their own volition. Neither are those individual firms that have monopoly or oligopoly market power, which allows them to effectively establish global ordering through their strategic practices, codes, and so on.

In short, there is no discernable pattern emerging of a generalized shift toward multistakeholderism beyond those processes in which it already exists. The sort of strong, "Type 4" multistakeholderism discussed in this issue seems to exist only in those organizations or processes that are indigenous to the Internet environment, such as ICANN, the Internet Engineering Task Force, and the Regional Internet Registries. So while the policy problems we face may be post-Westphalian in character, much of the organizational apparatus for managing them is not. If that can change, or if we can grow an ecosystem of new, innovative, open, and accountable institutional arrangements, then we will indeed be able to speak of a political paradigm shift.

# INTERNET GOVERNANCE:
## A CENTROID OF MULTISTAKEHOLDER INTERESTS

*Vint Cerf, Google*



### INTRODUCTION

#### SETTING GLOBAL INTERNET GOVERNANCE IN HISTORIC CONTEXT

This essay has to be among the best on this topic I have ever read. It draws on historical frameworks for perspective and promotes the need for and benefits of a different model of governance for the global Internet. In his reference to the Westphalian Treaty of 1648, de La Chapelle draws attention to the geographic and national character of this agreement and, in this context, Cardinal Jules de Mazarin's calls for an agreement also based on economic recovery and fair trade are worthy of mention. This notion of common interest strikes me as relevant to the question of Internet Governance as well. As de La Chapelle points out, the Internet has a non-national character to it (e.g., IP addresses are NOT bound to national borders by design, but, rather, are indicators of topological connectedness among independently operated networks).

The World Summit on the Information Society (WSIS) lasting from 2003–2005 drew remarkable attention to the Internet as an example of a global infrastructure that could lead to (or has already led to) a growing information society. Perhaps it is not surprising that the WSIS led immediately to the question, "Who is in charge of the Internet?" The government delegates to WSIS were somewhat alarmed by the explanation that "no one is in charge, it is a distributed system with highly distributed responsibilities." Many were incredulous that such a massive and apparently interoperable system did not have some form of central control. The telephone system, also very distributed but often operated as a governmental entity, had a treaty organization, the International Telecommunications Union (ITU) that oversaw the international aspects of the system. Thus, delegates were quick to assume that the Internet Corporation for Assigned Names and Numbers (ICANN) would take on the role of ITU counterpart in the Internet space. Calling this assumption a misunderstanding of the Internet's character is an understatement.

## 1.

### THE INTERPLAY THAT HAS DEVELOPED BETWEEN INTERNET GOVERNANCE STAKEHOLDERS.

#### 1.1 DISTRIBUTED DISTRIBUTION OF THE ADDRESS SPACE.

ICANN does indeed have a key role in the global allocation of Internet Address space (i.e. IP version 4 and IP version 6 numerical addresses); the approval of new Top Level Domains (TLDs) for the Domain Name System (e.g., generic TLDs .com, .net, .org, .info, among others, and also country code TLDs (ccTLDs) such as .fr, .uk. .ru, and .us); and the maintenance of protocol parameter tables for the Internet Engineering Task Force (IETF). ICANN also pre-

pares updates to the "root zone" of the Domain Name System (DNS) that are reviewed by the US Department of Commerce/National Telecommunications and Information Agency, and implemented by the VeriSign Corporation.

However, these functions are performed within a complex universe of interrelated actors. For example, Internet Address space is managed by five Regional Internet Registries that, together, form the Number Resource Organization. They accept large blocks of address space issued by ICANN's Internet Assigned Numbers Authority (IANA) and delegate it to Internet Service Providers and, in some instances, large companies that need direct assignments of address space.



There are thirteen root zone service systems operated by twelve companies or organizations (and on the order of one hundred replications of their servers exist around the world). There is a loose organization of root server operators advising ICANN in the form of the Root Server System Advisory Committee. The country code assignments are drawn from a table managed by the Organization for International Standards (ISO), specifically ISO 3166-1 and changes to the country code TLDs are pursuant only to official changes in that table.

### **1.2** THE INSTITUTIONS THAT BROKER THE ROUGH CONSENSUS WHICH ALLOWS SERVICES TO INTER-OPERATE BASED ON STANDARDIZED PROTOCOLS/INTERFACES.

