Internet Freedom in a World of States

Jeremy Malcolm

Consumers International

Consumers in the Information Society 2013
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1 Background
   - The ITU, WCIT and the ITRs
   - WSIS, the IGF and Enhanced Cooperation
   - Other Internet governance institutions

2 Three false assumptions
   - Governments should stay out of Internet governance
   - Or they should be limited to the national level
   - Or they should be limited to existing mechanisms

3 Recommendations
   - The need for institutional evolution
   - The need for a concrete proposal
   - Conclusions
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- The oldest UN body (est. 1865)
- Almost all (193) countries are members
- Sector members have access but no vote
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Telecommunication Development Sector
WCIT 2012 and the amendment of the ITRs

World Conference on International Telecommunications

- Unprecedented hype over a “UN takeover of the Internet”
- Proposals to amend International Telecoms Regulations:
  - Making ITU rules binding on non-members
  - Gaining control of Internet resource allocation
  - Revenue sharing between content hosts and telcos
- Internet proposals shuffled into a non-binding resolution
- WCIT ended in failure: only 89 countries signed so far
  - Spam and security provisions seen as an incursion
- Loss of useful provisions on telecommunications
  - Mobile roaming rules, global emergency number, accessibility
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Held in two phases: 2003 in Geneva and 2005 in Tunisia
Civil society and the private sector were invited to the table
But states controlled this and kept them on a short leash
Geneva Declaration of Principles
11 principles, including that “management of the Internet ... should involve all stakeholders” “in their respective roles”
Claims that “Policy authority for Internet-related public policy issues is the sovereign right of States”
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For pursuing the 11 principles (such as capacity building)
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So WGIG was established to make recommendations to WSIS
- 40 members, half governmental (forerunner of the IGF’s MAG)
- ITU asked WGIG to confine itself to considering ICANN’s role
- WGIG considered Internet governance much more broadly

**Definition**

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 programmes that shape the evolution and use of the Internet.
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WGIG’s recommendations

- An Internet governance forum linked to the United Nations
- No single government should have a pre-eminent role in IG
- Governance should be multilateral, transparent and democratic
- Four options for global oversight of naming and numbering:
  - A governmental Global Internet Council for oversight of ICANN
  - The status quo, with enhancement of ICANN’s GAC as needed
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  - Separate bodies for policy, naming/numbering and discussion
- Recommendations made in thirteen public policy issue areas

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The Tunis Agenda for the Information Society

- Process of “enhanced cooperation”
  - Governments lead development of policy principles
  - Subject to consultation with other stakeholders
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  - Has gone nowhere fast

- Internet Governance Forum’s mandate includes:
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  - Facilitate discourse between IG bodies
  - Promote capacity building in developing countries
  - Identify emerging issues and make recommendations

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  - Information & Communications Policy Committee (ICCP)
- CSTD
  - Role of system-wide followup from WSIS, UNCTAD hosts
- UNESCO
  - Hosting WSIS+10, but has been warned off a positive agenda
- G8
  - Held a widely criticised eG8 in 2011 on civilising the Internet
- Trans-Pacific Partnership
  - Includes intellectual property and free flow of information
- IBSA
  - Led to an Indian proposal for a CIRP
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A movement to increase government control is feared from
- Initiatives like SOPA and PIPA at the national level
- Global initiatives like ACTA, the TPP and WCIT

Internet libertarianism is still a pervasive school of thought

You claim there are problems among us that you need to solve. You use this claim as an excuse to invade our precincts. Many of these problems don’t exist. Where there are real conflicts, where there are wrongs, we will identify them and address them by our means. We are forming our own Social Contract. This governance will arise according to the conditions of our world, not yours.
What lies behind the first assumption

- A movement to increase government control is feared from
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Why it is wrong

- Many government interventions already happen at the national level and with civil society’s support:
  - Network neutrality rules to stop operators from discriminating
  - Providing incentives to promote migration to IPv6
  - Enforceable standards for the protection of personal data
  - Extending universal service policies to include Internet access

**Conclusion**

Government intervention isn’t always good, but it sometimes is

- When it fails, we look to governance through another mechanism (norms, code) or at another level (local, global)
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The problem with the second assumption

- Other global mechanisms – norms, code, markets – may fail
  - Norms are only enforceable through mob justice (Anonymous)
  - Code is not legitimate and does not promote positive rights
  - Markets are imperfect due to network effects and externalities

- Governments must be involved at the global level in two cases:
  - Where their interventions at the national level cause spillovers
  - To hold others to account for infringing universal human rights

Example

United States global seizure or takedown of content (under DMCA) or domains (eg. rojedirecta.com/.org legal under Spanish law)
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There are no existing mechanisms that are sufficiently inclusive and effective covering all Internet governance issues.

