A New Model for Global Internet Governance

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It came and went quietly, but the recently concluded World Summit on the Information Society (WSIS) in Geneva may represent something of a watershed moment in the history of the Internet. For all their differences, governments coalesced around the need to define and develop some form of global governance for the Internet. The Declaration of Principles, agreed upon on the final day of the meeting, refers to the need for 'management of the Internet'. In addition, it envisions a major role for governments in this management. 'Policy authority for Internet-related public policy issues is the sovereign right of States', the Declaration affirms. 'They have rights and responsibilities for international Internet-related public policy issues.'

It was not so long ago that the Internet was cherished precisely for its lack of rules and for the absence of anything that could be called 'governance'. As John Perry Barlow famously put it in his 1996

Declaration of the Independence of Cyberspace: 'Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace … You have no sovereignty where we gather … We have no elected government, nor are we likely to have one.' Yet the residents of cyberspace did not rise up in protest at the declaration of the WSIS.

Calls for a new system of rules are signs of growing complexities and the mainstream reach of the network. The fact is that the former system, which emphasised self-regulation and laissez-faire, is not adequate for the task. The growing commercialisation of the Internet, the proliferation of spam, identity (ID) theft, viruses, the violation of intellectual property rights and the remaining imbalance of access and connectivity are challenging the tremendous potential of the network. The creativity and innovation of the Internet need to be protected from those who would take advantage of chaos and abuse. In short, we are facing a worldwide crisis of governance on the Internet.

There are many underlying reasons for this crisis, of course. But we believe that the main reasons comprise the international decentralised nature of the Internet and the resulting insufficiency of traditional systems of regulation. The Internet clearly needs some rules. But attempts to develop a new

system of governance are unlikely to succeed if they look for answers only to the nation-state, which by definition is limited in its centralised authority and effectiveness to the borders of a single nation or the parties to treaties.

The purpose of this article is therefore to argue that we not only need Internet governance, but that we need a new paradigm of rule-making. The crisis of governance forces us to develop a new model of governance. Some essential components of this model are that: it must be international, capable of operating across borders; it must be multi-sectoral, including a wide variety of voices and participants; and finally, in this search for multi-sectoral governance, civil society must be accorded an equal voice alongside governments and industry.

Of course these three components are only preliminary and represent just the outlines of a new model. We are only now beginning to understand what it will take to govern the Internet – to balance innovation with rules, and to reach the necessary compromise between order and creative chaos. This process of generating new forms of internet governance is, moreover, part of a more general search around the world for new, international models of governance to manage trade, immigration,

security, development and other pressing global concerns. Existing forums of global governance – the World Trade Organization (WTO), for instance, or the World Intellectual Property Organization – have both something to teach emerging models of Internet governance and something to learn from them. The discussion here can therefore be seen as a contribution to a broader and still evolving conversation.

The need for a new model of governance

In order to understand Internet governance, it is helpful to briefly consider the history of the network. Created by the United States Department of Defense in the 1960s, the Internet was initially a creature of government. Nonetheless, a large part of its early success can be attributed to the absence of anything that could be called governance. From its inception, the network thrived on a culture of openness and of collaboration between industry, civil society and users. Deregulation and privatisation emerged as dominant tropes; the attendant notion of 'self-regulation' was supposed to offer a more flexible and adaptable form of control.

Early on, the results of this culture were impressive. They included the consensus-based standards, including TCP/IP and HTML, which fuelled the Internet's growth and popularity. But as the Internet grew in complexity and as the number of users (and interests) on the network increased exponentially, cracks began appearing in the surface of Internet self-governance. The newly apparent commercial value of the Internet, in particular, began complicating matters. As the dot-com economy boomed, companies had less incentive to collaborate with their competitors and more incentive to steer the development of the network in a direction that served their own commercial purposes. As Lawrence Lessig observed so astutely in his 1999 book, *Code and Other Laws of Cyberspace*, the absence of government control of the Internet did not mean that there would be no control at all; it simply meant that others could exert control, primarily through the code and software programs they wrote. In addition, and partly as a result of this growing commercialisation, the network became increasingly clogged with various forms of 'abuse': some analysts estimate, for example, that up to 50 percent of traffic on the network today consists of unwanted emails and other forms of communication (spam),

while paedophilia websites rose by 70 percent in 2003; also in that year approximately seven million people in the US alone became victims of identity theft in the prior 12 months.