The physical Internet is made up of hundreds of thousands of networks each operated independently but cooperatively, interconnecting on the basis of bilateral or multilateral agreements. In large measure, the system works because it relies on standards developed by the Internet Engineering Task Force (IETF), a body that operates under the auspices of the Internet Society (ISOC). The Internet Society is a global, not-for-profit organization with chapters around the world and operational sites in the US and Switzerland. There are other important standards that are used to build and operate the Internet and they come from many sources, including the International Telecommunications Union (ITU), the Institute of Electrical and Electronic Engineering (IEEE), the World Wide Web Consortium (W3C), the European Telecommunications Standards Institute (ETSI), the Organization for International Standards (ISO) and many others.

### **1.3** ENTREPRENEURSHIP AND COMPETITION IN THE HARDWARE AND SOFTWARE SECTORS CONTINUOUSLY PUSHING THE ENVELOPE.

The physical equipment used to implement the Internet comes from sources around the world as well. Router vendors include Cisco Systems, Juniper Systems, Huawei, Siemens, and many others. Users of the Internet access it through mobiles from many sources, with laptops, desktops, notebook computers from Apple, Hewlett-Packard, Lenovo, Dell, among many others. Software from an uncountable number of sources populates online platforms around the world. So-called "cloud computing" systems pioneered by Google, Amazon, Microsoft, IBM and others now provide enormous computing and storage capacity for users of the Internet. The American Smart Grid program and counterparts in Japan, Korea and elsewhere are currently in the process of further developing the "Internet of Things", which will lead to a more advanced network infrastructure for reporting, mamangement and control purposes.

Businesses around the world make use of the Internet and the World Wide Web application for sales, marketing, customer service, software product delivery, video and audio entertainment, and even voice services, with the latter formerly the exclusive domain of the telephone system.

# 2.

## INTERNET & SOCIETY.

### 2.1 THE INTERNET BELONGS TO THE PEOPLE.

In the early days the Internet was created for academic and military purposes. However, now that the general public has had access to the Internet since approximately 1989, the system has expanded to over 2 billion users and become a socio-technological extension of our societies. And while most users contribute and behave as citizens or businessmen, the net also includes criminals and others who abuse the network and its applications for personal gain. Viruses, worms, Trojan Horses and other malware are propagated around the Internet through infected web sites, infected thumb drives, spam email, and a variety of other attack vectors. However, while an Internet with a centralized control center would possibly allow for better surveillance and "higher security", it would most certainly also hinder the innovation and democratic liberty that online services have brought about.

### 2.2 TRANSPARENCY & ENHANCED COOPERATION.

The linking of the mobile world to the Internet through applications housed within the mobile phones has accelerated the social and political impact of the Internet. Mobiles are information windows and reporting devices capable of capturing audio, video and imagery and uploading this information onto the Internet. Applications such as Twitter have drawn users together through facilitating near real time interaction. The flexibility and adaptability of the Internet invites a wide range of collaborative and collective activities, discovery of like-minded individuals, activities spanning multiple time zones as well as rapidly coordinated local activities.

Is it any wonder that the nations of the world now regard the Internet as a force to be reckoned with? It is a powerful and still-growing system that offers extraordinary freedom of expression and collaboration to every Internet user.

# 3.

## CHALLENGES.



Technology is neither good nor bad nor neutral. The net can be used to harm others. Moreover, the system is vulnerable to various forms of attack, which take advantage of poorly protected personal computing equipment, server systems and/or mobiles. Such insufficient protection has led to wide-spread abuse involving equipment, servers, mobiles, etc. being compromised and placed under the control of so-called "botnet generals" who use these resources to generate spam, mount distributed denial-of-service attacks or interfere with other components of the Internet.

### 3.1 OPENNESS AS CHALLENGE.

The origins of the Internet date back to 1973. And even before that, major experiments and developments in time-sharing and computer networking were being conducted (e. g. ARPANET). The Internet design, though funded by the US Department of Defense, grew out of academic and corporate research institutions and the openness of these institutions found expression in the design and operation of the Internet itself. The standards were largely royalty-free and openly accessible on a global basis. The open nature of the Internet and the common availability of open source software facilitates the introduction of new applications and capabilities. Every layer of the Internet's architecture is theoretically accessible to users and, in consequence, users (and abusers) can exploit vulnerabilities in any of the layers. In consequence, network operators and software makers often look for ways to contain user access to certain layers or protocols. For example, most networks inhibit user operation of electronic mail servers in an effort to limit generation or propagation of spam.

