Corporate Responsibility and Global Internet Governance

A Global Network Initiative Policy Brief[*]

October 2012

This December in Dubai, world governments will gather to renegotiate a key treaty under the auspices of the International Telecommunication Union (ITU), a UN agency that specializes in global telecommunications. The meeting, known as the World Conference on International Telecommunications (WCIT), has been billed as a mortal threat to Internet freedom, a rare opportunity to fix inequitable flaws in the existing global economic framework for communications infrastructure, and all or none of the above.

Although there is a real risk that authoritarian states will use this process to seek greater government control over the Internet, it would be a mistake to turn the WCIT into a referendum on UN involvement in Internet governance. The UN already plays a key role through the international human rights system, and by supporting discussion venues like the Internet Governance Forum. The problem is that the opaque ITU process, which is largely closed to civil society participation, presents opportunities for governments to pursue politically motivated policies at the expense of users and innovators alike.[1] Although companies and governments have legitimate reasons to cooperate on Internet policy, when this happens behind closed doors without adequate safeguards the human rights of users can be put at risk.

The Global Network Initiative (GNI) was formed to develop standards and an accountability framework for information and communications technology (ICT) companies faced with government requests impacting free expression and privacy rights, and to strengthen efforts to work with governments to advance these rights globally. Based on this experience, we offer the following recommendations for governments and other stakeholders to consider:

1. **Embrace international human rights standards.** They provide an objective baseline that is universally acknowledged, even if governments do not always live up to them.
2. **Ensure multi-stakeholder collaboration.** Pool the collective expertise of informed stakeholders and allow civil society to check company and government action that may infringe on rights.
3. **Enhance transparency.** Committing to a system of transparency with the public provides credibility and accountability.

Internet governance and policy is a complex subject that is unsuited to top-down, government-dominated structures. Taken together, human rights standards, multi-stakeholder collaboration, and transparency are necessary safeguards against increased government control of the Internet, and also offer practical opportunities to improve the existing system.

---

[*] This document draws on discussion in a July 2012 GNI learning call on the ITU as well as feedback and suggestions from GNI's Policy and Learning Committee. The views expressed do not necessarily represent the views of GNI's participants.

The issue: government control of Internet policy

The Internet is a network-of-networks, much of which is built and operated by the private sector, while other parts are partially or entirely state-owned. It has developed without heavy-handed regulation, which has enabled innovation at a scale and speed that very few would have predicted. But as the Internet's significance in social, economic, and political life has grown, so too have government efforts to control it. Questions of who should govern the Internet (and how) are not new, nor are questions of how the UN should be involved.[2]

The mention of UN involvement in Internet governance tends to provoke polarized reactions that obscure the range of roles that different UN bodies already play when it comes to the Internet. From hosting the World Summit on the Information Society and the Internet Governance Forum to the ongoing debate around Enhanced Cooperation at the UN Commission on Science and Technology for Development, there is no shortage of important opportunities for intergovernmental organizations to engage in activities related to the ICT sector. The ITU already plays an important, highly specialized role in managing radio communications and satellites, establishing technical telecommunications standards, and promoting access to ICT worldwide. But its treaty framework has never addressed Internet governance and policy.

Emerging human rights standards

In recent years the UN and the international and regional human rights systems have made important strides refining human rights standards directly related to the Internet. The Human Rights Council, although often criticized because of the less-than-pristine human rights records of some of its members, is elected by the UN General Assembly, which provides an important degree of international legitimacy. Although the Assembly and the Council are forums for political action by member states, they also appoint independent special rapporteurs and representatives who bring their expertise to selected issues. They offer a firm substantive basis for integrating human rights concerns into Internet policymaking.

Human Rights Council resolution on human rights on the Internet

In July 2012 the UN Human Rights Council unanimously endorsed a Resolution on the promotion, protection and enjoyment of human rights on the Internet.[3] The Council adopted the resolution with important support not just from the US and Europe, but also from Tunisia, Brazil, and Turkey among others.[4] Despite expressing concerns that "unhealthy and negative information flow will obstruct the development of the Internet," even China supported the resolution.

UN guiding principles for business and human rights

The UN Guiding Principles for Business and Human Rights succinctly articulate the State responsibility to protect human rights, the corporate responsibility to respect human rights, and the need for greater access to effective remedy for victims of human rights violations.[5] Special Representative John Ruggie and his team spent years developing the "Protect, Respect, and Remedy" framework in the UN Guiding Principles. This work sets a clear expectation for technology companies on their responsibility to respect human rights as they develop policies impacting freedom of expression and privacy.

Worrying proposals and opportunities for improvement

While individual proposals for the WCIT process may not explicitly reference Internet governance, several proposals could significantly alter key aspects of Internet functionality and openness with the potential to constrain the space for online expression. For example, several proposals would expand the treaty to deal with a range of cybersecurity and network security issues, including greater identification online, raising questions of how treaty obligations would impact user privacy. Another would extend the treaty regulations to address spam and to articulate when states can limit access to infrastructure, which would bring Internet content regulation into the remit of the ITU's treaty.[10] Yet another would replace the current Internet traffic system with a sending-party-pays approach based on telephone interconnection fee systems, a change that could dramatically increase costs for users and content creators.[11] Finally, one set of proposals might bring Internet naming and addressing squarely within the ITU's mandate.[12]

If the ITU's regulations were to expand along these lines, a move that some member states clearly favor, it would represent a substantial shift away from the more open and inclusive models employed by existing multi-stakeholder governance bodies for the Internet, and have a chilling effect on global Internet evolution.