- Recall WGIG’s definition of Internet governance:
  - Not limited to technical standards and resource allocation
  - Includes cybercrime, IP, consumer protection, privacy, FoE

- Existing policy fora are either not inclusive or too weak:
  - OECD, APEC, G8 are not geographically inclusive
  - WIPO, CSTD, ITU, TPP are not multi-stakeholder enough
  - IGF is inclusive but too weak – no recommendations

- Nevertheless these non-inclusive fora are rolling forward:
  - US pushing OECD Internet governance communiqué
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Global Internet governance is already happening now

| Some governments are *already* making global rules | ✓ |
| This *isn’t yet* adequately inclusive of all stakeholders | ✓ |

Our choice is do we *stop it* or do we *participate in it*?

| There are *some* problems norms, markets can’t solve | ✓ |
| In *some* cases, we want governments to intervene | ✓ |
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Internet principles

- Limit this to development of Internet public policy principles
  - To enable *binding global rules* limits national flexibility
  - It’s safer due to *democratic deficits* at the global level

Example

The Universal Declaration of Human Rights began as soft law

- In rare cases, hard law may be justified
  - WIPO Treaty on Access to Works for Visually Impaired Persons
- IGF MAG urged to develop a compendium of existing principles
  - But where do the new principles come from?
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Our mandate to make this happen is *enhanced cooperation*

Defined in the Tunis Agenda as a

*process towards enhanced cooperation involving all stakeholders, proceeding as quickly as possible and responsive to innovation ... [which would] enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet*

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Democracy

- Legitimacy of principles turns on the democracy of the process
  - Domestically this means regular elections and due process
  - Globally, the closest we have is a multi-stakeholder process
  - Aim: that the viewpoints of all those impacted are represented

- Examples of best practices can be found from
  - Deliberative democratic processes help refine participants’ preferences through deliberation among equals
  - Internet technical community rough consensus processes, eg. IETF – though these are not so inclusive in practice
  - Yes, even the United Nations!
    - WGIG was a multi-stakeholder group working online and off
    - The ILO has been an equal multi-stakeholder body since 1919

- However “authority for Internet-related public policy issues is the sovereign right of States”

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  - *Deliberative* democratic processes help refine participants’ preferences through deliberation among equals
  - Internet technical community *rough consensus* processes, eg. IETF – though these are not so inclusive in practice
  - Yes, even the United Nations!
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Outline

1 Background
   - The ITU, WCIT and the ITRs
   - WSIS, the IGF and Enhanced Cooperation
   - Other Internet governance institutions

2 Three false assumptions
   - Governments should stay out of Internet governance
   - Or they should be limited to the national level
   - Or they should be limited to existing mechanisms

3 Recommendations
   - The need for institutional evolution
   - The need for a concrete proposal
   - Conclusions

Jeremy Malcolm | Internet Freedom in a World of States
A truly multi-stakeholder alternative to the ITU

- Civil society is not party to the Tunis Agenda so can stretch it
  - A wiki-based online policy thinktank?
  - An IETF-inspired process (the ECTF)?
  - Pirate Party style liquid democracy?

- My suggestion is based on consensus democracy (*consociation*)
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  - No stakeholder group can force a recommendation on the rest
  - Either attached to, or at least complementary to, the IGF

- If you don’t like it, suggest something else – the time is now!
- Doing nothing means supporting the *status quo* and fighting SOPA/PIPA, TPP and ITU forest fires until the end of time
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- We will have to expend *equal effort and money* promoting a positive agenda to help guarantee both *rights* and freedoms.
  - Targets CSTD, IGF MAG, government, industry *and our peers*.
- Keep the end game in view – ask, “if not this, then what?”
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For Further Reading

Jeremy Malcolm.

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