Response to the Working Group on Internet Governance Report to the World Summit on the Information Society

By The Center for Democracy & Technology

Preface:

The Center for Democracy & Technology (CDT) is a Washington-based nonprofit organization that works to promote democratic values and constitutional liberties in the digital age. CDT works with public interest groups, technology companies, individuals, regulators and lawmakers to support rules and structures that preserve the essentially democratizing nature of the Internet.

From the outset of the global Internet governance debate, which began in earnest with the establishment of the Internet Corporation for Assigned Names and Numbers (ICANN) in 1998, CDT has played an active role. Working through the ICANN process, CDT has advocated for changes to make the organization more transparent and representative. Outside of ICANN, through its Global Internet Policy Initiative, CDT has worked on the ground in developing nations to promote the creation of legal and regulatory structures that support open Internet development. CDT is actively committed to bringing together voices from industry, civil society and governments to address the unique issues posed by this global medium.

Introduction:

As a global medium for empowering individuals, promoting free speech and democratizing control over mass communications, the Internet is an unparalleled success story. Just as profoundly, it has become an essential element of worldwide economic activity.

The Internet's rapid evolution to a central role in global communications and commerce has fueled a growing global debate over what sorts of institutions should oversee and preserve the stability and accessibility of this resource on which we've all come to rely. "Internet governance" poses a range of important questions, but in the heated climate of the debate it has become too easy to lose sight of how well the Internet already functions as a tool for commerce, democracy, and human development. While it is certainly worthwhile to look for ways to improve the transparency and openness of the existing governance structures, it is equally vital that we acknowledge that existing structures have worked quite effectively to make the Internet the robust medium it is today. Furthermore, to the extent that Internet development has been uneven, and that developing and transitional countries in particular are at risk of being left behind in the information society, much of the reason for that lies not in international structures, but in national laws, especially the failure to reform the telecommunications sector and to create a legal environment conducive to free enterprise. We must not fail to understand that the

current Internet governance regime -- made up of standards-setting bodies like ICANN and others -- has been largely effective at performing its vital but limited mission. If we ignore that reality and fail torecognize that many of the problems limiting further Internet growth are national in origin, we risk jettisoning an effective, if flawed, governance structure in favor of a new regime that could threaten the very security, accessibility and openness we are all seeking to enhance.

The Working Group on Internet Governance (WGIG) was commissioned to address these difficult questions and to provide recommendations to the United Nations' World Summit on the Information Society (WSIS), which will convene for the last time in November 2005 in Tunisia. In July, WGIG issued its report on Internet governance, proposing four possible alternatives to the current structure. The report is laudable on many counts. It calls for the preservation of free speech rights online and the continued involvement of multiple stakeholders (including representatives from industry, government and civil society) in the governance process. Unfortunately, three of the four governance models proposed by WGIG call for drastic, potentially destabilizing changes to the Internet oversight structure -- changes that simply aren't supported by the current state of online affairs. Indeed all four of the recommendations call for more hands-on involvement bygovernment-dominated bodies, a development that would undercut the speedy, bottom-up decision-making process fostered by the existing network of non-governmental management bodies that oversee the Internet's key functions. The report fails to acknowledge that top-down governmental structures may not be the most effective – or even the most representative – source of governance for the Internet.

The three most troubling recommendations in the report are premised on the flawed notion that drastic change is necessary to make the Internet governance structure more open and transparent, particularly to less developed nations. Before WGIG was formed, it became clear that many in the UN were operating under the assumption that existing Internet governance structures were unresponsive to developing country concerns or were closed to their participation. Although UN officials were publicly agnostic about some of the sweeping early proposals for Internet governance "regime change" from member states, they openly rebuffed any suggestion that the UN may do better by simply keeping its hands off the process altogether. Given that stance, it's not surprising that the WGIG report calls for drastic, overreaching changes. However, the report fails to document its premise that existing structures have not responded to needs of the international community, and fails to consider how, to the extent they are unrepresentative, they could be made representative without overreaching and unnecessary change. The report does not examine the underlying notion that the Internet governance structure is broken beyond repair and should be shelved in favor of an untested alternative.

The least problematic recommendation in the WGIG report is a call to create a permanent global forum to discuss the issues surrounding Internet governance. The Summit has proven, if nothing else, that these are issues comprise a major global concern. Strong safeguards would need to be established to prevent such an institution from taking on regulatory duties or disturbing the existing governance structures, but a properly implemented international forum would provide a platform for governments, civil society

groups and companies to voice their concerns and offer recommendations for improvements. It is not necessarily the case that such a forum would need to be established through the WSIS structure, but it seems clear that some form of new platform is needed to foster greater international communication on Internet-related issues.

in sum, the WGIG report is a thoughtful document that warrants consideration by governments and members of the global Internet community. Some of the conclusions contained in the consensus document are unassailable, such as the need to preserve free speech online and to involve multiple stakeholders in the governance process. Unfortunately, too many of the recommendations in the report are premised on an unreasonably dim view of the existing governance structure, coupled with a troubling belief that an intergovernmental bureaucracy could assume control over key Internet management functions without dragging the governance process into a political quagmire.

