

# **Transparency in Internet Governance as an A2K Issue**

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## 1. Policy Making Transparency and A2K

- Broad view of A2K: issue goes far beyond intellectual property to full range of barriers to knowledge acquisition
- Public and private sector policies at all levels may erect a multitude of barriers to A2K that are difficult to address absent A2K about how decision are made and the ability to weigh in effectively
- Procedural transparency is hence a prerequisite for promoting public interest objectives on substantive issues in ICT policy arenas

# **The Centrality of Transparency is Recognized in the Proposed A2K Treaty**

## *Article 5-5 - Access to Government Information*

- Members shall facilitate public access to information held by public bodies and private bodies that are conducting public business
- Everyone has the right to access information held by public bodies
- Any exemptions to this right shall be set down in law, limited in scope, proportional, subject to review
- Any refusal shall be subject to review by an independent body
- Public bodies shall be required, even in the absence of a request, to publish important information of significant public interest
- Secrecy laws and other legislation shall be amended as necessary to comply with freedom of information principle

These principles supported by international human rights law, e.g. UDHR Article 19

## **Transparency is Increasingly Difficult to Contest as a Matter of Principle**

- The confluence of technological change, social mobilization, citizen expectations, and new national and international norms applies increasing pressure
- National level, governmental resistance in principle becoming more difficult to sustain, especially in democratic societies; the debate now is more on the precise nature and scope of transparency in practice
- Demands now spreading to international institutions and global governance in a variety of issue-areas
- Private sector policy making remains a much more difficult problem; strong resistance despite growing role of business in national/global governance, especially of ICT

## 2. Internet Governance

- Internet governance is a central terrain of struggle for A2K
- The scope, diversity, and impact of Internet governance mechanisms are increasing rapidly, will continue
- Many of these mechanisms can directly promote or retard A2K, so it is imperative that they be made transparent, accountable, and inclusively participatory
- Developments in the global policy debate, most notably the World Summit on the Information Society (WSIS), have made this a very live issue
- There is now an unprecedented opening to demand transparency, but public interest proponents must mobilize

# The Collective Rethinking of Internet Governance

The Working Group on Internet Governance (WGIG) Report & the WSIS Tunis Agenda for the Information Society : A working definition of Internet governance

- *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.*
- Not just ICANN and DNS issues
- This ‘broad definition’ covers the full range of shared or generally recognized/applied mechanisms that shape the Internet’s physical and logical infrastructure and its use for communication, commerce, and more

## Internet Governance Exists at Three Levels

- *Physical infrastructure*, e.g. underlying services, applications, facilities and their interconnection
- *Logical infrastructure*, e.g. domain names and IP addresses, technical standards, root server and zone file operations, network security
- *Usage for transactions and content*, e.g. e-commerce, e-signatures, e-contracting, trade in digital goods and services, consumer protection, intellectual property, speech, alternative dispute resolution, encryption, privacy and “information security”

## A Few of the Many Organizations and Collaborations Involved

- Physical & Logical Infrastructure

- Intergovernmental*: e.g. ITU, regional telecom bodies (CITEL, APT, etc), WTO, WIPO/UDRP, EU

- Private Sector*: e.g. Telecom standards bodies, IANA, ICANN, IETF, IESG, IAB, RIRs, registrars, W3C

- Transactions and Content

- Intergovernmental*: WTO, WCO, WIPO, UNCITRAL, UN/CEFACT, COE, OECD, EU, Hague Convention (proposed)

- Private Sector*: TRUSTe, Internet Content Rating Association (limited), industry association codes, alternative dispute resolution systems

## Wide Variations in Institutional Form...

*Institutional settings:* linked to formal organizations (as forums, or as joint facilities with semi-independent programmatic responsibilities), vs. free standing mechanisms

*Agreement type:* Intergovernmental (e.g. treaties, recommendations, guidelines, declarations, MOUs, custom);  
Private Sector (e.g. contracts, MOUs, codes, custom)

*Decision making procedures:* voting/consensus, recognition and representation

*Rule strength:* Formal or informal, binding or voluntary

*Scope:* range and interrelatedness of issues covered

*Domain:* Public/private sector/civil society, universal vs. smaller-n groupings

*Compliance mechanisms:* Monitoring and enforcement

*Distributional bias:* market or administrative allocation of benefits across participants

## **...and in Levels of Transparency**

### *Dimensions of Transparency*

- *Input/procedural*: decision making rules including notices of proposed actions, solicitation and treatment of inputs, explanations of decisions reached, opportunities for review & reconsideration
- *Output/informational*: Web and paper access to minutes of meetings, member input documents and position statements, topical reports, agreements (including standards), etc.
- *Relatedly, inclusive multistakeholder participation*

### *Intergovernmental examples*

- ITU, WTO, OECD, WIPO

### *Private Sector/Non-profit*

- ICANN, RIRs, ICC

## Some Challenges

- Confidentiality said to promote bargaining, trade-offs
- Secretariat budgetary concerns regarding free access to reports, standards, etc.
- Developing country governments often resist transparency (and inclusion of civil society organizations) in intergovernmental institutions
- Private sector strongly favors transparency in intergovernmental organizations but resists calls for the same in industry organizations
- Transparency can have unanticipated consequences:
  - Sanitizing of reports, per the WTO experience
  - Strengthening the importance of back channel, off the record processes