### 3.2 GLOBAL REACH AND PSEUDONYMITY AS CHALLENGE.

Pseudonymity was and still is largely the rule when it comes to identifiers used in cyberspace. Authentication relied and still largely relies on usernames and passwords that are only loosely bound to actual users. Not surprisingly, governments worry that the enforcement of societal laws and norms have proven difficult, not least owing to the fact that abuse can originate in one jurisdiction but target a victim in another. In the absence of reciprocity, it may be impossible to take action against the attacking party, or even to identify an individual or group responsible for the damage.

The Internet can be seen as a platform or infrastructure on top of which myriad applications can be built. The World Wide Web is, itself, a platform built atop the Internet. Many applications have been created in the context of the WWW. Users probably do not always realize that web applications, themselves, initiate programs that operate directly on top of the basic Internet platform. Streaming audio and video, voice over IP, peer-to-peer data exchanges and many other applications, while initiated through web-based interactions using browsers and corresponding web servers, are applications of the basic Internet infrastructure. By implication, there is still substantial latitude for innovation in the Internet, beyond the rich and varied platform provided by the World Wide Web.

# 4.

## CONCLUSION: DO NOT CHANGE A WINNING APPROACH.

The diversity of players, providers, implementers, operators and users of Internet-based systems speaks to the importance of the multistakeholder model so well described in de La Chapelle's essay. Although governments have tended to focus on the potential harms that may befall citizen, private sector and government users of the Internet, the historic evolution of the Internet has proven that a cooperative strategy, by focusing on constructive agreements that enhance the value of the Internet's infrastructure for all sectors, would be of enormous value.

### 4.1 APPLYING THE MULTISTAKEHOLDER APPROACH TO CURRENT CHALLENGES.

A modest example of this would be to establish standards for the application of public key technology to validate "digital signatures" that may be used to conclude contracts negotiated in and expressed in the cyberspace of the Internet. If actors transacting agreements in the medium had certainty that these agreements had recourse in the event of breach, even when parties are operating in separate jurisdictions, electronic business and commerce would benefit. One can readily imagine other kinds of constructive, multilateral agreements that would be beneficial both in terms of protecting against harm and promoting the utility of this global medium.

### 4.2 INTERNET GOVERNANCE AS A DISTRIBUTED AND CONSTRAINED RESPONSIBILITY.

Because many of the harms result from exploiting vulnerabilities in software and/or hardware used to implement the Internet and its applications, it may also be worth asking what kinds of responsibility should fall on the shoulders of producers. At the same time, intermediary parties, even if they are operating in an optimal manner, may become unknowing conduits for harm. Safe harbors may thus be needed in order to protect these actors. So-called "spear phishing" attacks involve innocent-looking emails that recipients open, only to find their browsers have downloaded malware from an infected web site. Such attacks are extremely difficult if not impossible for intermediaries to detect. Indeed, efforts to detect them might be considered invasions of privacy in some jurisdictions. Balance is therefore needed in apportioning liability, rewarding best practices and achieving a safer environment for the use of the Internet.

There is no question in my mind that the diversity of players in the Internet universe demands a multi-stakeholder approach to governance in the most general sense of the word. De La Chapelle makes a compelling case for this perspective with which I am in agreement.

# BUILDING SUITABLE FRAMEWORKS FOR INTERNET GOVERNANCE



## THE INTERPLAY BETWEEN TECHNOLOGY AND POLICY

*Sivasubramanian Muthusamy, ISOC India – Chennai*

There is so much to be said in praise of Bertrand de La Chapelle's work, which is well structured as a thorough analysis. A summary observation is that this text by Bertrand is one that should be read not only by participants in the Internet governance process, but also by policymakers and opinion leaders around the world for its conceptual clarity on this paradigm. It should be embraced in the conventional political arena.

### THE MULTISTAKEHOLDER MODEL OF GOVERNANCE IS BASED ON DEMOCRATIC PRINCIPLES AND IS A FURTHER EXTENSION OF DEMOCRACY

Bertrand observes that "many governments are afraid that multistakeholder processes weaken their legitimacy" and argues that "multistakeholder governance can foster democracy [and] enrich existing representative frameworks …"

True. The multistakeholder model of governance **is** democracy where the Houses of Commons and Lords are in the same parliament, and thus part of the executive that makes decisions. It is an extended form of democracy that truly rises from the bottom up. It is a democracy that includes the people in the process of policy-making like never before.

The theocracies of ancient and later times were considered imperfect due to their conservative outlook on civil liberties, especially on religious doctrine. Monarchy became undesirable both before and after the separation of the church and state, with insufficient safeguards against the occasional emergence of an inadequate, eccentric or unjust monarch. Aristocracy or any form of oligarchy did not share power widely enough, and were thus considered unfair as forms of government.