Existing Governance Structures Should Be Reformed, Not Abandoned

Although the WGIG report properly extends its definition of "Internet governance" beyond the technical management functions overseen by the non-profit Internet Corporation for Assigned Names and Numbers (ICANN), much of the report is devoted to discussing concerns with the ICANN process and proposing severe changes to how it operates.

ICANN is an easy and frequent target of criticism within the global Internet community, and not without reason. The organization, created in 1998 to introduce competition to the sale of domain names, has yet to achieve the lofty goals of simplicity, transparency and public representation with which it was founded. As ICANN's efforts to make itself more open have foundered, the organization has also occasionally reached beyond the limited technical oversight mission for which it was conceived. The combination of limited representation and the perception of an expanding mission have given the Internet community considerable pause. CDT shares these concerns and has worked since ICANN’s founding to address them, calling both for better representation and for a limited mission. However, despite efforts to internationalize its board and membership, the group is still widely perceived as being overly beholden to US interests. In defending existing Internet structures, it's important not to minimize the need to improve and open the ICANN process.

Yet for all of the concerns associated with ICANN, the group has tallied a slate of accomplishments over the past seven years that would have been unheard of for an intergovernmental body operating under the same timeline. Since its inception, ICANN has introduced competition to both the retail and wholesale domain name businesses (both former monopolies), drastically driving down prices for consumers worldwide. By adding new Internet domains -- .info and .biz, for example -- ICANN has expanded the

Internet space, and created more choices for users seeking to communicate. It has established procedures for re-delegation of country code Top Level Domains (ccTLDs) and has approved the re-delegation of numerous ccTLDs to local organizations more representative of the national Internet community. The organization, which boasts an internationally representative board, headed by an Australian, Paul Twomey, has also gone to pains to involve developing countries in the standard setting process, holding its meetings all over the world, on every continent except Antarctica.

Although many of us have been dissatisfied with ICANN's efforts to make its processes more transparent and representative, the organization has been responsive to the complaints raised by businesses and public interest advocates. ICANN has juggled its internal governance structure several times, and while many feel that the organization hasn't yet struck the proper balance, its willingness to work with the Internet community to resolve such issues contrasts favorably with even the best multi-national bodies, which tend to be impenetrable to all but their member nations.

Complaints that ICANN has failed to adequately involve the international community in its decision-making process are not unfounded, but the volume of that outcry seems badly out of proportion to the limited nature of ICANN's mission. ICANN was commissioned to oversee a narrow set of technical management functions for the Domain Name System. Though it is worthwhile to make ICANN more internationally representative, reformers should be devoting the bulk of their efforts to containing the ICANN's scope, which has grown beyond its initial charter. Taking steps to limit ICANN's role could help alleviate global concerns about representation.

Winston Churchill famously said of democracy: "It is the worst form of government, except for all the others." That's a particularly apt description of ICANN, which, despite its flaws, remains our best hope for properly overseeing the vital functions of the Internet's global addressing system. ICANN is a young organization and is by no means beyond repair. Working together, the global Internet community should continue to apply pressure to encourage ICANN to narrow its scope and make its processes clearer. In the meantime, the group must be given more time to evolve into the organization it should be. Further, any proposal to change that structure or to alter the balance of control over Internet governance must fully vetted and found to pose no danger to the stability and security of the Internet.

Analysis of WGIG Proposals

1) Creation of a World Internet Governance Forum

The WGIG report contains several recommendations, but the one major proposal that runs through the document is a call to create a new international forum to address Internet governance issues. Although not without concerns, such a forum, properly implemented, could be a valuable resource, both for the global Internet community and for world

leaders who feel that their voice is not being adequately heard in the Internet governance debate.

Creating such a forum poses two major concerns. First, without a very clear charter circumscribing the powers and scope of the new entity, there is a danger that a new international forum could attempt to assume some sort of regulatory function, or expand its involvement into areas that are the province of sovereign governments. Secondly, even if the forum were established in such a way that it had a limited scope and mission, "Internet governance" is a vast topic and could yield many years of discussions on literally dozens of issues. Such an open-ended structure could force Internet policy experts to commit thousands of hours of work that may be better used addressing the immediate problems of Internet management.