Currently, Internet governance takes place in a variety of venues that include technical standards bodies ensuring Internet interconnectivity such as the Internet Engineering Task Force and the World Wide Web Consortium, as well as the Internet Corporation for Assigned Names and Numbers (ICANN), which is responsible for coordinating the Internet's set of unique technical identifiers.[13] These organizations include many different stakeholders as a part of their decision making or discussion process, ensuring no one stakeholder group dominates. They also generally share a commitment to maintaining the technical efficiency of the Internet—their aim is to make the Internet work as well as it can for users and innovators alike. In contrast, an

intergovernmental approach to Internet governance would likely prioritize the political interests of governments as they relate to online communications, rather than technical efficiency, with a negative net impact on the free flow of information.

Many of the proposals that could threaten human rights on the Internet have been proposed by authoritarian governments that are interested in wresting control of the Internet away from the ecosystem of multi-stakeholder groups that currently undertake Internet governance. But they are not the only entities dissatisfied with the status quo. Many governments, companies, and civil society groups, particularly from developing countries, feel that they are insufficiently represented by the current Internet governance ecosystem.[14] Although the US Commerce Department's oversight of ICANN is commonly cited as a particular concern, there are also issues regarding the underrepresentation of participants from non-English speaking and developing countries in multi-stakeholder technical bodies among other concerns. Members of the Internet community should work together to improve the current system to fulfill the promise of the multi-stakeholder model. It would be counterproductive to further alienate constituencies who would support a multi-stakeholder approach by focusing on the perils of UN involvement without considering further reforms to the current system that would deal substantively with these grievances.

Looking ahead

As the debate surrounding the WCIT intensifies, there is no doubt that we are entering a period where the current system of bottom-up, decentralized decision-making on Internet policy is coming under sustained fire. The WCIT is also just one in a number of upcoming moments where Internet policymaking will be contested.[15] Alongside it, a number of proposals before the UN General Assembly call for major changes. These include the proposal for an International Code of Conduct for Information Security put forward by China, Russia, Uzbekistan, and Tajikistan, as well as a proposal by India to create a new global body within the UN system to oversee Internet policymaking.[16] At the same time, it is at the national level where governments have the greatest leverage to implement restrictions on the Internet. During the periods in between major global conferences, responsible companies and civil society groups will need to work together to ensure that Internet regulation is conducted with respect for human rights, and in an inclusive and transparent manner.

Government policymakers, companies, and open Internet campaigners should work to ensure that the Internet remains free and open so it will be possible to realize its full potential. Together, they have an opportunity to both defend and improve the multi-stakeholder model of Internet governance.

Endnotes

[1] Most ITU documents are not available to the public, and government delegations are not required to consult with academics, technical experts, or human rights advocates when deciding what policies to support. Although companies and civil society organizations are able to join the ITU as sector members, the cost is prohibitively expensive for most civil society groups and the opportunities to influence policy and decisions are limited. For more details see http://www.itu.int/en/membership/Pages/sector-members.aspx.

[2] Milton Mueller, "Threat Analysis of ITU's WCIT (Part 1): Historical Context" available at http://www.internetgovernance.org/2012/05/24/threat-analysis-of-itus-wcit-part-1-historical-context.

[3] UN Human Rights Council, "The promotion, protection and enjoyment of human rights on the Internet," A/HRC/20/L.13 available at http://globalnetworkinitiative.org/sites/default/files/UNHRC%20Resolution%20.pdf.

[4] AFP, "Human Rights Council backs Internet freedom," July 5, 2012, available at http://www.google.com/hostednews/afp/article/ALeqM5gXF2qaGWKFWY2uG1KWswUE1u06Kg?docId=CNG.051f804d4677263cca8ea52a406c33d6.b61.

[5] UN, "Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" available at http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf

[6] The annual reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression are available at http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx.

[7] "Freedom of Expression on the Internet Cross-regional Statement" June 10, 2011 available at http://www.regeringen.se/sb/d/7417/a/170565.

[8] Association for Progressive Communications, " The Human Rights Council panel on freedom of expression and the Internet," February 25, 2012 available at http://www.apc.org/en/news/human-rights-council-panel-freedom-expression-and.

[9] "Joint Declaration on Freedom of Expression and the Internet" available at http://www.law-democracy.org/wp-content/uploads/2010/07/11.06.Joint-Declaration.Internet.pdf.

[10] CDT https://www.cdt.org/policy/itus-wcit-negotiation-internet-governance-or-just-governing-internet.

[11] Internet Society, "Internet Connections: Proposals for New Interconnection Model Comes Up Short," available at http://www.internetsociety.org/sites/default/files/Internet%20Interconnections%20Proposals%20For%20New%20Interconnection%20Model%20Comes%20Up%20Short.pdf.

[12] Internet Society, "Internet Society Board of Trustees Expresses Concern about the Potential Impact of the World Conference on International Telecommunications on the Internet" available at http://www.internetsociety.org/news/internet-society-board-trustees-expresses-concern-about-potential-impact-world-conference.

[13] For a more comprehensive description of the organizations involved in global Internet governance see CDT, "The ITU's WCIT Negotiation: Internet Governance, or Just Governing the Internet?" June 27, 2012 available at https://www.cdt.org/policy/itus-wcit-negotiation-internet-governance-or-just-governing-internet.

[14] Rebecca Mackinnon, "The United Nations and the Internet: It's Complicated," Foreign Policy, August 8, 2012, available at http://www.foreignpolicy.com/articles/2012/08/08/the_united_nations_and_the_internet_it_s_complicated.

[15] For example, the WSIS Stocktaking Process and the Fifth World Telecommunication/ICT Policy Forum (WTPF) are other upcoming events of note.

[16] "Full text: India's United Nations proposal to control the Internet" available at http://content.ibnlive.in.com/article/21-May-2012documents/full-text-indias-un-proposal-to-control-the-internet-259971-53.html.