Democracy has emerged as the "safest of the imperfect forms of government". From a system of government by one person or by a very small group by divine right or otherwise, democracy as a form of government by the people happens to be more acceptable, but it is still not free of its own limitations. Equal people in a democracy are "equals without an equal share", as power tends to be concentrated on people's representatives and appointed administrators, the inevitable distortion that is caused by the political party system.

In monarchy and its broad variants, there was an element of absolute power, which was what was meant to be countered as democracy evolved. However, democracy as the new institution gave rise to a new class of monarchs and lords by new names. As more and more nations embraced democracy, it was more a situation of one form of imbalance being replaced by another, albeit lesser, form of imbalance by a new name.

In a parliamentary democracy of the people, the will of the people does not always escalate to find its voice in the parliament of the representatives that they have elected. There is often a disconnect between the people and their elected representatives who, in many democracies, follow the will of the political parties they belong to rather than follow the will of the people who elected them to parliament. The consent of the governed is assumed to be present in all decisions voted though parliament, and derives from the elected representatives because the parliamentary process is not a bottom-up process to a scientific degree. With such powers of blanket representation, the representatives of the people, though structurally separate from the executive/administration, actually tend to become a governing class instead of being public servants on the other side of the table, balancing the power of the executive/administration.

## THE MULTISTAKEHOLDER MODEL OF GOVERNANCE IS A MORE BALANCED FORM OF GOVERNANCE

Even in many evolved democracies where the design of government is apparently balanced between the administration, judiciary and the council of people's representatives, this balance does not always exist. In reality, at least in some countries, at least some of the time, decisions are made by visible or invisible power centers or forces, by processes that are far from transparent.

In the United States, there is the unacknowledged problem of the executive being overwhelmed by the status quo and the problem of the unbalanced power of lobby groups who influence policies in favor of their own interests. In India, representation of the people is governed more by the priorities of the political parties they belong to and, in some cases, even governed more by the self interest of the politicians than the priorities of the political parties to which they belong. The judiciary in India – as in many of the democratic nations – has not provided a sufficient balance between political forces and excesses.

This has happened not so much by calculative design but because of the infeasibility of participation by the entire population in governance. This limitation has existed for over two thousand years, but in the last 100 years the press has made it possible for the voice of the people to be heard to some degree, and in the last 20 years the Internet has opened up the technical possibility for everybody's voice to be heard everywhere.

The possibility of truly bottom-up democracy, as intended by its founding fathers and early philosophers, has emerged in the Internet era, which means that the leaders of the nations of the world might consider this to be an opportune moment to work on enhancing democracy. Governments must be receptive to the idea that multistakeholder governance could be a natural progression of the idea of democracy, providing a balance that could be fair to all concerned.

The multistakeholder form of governance is a higher form of governance, evolved further from traditional democracy, which has experienced different forms of limitations in different countries. It fosters the participation of every stakeholder, it is bottom-up and the process is meant to be transparent.

## THE MULTISTAKEHOLDER MODEL IS A FAIR MECHANISM FOR CROSS-BORDER POLICY-MAKING

As Bertrand implies, any reluctance or resistance to the multistakeholder model of governance might stem from a fear of altering the national political system and from a fear of disrupting the international political system.

The status quo in the national political system is that the government comprises elected politicians and appointed officials, and the reluctance to include other stakeholders stems from the fear of diluting the powers of those already in formal government roles. In the international context, the reluctance of national governments in subscribing to the multistakeholder model arises from apprehensions concerning the erosion of the concept of national sovereignty in the international system and erosion of the principle of non-interference.

The principle of non-interference territoriality has proven to be difficult, especially during the last hundred years. What happens in one country's territory spreads beyond its borders and has an impact around the world. Be it an oil spill, nuclear mismanagement or religious doctrine, the repercussions are not contained within borders, so it has been silently acknowledged as necessary to alter this principle. Within the Internet space, it becomes all the more important to be a lot less rigid on this principle.

In the real world of political borders, instances of altering the principle of non-interference have so far occurred largely by means of what Bertrand calls "mini-lateral" initiatives. Within the Internet space, with its fractalized sovereignty and jurisdictional conflicts, the principle of non-interference is almost inapplicable. What needs to be done is to acknowledge this situation and evolve a fair mechanism for cross-border policy-making.