One possible solution is, instead of creating a single, open-ended forum, the global Internet community could address issues like spam, electronic copyright, and free expression is a series of time-limited, issue specific forums. Such an approach addresses concerns about mission creep and would allow experts in specific areas to convene around the issues that are important to them without committing to years of discussion on the overarching issue of Internet governance.

2) Proposals for Internet Governance "Regime Change"

At the heart of the WGIG report are four proposals recommending changes to the current Internet governance structure. Of the four proposals, three (models one, three and four in the report) call for the creation of a new intergovernmental body, likely based in the United Nations, which would assume some level of control over the Internet's core systems. The first and third proposals call for the new body to assume some sort of oversight of ICANN, while the fourth calls for the elimination and replacement of ICANN with a new entity.

It is not necessary to parse the differences among the three recommendations. Any of the three would entail drastic changes to the way the Internet operates, with unpredictable but quite likely negative results. Although they vary in the severity of the changes they propose, all three would shift control of the Internet's core systems from a flexible bottom up nongovernmental management structure to a vast intergovernmental bureaucracy akin to the United Nations' International Telecommunications Union (ITU). Although WGIG insists that none of its proposals call for governments to play a role in the "day-to-day" management of the Internet, these three proposals certainly would appear to hand veto power over day-to-day management decisions to multi-governmental body. Forcing ICANN to clear all of it's decisions through a body made up of UN member states is not substantially different from simply handing that decision-making power over to the UN directly.

Even if there was no danger of an intergovernmental Internet oversight agency being hijacked or stalled by governments seeking to impose anti-democratic controls on Internet communications, the amount of time it would take such a body to reach any

substantive decision could stifle Internet development. Major initiatives of the sort that ICANN completed in matters of months -- such as introducing competition to the Internet addressing market and authorizing the creation of new domain names -- could take years or decades if they had to be approved through a new UN agency. In a medium defined by the speed of its own evolution, such delay could be even more dangerous than regressive policy proposals, which can at least be defeated.

The second of the four models comes the closest to offering an acceptable path forward in Internet governance. Importantly, it does not call for the creation of an intergovernmental body, or for a change in the existing oversight structure. Instead it relies on the forum concept (described above) to give world governments a more consistent voice in the Internet governance debate. Under this approach, the forum would launch "initiatives" on various governance-related issues, providing analyses and recommendations to ICANN.

This model raises issues of its own. It includes a recommendation that it "may be necessary" to broaden the role of ICANN's Government Advisory Committee (GAC). Made up of government representatives from several countries, the GAC provides the ICANN board with the government perspective on policy matters. Although the GAC does not have a voting role in the ICANN process, it is already one of the most influential supporting groups within the organization. It is difficult to imagine how that role could be increased without upsetting the balance of influence in ICANN and potentially weakening the input of the many other stakeholder groups that participate in the ICANN process. Also, while the WGIG report does not offer details on how the Internet governance forum would interact with ICANN, that interaction would have to be limited to offering non-binding recommendations. Anything more and it veers dangerously close to providing an oversight function, which would erase the second model's advantages over the others.

Like the forum concept, the viability of the second model depends almost entirely on the refining language used to implement it. Properly defined, it could offer a path that preserves the stability and openness of the Internet while at the same time addressing the concerns of stakeholders who feel underrepresented in the existing governance apparatus.

Conclusion:

That WGIG was able to produce a document that garnered the consensus approval of its own diverse base of participants is impressive. The report includes a commendable commitment to preserving free expression, as well as to involving all stakeholders -- including governments, public interest groups and businesses -- in the governance process. Further developed and properly limited, some of the recommendations contained in the report may help to alleviate growing pressure from world governments to play a greater role on the Internet governance process.

Regrettably, much of the report seems based on two fundamentally flawed concepts: First, that the existing Internet governance apparatus is broken so badly that it should be replaced by a new and untested structure; and second, that more government involvement is necessary in future Internet governance efforts. Neither assumption is supported by history, or by the current state of the Internet, which is, and would likely remain, stable, open and secure absent any changes to the governance structure. Those incorrect assumptions give way to a handful of needlessly drastic recommendations that would threaten the openness and stability of the Internet. As governments ponder these proposals, they must ask whether they want to risk destroying the effective, if flawed, system for managing one of the world's most vital technological resources, only to replace it with an untested system that could hinder the course of development from which all Internet users have benefited.

If there is an overarching message to be taken from the report, and from the Internet governance debate within WSIS thus far, it is that many governments feel inadequately represented by existing Internet governance structures. Regardless of what comes out of WSIS, it is vital for the U.S. Internet community to play a role in broadening the dialogue over Internet policy issues to include voices from around the world. Such a dialogue will highlight our common interests and perhaps illuminate areas where we can work together to improve the governance framework without disturbing the security of the Internet.

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