These problems have not gone unnoticed (as, indeed, is illustrated by the WSIS Declaration). Around the world, governments have woken up to the dangers posed by an unregulated Internet and have stepped up their efforts to respond. The US, for example, enacted an anti-spam law (CAN-SPAM Act) that contains punitive and other measures designed to limit unwanted emails. The European Union, too, has enacted a series of strict directives regarding privacy and electronic communications. More generally, recent months and years have witnessed a slew of laws to uphold (and update) intellectual property rights, to limit the proliferation of viruses, and to regulate online gambling, ID theft, piracy and pornography.

The limits of the state

Such laws are no doubt well intentioned. They are unlikely, however, to prove sufficient to address the Internet's crisis of governance for at least two reasons. First, because freedom from state regulation has in fact been central to the Internet's success;

regulation always poses the danger of over-regulation, which could stifle the entrepreneurial and innovative spirit of the network, and mission-creep. Purely technological solutions, however, have similar problems. While vigorous filtering, for instance, will purge spam from inboxes, it can also act as an unintended censor by suppressing any mention of the typical spam themes – and even references to spam itself – in legitimate personal e-mails. It is therefore essential that any attempt to impose order on the Internet sees government (and technology) as just part of the solution among many actors.

Second, and perhaps even more fundamentally, government control is not the answer for the simple reason that it is unlikely to work. The Internet is too dispersed, too decentralised and too international. It truly is beyond the reach of any single nation-state. This means that it is resistant to traditional forms of regulation. It requires us not only to exert some control, but also to develop a whole new method of control.

Consider, to begin with, recent attempts by the record industry to limit the flow of copyrighted material on peer-to-peer file-sharing networks. While several countries (including the US) have ruled in favour of the record industry, such rulings

have little practical effect when the networks themselves transcend national boundaries and legal jurisdictions. One new file-sharing network, Earth Station 5 (ES5), vividly illustrates the point: currently operated from the West Bank and Gaza, the network operates in a legal no-man's land, safely beyond the reach of most state authorities.

Such difficulties can be found across a range of issues. But the difficulties, it is worth noting, are not just limited to challenges of enforcement: the international nature of the Internet also raises questions regarding cross-jurisdictional harmonisation. Not every country has the same legal standards regarding free speech; likewise, not every country has the same protections for privacy. This means that even when nation-states (or groups of nation-states) are capable of exerting control, their efforts may be undermined by colliding legal norms and standards, leading to a possible Balkanisation of the Internet.

A notable – and notorious – instance of such collision occurred in 2000, when a French court, citing that country's anti-hate speech laws, ordered Yahoo! to block the auctioning of Nazi memorabilia on its site. The order, which would have affected all users of the Yahoo! network, was inconsistent with American free speech

traditions and laws. A French court was in effect assuming the right to dictate what Americans (or Indians, or Russians or Brazilians) could view on the network. A similar collision of legal standards occurred last year, when an Australian court ruled that a Melbourne businessman could sue Dow Jones for libel in Australia even though the content in question originated from the US. Both cases shed light on the weaknesses of existing, state-led systems of governance: it is difficult (even impossible) to govern a global resource such as the Internet when the global community disagrees on the legal (or other) norms that should form the basis for governance.

Towards a new model and the importance of civil society

Taken together, these examples effectively demonstrate the challenges of governance on the Internet. It is now clear that the absence or Balkanisation of rules can challenge the potential of the network; but the nation-state, it should be equally clear, is not capable of realising that potential on its own. What we need, as we have argued, is an altogether new model of governance – one that is capable of governing across borders, and capable of supplementing

(although not replacing) the powers of the state.

Lessons from other attempts at governance

Fortunately, we can turn to (and build on) some existing examples of international, non-traditional regulation. The Internet Corporation for Assigned Names and Numbers (ICANN), for instance, provides one innovative model of decision-making. Although ICANN has had many teething problems, its management of the Domain Name System (DNS) nonetheless provides a valuable illustration of how an international resource can be managed by a multi-sectoral, non-governmental organisation (NGO). Likewise, the Digital Opportunity Task Force (DOT Force), initiated by the leaders of the Group of Eight (G-8) nations in 2000, provides an interesting experiment of cross-sectoral engagement. Government-created and endorsed, but led by a mix of government, business and NGOs from the developed and developing world, the DOT Force successfully managed to create a global action and implementation plan to use information and communications technologies to support economic and social development. Its governance structure and multi-sectoral processes have since been applied to the UN-ICT

Taskforce.