Bits and pieces of legislation get enacted in different corners of the world, but not as components in tune with one another and not necessarily forming part of the whole. Nation states find ways of drawing up imaginary borders rather than expanding their vision away from and beyond traditional border-based sovereignty.

This is the era of global policy-making for all the world's people, while the focus remains on safeguarding national priorities which are no longer governed in isolation. There is a need for a global policy for Internet governance. There might even be a matter of urgency in evolving a framework for such a global policy. Existing international institutions may not have a suitable framework for Internet governance.

## ON WHY IT IS WISER TO INCLUDE STAKEHOLDERS

All stakeholders already participate in Internet policy, either indirectly or invisibly. Formalizing their roles would ensure a balance.

**Internet Community:** The architecture of the Internet emerged as a community effort. Organizations providing the umbrella for collaboration have been catalysts for the growth and evolution of the Internet. They channel the community's commitment to the Internet as neutral stakeholders, together with other international organizations that have a role to play in Internet governance. In the Internet sphere, the role of governments and other stakeholders came later than that of the Internet community, so the community and the Internet organizations are the primary stakeholders.

**Business:** The business policies, public policies, business decisions and styles of operation of very large Internet companies such as Google, Facebook and Skype have an impact on the way the world works. They are already part of this process. These and other significant businesses do not have seats in political or diplomatic policy, but their business policies do alter the political and diplomatic policies of governments. They are already a part of Internet governance; what needs to be done is to formalize their roles as stakeholders.

**Civil Society:** The common man is becoming more and more connected, exchanging information and sharing his views. With over a billion people thus connected, a civil society, though still unstructured, is emerging. The flow of Internet communication, and in particular the power of social media, has surprised governments, which have reacted by asserting their sovereignty on the Internet space, using methods including those that hitherto have been characteristic of undemocratic governments. These measures range from pressure on Blackberry to open up its encryption, DNS filtering, directives to various Internet services on data retention, and assertive measures for surveillance in various forms.

The state has always been unwilling to share its power equally with the people. It would be a fallacy to say that this unwillingness to decentralize its powers has only ever been characteristic of a monarchy, oligarchy or a dictatorship. In a different form, to a lesser degree, the unwillingness to let the people decide for

themselves is true of even the most evolved democracies. Elected representatives and public administrators have been comfortable with the limitations of democracy, i. e. of its inability to evolve a truly bottom-up process for decisions. In any form of government, civilians have remained on the street, with variations in the location of the ruler: a balcony in the case of monarchy, an armored car in a dictatorship, a podium or a desk in a democracy. This was never intended for democracy by the founding fathers, and is perhaps undesired by members of the most modern governments, but this has been the limitation, because it has not been possible to include the whole world in government, or consult all of the people on all major decisions, except to expect them to vote every term to elect their representatives, who in effect assume a blanket consent for the length of their term for all decisions that they make. This is the area where democracy hasn't evolved, but the Internet now makes it possible to connect the people to the process of governance.

In what has been dubbed India's second freedom struggle, Anna Hazare, assisted by a retired Supreme Court judge, a lawyer, a former police officer and spiritual leaders, encouraged the latent dissent of the people against corruption in politics. Millions of people became part of the movement and a further billion did not disagree with the cause espoused. This is proof enough to show that the assumed consent has actually been absent on most matters of governance in the country so far. It also shows that governments fail to understand the mood of the people. If the political system is inadequate, or if the policies fail to serve the common good, dissent is only a matter of time in any society. Civil society has risen successfully in Egypt, Libya, Syria, India and to a containable extent in the UK, proof enough to indicate that there is discontent not only in dictatorships but also in evolving and relatively evolved democracies.

It would be constructive to acknowledge the stake of civil society. Civil society is structured and organized around the table, but would be unmanageable on the streets.

## ICANN AND IGF EXPERIMENTS ARE NOT ENOUGH TO FULLY UNDERSTAND THE FULL POTENTIAL OF THIS NEW PARADIGM

Bertrand's question, "Have ICANN and the IGF, despite their relative short existence, demonstrated the viability of the multistakeholder approach?" is somewhat unfair in the context of evaluating the multistakeholder model of governance. The multistakeholder processes at ICANN and IGF are experiments performed on relatively small groups of participants that are not sufficiently diverse, with very limited resources over a very limited period of time. Democracy has evolved over 2,000 years, if we consider the Roman senate as its origin. Monarchy has had an even longer timeline. It takes time for institutions to evolve; if not 2,000 years, then at least 50 years. Yet both the IGF and ICANN have demonstrated that this model of governance is "viable", that it works.