### 3. What is to be Done?

#### External Monitoring, Analysis, Reporting

##### *The Current Vertical, Fragmented Approach*

- Specialized epistemic communities around topics/institutions; systematic, accessible, public interest-oriented work a subset of this
- A few pieces of the Internet governance puzzle receive a fair degree of attention (often specialized > accessible)
  - ICANN/DNS; WIPO/IPR; COE/privacy
- Many others largely or entirely overlooked
  - ITU, ETSI, et al/technical standardization & regulation; WTO/networked trade; OECD; industry “self regulatory” bodies

# External Monitoring, Analysis, Reporting

## *A Horizontal, Holistic Approach is Needed*

- By issue-area: WEF Global Governance Initiative
- By institutions: None at present for Internet governance, but some experiences to build on:
  - Global Transparency Initiative, CSO coalition on financial institutions---IMF, WB, regional development banks; drafted a Transparency Charter in 2005
  - Joe Stiglitz’s Initiative for Policy Dialogue has Transparency Task Force that has looked at IFIs too
  - National-level promising parallels, e.g. Freedominfo.org on national FOI policies; OpenNet Initiative on filtering policies; RSF on filtering and speech

## **Coalition Building Among Civil Society Organizations, Academics, other Public Interest Advocates**

- Centrifugal forces are significant, limited *ad hoc* collaboration across advocacy in varying Internet governance domains
- WSIS meta-coalition somewhat dormant overall but latent potential remains; Follow-Up and Implementation process will be a challenge but also a real opportunity
- Two particularly relevant holistic groupings remain intact: Human Rights Caucus, Internet Governance Caucus
- The Internet Governance Forum (below) provides a catalytic opportunity for continuity, growth
- Links with the A2K community would be helpful

## **Coalition Building With Friendlies in Other Sectors**

- Some people in international organization secretariats and governments favorable to more transparency & inclusive participation
- Examples: ITU Reform initiative, OECD, ICANN
- Need sustained dialogue
- Focus on horizontal principles, less threatening
- Private sector a potentially important ally regarding intergovernmentals, but again is much more difficult with respect to its own activities

# The Internet Governance Forum as a Potential Catalyst for Horizontal Transparency

- Origins of the IGF: civil society and the WSIS/WGIG
- Multistakeholder space for dialogue, analysis, capacity building; no authority for binding decisions, but could promote consensus and feed into other processes
- Current constitutional debate:
  - Rules for participation, WSIS vs. peer-level
  - Annual plenary meetings only vs. ongoing multilevel process with break-out sessions, working groups and relationships to other initiatives, areas of expertise
  - Use of technologies, Web spaces and lists; virtual participation
  - Relationship to other international forums and collaborations
  - Funding

# The Tunis Agenda for the Information Society

## Mandate and Transparency

- The IGF is to play a multidimensional, catalytic role in relation to existing Internet governance mechanisms
- In particular, it is to, *‘Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet Governance processes’*
- The WSIS Principles** hold that Internet governance, *‘should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations. It should ensure an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet, taking into account multilingualism.’*

## What does this mean in practice?

- Clear principles

- *Transparent*: Open decision making, free information access
- *Full involvement*: Multistakeholder inclusion (active/passive)

- Unclear or somewhat clear principles

- *Multilateral*: ‘As appropriate?’
- *Democratic*: ?
- *Equitable distribution of resources*: ‘Where applicable?’
- *Access for all*: ‘Where applicable?’
- *Stability, security, multilingualism*: ‘Where applicable?’

➤ All Internet governance processes should be transparent & involve all interested nongovernmental stakeholders

➤ The IGF is uniquely well placed to ‘assess, on an ongoing basis,’ their conformity with these requirements

## Related, supportive elements of the Tunis Agenda

- The IGF is mandated to:

- Facilitate discourse between bodies on cross-cutting policies and discuss issues outside the scope of any existing body*

- Interface with appropriate inter-governmental organizations and other institutions **on matters under their purview**;*

- Facilitate the exchange of information and best practices, making full use of the expertise of the academic, scientific and technical communities;*

- Strengthen and enhance the engagement of stakeholders in existing and/or future Internet Governance mechanisms*

- Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, **make recommendations** [emphasis added]*

➤ **Ongoing monitoring/analysis needed**

## Potential impediments

- Lack of preparatory discussion during WSIS (except in WGIG) on most mechanisms & application of principles
- Unclear political commitments to & selective interpretations of this & other elements of the Agenda
- Limiting visions of the IGF as primarily a series of one-off, annual conferences on comparatively ‘safe’ issues
- Professed concerns about the supposed ‘duplication’ of work being ‘done elsewhere’
- Possible turf-based defensive reactions by some secretariats, members of other organizations [including those that *are* relatively transparent & inclusive!]
- Unanswered questions on IGF’s institutional capacity

## Working Group Needed

- Annual IGF conferences alone cannot implement the clear mandate agreed by all governments in the Tunis Agenda
- Failure to implement would constitute a major missed opportunity and could reduce both the IGF's value & the engagement of many stakeholders (not just civil society)
- IGF should support the development of a *Working Group on Implementation of the WSIS Principles (WGIWP)*
- WGIWP could be minimal cost, largely virtual, transparent, open to all, & work closely with external sources of expertise in the research community
- WGIWP could monitor & assess trends, maintain a web portal, issue reports & recommendations for consideration or just 'for information' at annual conferences

## Conclusion

- The WSIS fundamentally changed the terms of debate and negotiating dynamics on Internet governance
- Strong normative presumption that multistakeholder inclusion is required; signs of change in relevant bodies, particularly among secretariats
- Transparency is closely linked, has been endorsed by governments, and this can be leveraged
- Civil society has yet to mobilize coherent campaign to demand implementation by both intergovernmental and private sector mechanisms
- Collaboration between A2K proponents and public interest activists in Internet governance would be useful