Of course none of these organisations is perfect and their scope is limited. Their failings have as much to teach us as their successes. ICANN's many problems, for example, offer a useful set of lessons in developing a more effective system of rule-making for the Internet. Although the organisation's recent reforms may have put it on a new path, ICANN remains dogged by perceptions that it has been insufficiently participatory and open. Developing countries and civil society groups, in particular, have felt left out of the decision-making process. This sense of exclusion has undermined ICANN's legitimacy and authority, and therefore limited its effectiveness: it provides a cautionary reminder that any system of international rule-making needs to include as wide a range of voices as possible. That is why, as we have repeatedly argued, Internet governance must be based on a principle of multi-sectoral participation.

This principle, as much as the need for international solutions, is essential for successful governance. Traditional regulation relies primarily on the coercive and punitive powers of the state. But effective Internet governance is likely to rely on a culture of mutual interest and deference. Its authority will therefore depend crucially on its legitimacy and that, in turn, will rely on perceptions of inclusiveness, a sense that actors representing various sectors and regions have a voice at the table of Internet rule-making.

The role of civil society

Certainly, governments and the private sector must be among these actors: each represents an essential pillar upon which Internet governance rests. But an equally important, if often overlooked, pillar is represented by civil society. Indeed, civil society – in the form of NGOs and public interest groups – has an equally important role to play in multi-sectoral Internet governance.

Representing the public interest
First, civil society is an important actor because it is often best placed to represent the public interest. As noted above, many of the problems we are facing on the Internet stem from its growing commercialisation. But this is not necessarily against the public interest: indeed, commercialisation is at the root of much of the innovation and creativity on the network. Inevitably, however, there are moments when private

and public interests collide; and at such moments, civil society groups are ideally placed to represent the latter and to defend individual rights against the state.

Trust

Part of the reason that civil society can play this role is because it possesses significant capital in the form of trust. Unaffiliated with the state and the commercial sectors, civil society groups often are able to articulate an independent and reliable point of view. Indeed, a recent survey on trust, conducted with 36,000 people by the World Economic Forum, found that civil society, i.e. NGOs and advocacy groups, had the second highest ratings as trusted parties (after the armed forces); the institutions that were least trusted were governments (at the very bottom) and private companies. Another survey on Internet accountability conducted by the Markle Foundation showed similar results, with respondents reacting positively to the idea of NGOs having a role in developing rules for the Internet. The public assigns a positive score to this idea (a rating of 7.1) – a far more favourable rating than those received by technical experts (6.6), individuals (6.3) or state governments (5.0). Given the widely recognised importance of trust in facilitating economic, social and other interactions, such figures point to the

important role played by civil society in promoting the health of the online environment.

International

Finally, civil society can play an effective role because it often is truly global (and increasingly so) in its reach. Given that Internet governance requires international coordination, it is of course essential that it should include groups with global reach. Transnational NGOs and other civil society groups, which have grown rapidly throughout the world in recent decades, are ideally placed to fill the role of an international actor representing all segments of the global community. Indeed, a significant proportion of international aid is already channelled through international NGOs, and they have also been at the forefront of international advocacy and rule-making for a range of issues.

Such advocacy, it is worth adding, is particularly important as a means of including developing countries in Internet governance. The early failures of ICANN, as well as the recent problems encountered by the WTO at Cancun, clearly demonstrate the perils of multilateral governance mechanisms that fail to address the needs of the developing world. Without an inclusive process, international rule-making

institutions will lack legitimacy and thus authority. Perhaps even more importantly, the failure to include developing nations in rule-making processes will lead to an imbalance in those rules, a systemic exclusion of nations and populations that will only become more pronounced as the network evolves. Ultimately, such imbalances will not only harm developing nations; they will also undermine the network itself, stunting its growth and limiting the number of new, innovative applications that may emerge from the user community.

Conclusion

We remain fundamentally optimistic that we can develop new models of governance that will help us overcome current difficulties with the network and allow people to benefit from its tremendous potential. The model we have argued for must have three essential components: it must be international in its reach and authority; it must be based on multi-sectoral and geographically inclusive participation; and it needs to include representatives of civil society.

If each of these three conditions is fulfilled, we believe that the benefits will extend beyond the health of the Internet. Certainly, we will see the network flourish.

But in addition, and partly as a result of this flourishing, the Internet can also become an instrument for greater global cooperation and harmony. At a time when so many of our conflicts are being driven by competing ideologies and ideas, a global and inclusive internet can play an essential role in encouraging healthy (and peaceful) debate and discussion of those ideas. So much is at stake – for the Internet itself, and more generally for the global community.