ICANN is a ten year-old institution. While Bertrand has discussed ICANN at length to explain the multistakeholder process, it is necessary to exercise caution in criticizing the shortfalls in the ICANN process as a yardstick for the effectiveness of the multistakeholder process. That would be akin to judging the concept of a fuel-cell car with advanced electronic controls by its first prototype, built with just enough expertise and resources, in the same sense as a car with a steam engine and wooden wheels, built to demonstrate that it moves without a horse.

## THE MULTISTAKEHOLDER MODEL OF GOVERNANCE REQUIRES AMPLE ATTENTION TO ITS OVERALL DESIGN AND DETAILS

Bertrand observes that, in the technical sphere, the Internet has made heterogeneous networks work seamlessly. If that could happen in the area of policy it would be wonderful.

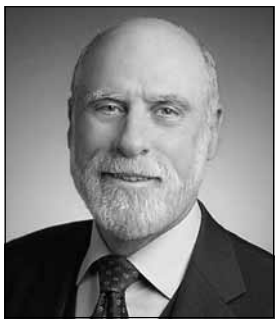
A very broad caution comes from world history. Along the timeline of the world's political history there have been several transitions from one form of

government to another. Whether it was a transition from monarchy to democracy or a transition from a dictatorial form of government to democracy, to some extent it has been a case of one form of imbalance being replaced by another. There has never been a form of governance with a fair degree of balance. The multistakeholder process could aim to bring about the desirable degree of balance, if the overall "design" of the multistakeholder process has built-in safeguards against its distortion.

# Authors



**Fiona M. Alexander** is the Associate Administrator (Head of Office) for the US Department of Commerce's National Telecommunications and Information Administration's (NTIA) Office of International Affairs. She manages NTIA's activities related to the Internet's DNS, its involvement in international ICT, including bilateral and multilateral discussions in venues such as the ITU, OECD, ITSO and IMSO. Ms. Alexander is a key member of the Department's Internet Policy Task Force, was NTIA's lead negotiator for issues related to Internet Governance during the UN WSIS as well as for the Affirmation of Commitments with the ICANN. She worked as a key member of the United State's team on the OECD's Internet Policy Making Principles. Prior to joining NTIA, Ms. Alexander was a Senior Consultant at Booz, Allen & Hamilton. She holds a Master's degree in International Relations from American University.



**Vinton G. Cerf** is the Vice President and Chief Internet Evangelist of Google. He is the co-designer of the TCP/IP protocols and the architecture of the Internet. Mr. Cerf, along with his colleague Robert Kahn, is recognized as one of the "Fathers of the Internet" and therefore has been lauded with honorary degrees and awards that include the U.S. National Medal of Technology, the Marconi Fellowship, the Turing Award, and the Presidential Medal of Freedom. He served as Chairman of the Board for ICANN and is, amongst others, a Fellow of the IEEE, ACM, the APS, and a member of the National Academy of Engineering. Mr. Cerf holds a B. Sc. in Mathematics from Stanford University and a M. Sc. and a Ph. D. in Computer Science from UCLA, as well as Honorary Doctorates from 18 universities.

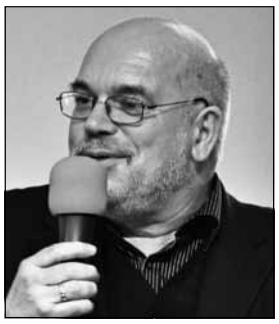
**Olivier M. J. Crépin-Leblond** is the Chair of the ALAC in ICANN. He represents the community of individual Internet users and their interests in the policy development work of ICANN. Before joining the ALAC he was a member of the ICANN Nominating Committee and Secretary of ICANN's EUROALO. Mr. Crépin-Lebond founded Global Information Highway Ltd., where he has been involved in various projects to foster Internet connectivity in developing countries. He is member of the Lead Team of ISOC England, the IET, a Senior Member of IEEE and a NSRC affiliate. Mr. Crépin-Leblond holds a B. Eng. Honours degree in Computer System and Electronics from King's College, a Ph. D. in Digital Communications from the Imperial College and a Specialized Master's degree in Competitive Intelligence and Knowledge Management from SKEMA Business School.

**Bertrand de La Chapelle** is a Program Director at the International Diplomatic Academy and a Director on the Board of ICANN. He was France's Thematic Ambassador and Special Envoy for the Information Society, participating in all WSIS follow-up activities and Internet governance processes, including as vice-chair of ICANN's Governmental Advisory Committee (GAC) and as a member of the Multistakeholder Advisory Group (MAG) of the IGF. He participated in the WSIS, including as Director of the collaborative platform WSIS-online. He is a French career diplomat and entrepreneur, who co-founded Virtools, now part of Dassault Systemes. Mr. de La Chapelle is a graduate of Ecole Polytechnique, Institut d'Etudes Politiques de Paris and Ecole Nationale d'Administration.

**William J. Drake** is an International Fellow at the Media Change and Innovation Division of the IPMZ, University of Zurich. Some of his previous positions include: Senior Associate of the Centre for International Governance at the Graduate Institute of International and Development Studies in Geneva, President of Computer Professionals for Social Responsibility, Senior Associate and Director of the Project on the Information Revolution and World Politics at the Carnegie Endowment for International Peace, and Founding Associate Director of the Communication, Culture and Technology Program at Georgetown University. He is, inter alia, a member of the GNSO Council and the EURALO board of directors in ICANN. Mr. Drake holds a Ph. D. in Political Science from Columbia University.

**Anriette Esterhuysen** is Executive Director of the Association for Progressive Communications (APC), which is an international network of organisations working with ITCs to support social justice and development. She was Executive Director of SANGONeT, an ISP and training institution for civil society, labour and community organizations in South Africa. Prior to this she was engaged in development and human rights organizations in RSA and Zimbabwe. Currently she serves on the board of GeSCI. She co-founded of Women'sNet, served on the African Technical Advisor Committee of the AISI and was member of the UN ICT Task Force. Mrs. Esterhuysen holds a B.A. degree in Social Science, a postgraduate Diploma in Library and Information Science and a B.A. Hons. in Musicology from the University of the Witwatersrand.

**Peter H. Hellmonds** is the Head of Public and International Affairs at Nokia Siemens Networks. He developed strategies and methods at the World Bank to achieve internet connectivity in developing countries. As a member of Siemens Business Services, he authored an eGovernment strategy, contributed to the World Economic Forum Digital Divide Initiative, the G8 Digital Opportunities Task Force, the UN ICT Task Force, and the WSIS. He is a member of the EBITT Commission of the ICC, the Strategy Council of UN GAID and Communications Expert Group of the German UNESCO. Mr. Hellmonds holds a B. Sc. in International Affairs from Georgetown University, a diploma in International Studies from John Hopkins University and a Master's degree in Public and International Affairs (MPA) from Princeton University.



**Wolfang Kleinwächter** is professor for International Communication Policy and Regulation at the University of Aarhus, Denmark. He served in the UN Working Group on Internet Governance (WGIG) and was until 2011 the personal advisor of Nitin Desai, Chairman of the Internet Governance Forum (IGF). He had various positions in ICANN, inter alia as Chair of the Nominating Committee (NomCom). He chairs the Cross Border Internet Expert Group of the Council of Europe and is also a member of the Council of the International Association for Media and Communication Research (IAMCR). He is co-founder and chair of the ICANN Studienkreis and the Summer School on Internet Governance (SSIG). Mr. Kleinwächter holds a B. A. in Communication Sciences, a M. A. in International Law and a Ph. D. in International Relations from the University of Leipzig.

**Everton Lucero** is a Brazilian career diplomat, and after his return from Washington D. C. indicated to the position of Director of the Coordination-General to Combat Illicit Transnational Activities at the Brazilian Ministry of Foreign Affairs. He was, inter alia, Assistant to the Press Secretary and to the Deputy Head of the Disarmament and Sensitive Technologies Division of the Ministry of Foreign Affairs and Chief International Advisor to the Minister of Science and Technology. He served at Brazilian Embassies in Singapore, Vienna and Washington D. C. Mr. Lucero represented government positions at the IGF. He participated as member of faculty on the South School of Internet Governance, on GIGANET, and at ICANN he held positions, including as Vice-Chairman of the Government Advisory Committee (GAC). He holds a Ph. D. from Rio Branco Institute, Brasília.

**Annette Mühlberg** heads the eGovernment, New Media and Administrative Modernization unit of ver.di. She is a member of the German Parliament's Commission of Inquiry on Internet and Digital Society and Chair of the Commission's task force on Business, Labour and Green IT. Ms. Mühlberg manages the ver.di series "Innovation + New Media + Participation" and organizes conferences on the information society. She represents ver.di at the Alliance Against Data Retention and in matters of eGovernment at the D21 Initiative. Ms. Mühlberg is a board member of EURALO. She chaired the ALAC in ICANN and co-authored the "Charta of Civil Rights for a Sustainable Knowledge Society" which was submitted to the WSIS. She is co-founder and coordinator of the German and European Internet Governance Forum.

**Sivasubramanian Muthusamy** is President of the ISOC chapter India – Chennai and CEO of his start up. He worked as the IDN's liaison of ICANN's At-Large Advisory Committee in 2009. He also participates in several ICANN working groups and regularly attends the Internet Governance Forum. For the IGF, Mr. Muthusamy organizes workshops on Internet core values, international trade and Internet governance, as well as round tables on Internet regulation as restriction of Civil Liberties. He also co-organized a workshop on children in the age of mobile access. He completed the advance and research phase of the Diplo Foundation's courses on Internet Governance and the European Summer School on Internet Governance. Mr. Muthusamy is contributing to CircleID on topics relating to Internet Governance.

**Waudo Siganga** is the Chairman of the Computer Society of Kenya and a member of the U.N. Multistakeholder Advisory Group. He has previously worked with the UN Working Group on Internet Governance and as Vice-Chairman of the World Information Technology & Services Alliance (WITSA) for Africa. Since the early 1990s, Mr. Siganga is working in the technology and policy areas of ICT. He also gained experience at the Industrial Development Bank in Kenya and as ICT Expert for ABN AMRO. Mr. Siganga has been involved in a number of significant ICT4D activities, including being appointed a member of the UN Global Alliance on ICT for Development (GAID) Network of Champions.

**Theresa Swinehart** is the Executive Director for Global Internet Policy of Verizon Communications, specializing on emerging Internet policy issues, Internet governance and multistakeholder models. During her professional career, she worked as the ICANN's Vice President for Global and Strategic Partnerships, as Director for Global E-Commerce at MCI and as Legal Researcher for the International Human Rights Law Group. Ms. Swinehart participated in the IGF Multistakeholder Advisory Committee (MAG) and is a member of the Internet Society's Board of Trustees (ISOC). She holds a Law degree from American University, a postgraduate degree in International Studies from the University of Vienna, and a BA in International Relations from the University of California, Davis.

**Catherine Trautmann** is a Member of the European Parliament for the Party of European Socialists (PES) and head of the French Socialist Delegation. She participates in the Committee on Industry, Research and Energy and in the Committee on Fisheries. Ms. Trautmann was awarded the Rank of Chevalier de la Légion d'Honneur and Commandeur des Arts et des Lettres. She has been a member of the French Parliament, Minister of Culture and Communications, Mayoress of Strasbourg, and worked as Government spokeswoman. Moreover, she gained experience as the Secretary of State for the Elderly and Disabled and President of the Inter-Ministerial Working Party on (Drug) Addiction. Ms. Trautman holds a Master's degree in Protestant Theology from the University of Strasbourg II and an Honorary Doctorate from Leicester University.

# Imprint

**93**

***Co:llaboratory Discussion Papers are a publication series by the Internet & Society Co:llaboratory.***

*Concept & Production:*

Sebastian Haselbeck · Wolfgang Kleinwächter (editor)
Oliver Klug · Max Senges · Katharina Vanzella

*Design concept & Final Artwork:*
Jessica Louis · www.jessicalouis.com
Formschoen · Sabine Grosser
Hamburg · Germany

*Production:*
Produktionsbüro Romey von Malottky GmbH
Hamburg · Germany

*Printed by:*
BINARE INTERNATIONAL
Nairobi · Kenya

*Co:llaboratory Steering Group:*
Dr. Max Senges · c/o Google Germany
Unter den Linden 21 · 10117 Berlin
kontakt@collaboratory.de

Visit the Internet & Society Co:*llaboratory* at
***www.collaboratory.de***
***www.youtube.com/Collaboratory***



MIND Multistakeholder Internet Dialog,
Co:*llaboratory* Discussion Paper Series No. 1,
a publication by the Internet & Society Co:*llaboratory*
**www.collaboratory.de · September 2011**

Internet & Society
Co:*llaboratory*

The Internet & Society Co:*llaboratory* is an open think tank, bringing together experts from civil society, academia, the private sector as well as governmental actors, to work jointly on solutions to societal questions around the Internet.

If you are interested in this project or would like to contribute, contact us at international@collaboratory.de

*Visit the Internet & Society Co:llaboratory on:*
***www.collaboratory.de/english***
***www.youtube.com/Collaboratory***

ISBN 978-3-9503139-2-5