

## This is for everyone: how to govern the internet as a global commons

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The governance of the internet was once a highly technical subject of interest to a tiny band of experts and enthusiasts. It is now rapidly becoming a public interest in every sense. Some of the reasons have to do with threats – threats from governments wanting to censor, constrain and control; threats from companies that are becoming near monopolies globally, with little accountability; and threats from malign interests (organised crime to terrorism) using the internet to harm the public.

We all have an interest in how best to spread the great potential of the internet to everyone, and most people are agreed that the status quo can't continue, and that the current roles of ICANN and the ITU have outlived their usefulness. The technical interoperability and address management systems that were largely run from the US have succeeded in spreading the internet to well over three billion users.

But it's not credible for power to remain in the hands of a self-appointed group (including largely unaccountable bodies making money from allocating domain names), and illegitimate for the US to be in a uniquely powerful position running a global commons. Meanwhile the alternative of an internet run by intergovernmental bodies, or states, and in particular states with little respect for human rights or free speech, is obviously unacceptable too.

Somehow the internet will have to be governed in ways that include many different stakeholders, prevent any monopolies of power, and allow for rapid evolution in tandem with the technologies themselves.

The technical issues being faced by the coming summits and gatherings intersect with a more basic issue, that across the world the public think the internet is theirs, free, and open, while in fact the truth is none of these is guaranteed. In this short paper I suggest some possible solutions for the governance of the internet that align with its spirit and nature as an open, evolving network run as a commons. I argue that these need to be:

- Based on simple agreed principles – mainly negative ones to prevent capture, monopoly or control
- Varied not singular, with diverse governance solutions for a range of different types of task
- Differentiated by geography rather than universal, so as to create a magnetic pull towards higher standards over time
- Adaptive, not set in stone, to cope with new technologies such as the emerging internet of things

## **Background**

Much is now in motion. In early 2014 the US government announced its intention to move stewardship of internet addressing functions to a global multi-stakeholder community. Through the Global Multi-stakeholder Meeting on the Future of Internet Governance held in Brazil and the resulting 'NETmundial Multi-stakeholder Statement', and more recently the Panel on Global Internet Cooperation and Governance Mechanisms, chaired by Estonian President Toomas Ilves, the pace has heated up.

But there are still surprisingly few specific proposals in circulation, and almost no serious debate in the world's newspapers, airwaves, magazines and web forums. To the extent that there is a debate it tends to polarise into narrow positions – those in favour of privacy against big governments and big business; those in favour of free communication vs those wanting powers to govern content. Meanwhile vague aspirations to networked governance and self-organisation risk leaving the real power structures untouched, so that the default will be an internet – in all its complexity – still largely run in invisible ways, by secretive interests.

### **What can we learn from other fields of global governance?**

There are innumerable useful *specific* lessons to be learned from other fields of global governance – from financial regulation to barcodes, public health and oceans to space – though there has been remarkably little debate about what these are (the digital world is surprisingly insular). One crucial and very general lesson from other fields of global governance is that they depend on the mutual reinforcement of three very different ways of thinking about the world, three complementary cultures.

The first is top-down hierarchy – concerned with treaties, laws and coercion. Some such rules will be needed in any future scenarios. The second is the market – concerned with trade, horizontal competition and free flow. Again, it is hard to imagine any future for the internet without a major role for business. The third is society – concerned with equality, openness and cooperation and bottom-up approaches to change. The spirit of the internet is its openness as an infrastructure for everyone.

Any plausible set of solutions will combine these three cultures, the top-down, horizontal and bottom-up. But most people can't help but see the world through only one of these lenses, usually the one they are most familiar with. They therefore fail to understand the roles of the other two and offer solutions that are, in this sense, culturally implausible.

Other major fields of global governance have only made progress towards truly global governance through a combination of these cultures. In the case of the environment, for example, progress has depended on the combination of strong treaties (on ozone etc), taxes and regulations; vigorous business competition; and active social movements. None on their own could have achieved changes in behaviour at a global scale. The same will be true of the internet and its governance which similarly needs to align these three cultures in a dynamic way. So what should be the building blocks of a new settlement? Here I set out some of the elements.

## **1. (Relatively) straightforward principles set out in a charter**

Across much of the world there is reasonably broad agreement on the high level principles that need to guide future governance. Although some still press for state control, a much more widely held view sees the internet as a field requiring multi-stakeholder governance, in which the voices of citizens, businesses and experts are also heard.

Equally there is a reasonable consensus in favour of maintaining the maximum freedom over content (with a relatively few exceptions); an evolutionary model of governance, rather than one in which many details are set down in formal law or treaty; and the maximum interoperability between different networks, in tandem with the internet's origin as a network of networks.

As the UN and other bodies have found, there is advantage in having explicit descriptions of principle, even at a high level, as a reference.

## **2. One problem or many? Distributing the tasks of governance**

The tasks of governance will then need to be disaggregated. The governance problem for the internet is actually a series of rather different governance problems, each of which may demand different answers. The internet is a complex, fragmented, contradictory series of capacities, and rapidly becoming more complex over time. As a result the governance tasks are diverse, and include at least the following:

- Agreeing at least some standards underlying interoperability
- Agreeing common approaches to address management
- Ensuring some secure payments arrangements – including coverage of IP and copyright – which are similar to trade rules
- Agreeing whether or not to permit prohibitions – of pornography, hate crime through to dissent
- Agreeing some distributions – of money from one part of the system to others
- Agreeing authentications – of people and institutions
- Agreeing protections – privacy, personal data, identity
- Agreeing some principles around childhood – the rights and opportunities for young people
- Agreeing some ways of handling new concentrations of power, including economic power.

Some of these are best handled primarily within national political units but with some overarching principles; others like payment systems only make sense at a much larger scale. In all cases there will be some general principles but also edges to be defined. So for example net neutrality, the principle that 'traffic should be treated equally, without discrimination, restriction or interference' may become an absolute or may become a less solid principle (eg if it is decided that some types of data, for example, critical medical services, deserve priority treatment).

As I will show, these different tasks, and the job of deciding on implementations, need a distribution mechanism.

The practical answer is to establish principles of what could be called 'triggered hierarchies', so that where feasible solutions are achieved at lower levels and only rise up to the global level if there is a major problem or objection. Similarly many decisions can be primarily dealt with by the stakeholders most directly affected and only become generalised, again, where there is a strong cause or objection. In other words the principle should be to solve problems through network means where possible, and hierarchy where necessary.

These design principles can be built in with layered specifications, set out transparently, for the handling of different kinds of decision-task and the principles whereby these can be triggered up the hierarchy. This architecture for decisions can itself be iterative, visible and reflexive.

### **3. Diagnosis as well as (and before) cure**

The governance task for each of these tasks is in part about making decisions. But diagnosis is as important an aspect of governance as prescription and action. The internet will therefore need some equivalent of the Intergovernmental Panel on Climate Change (for example an Internet Observatory Network) to continuously map the emergence of new opportunities and new threats, providing input to the governance process but clearly separated from it. Indeed it may be easier to agree on establishing such bodies than to establish agreement on the formal rule-making processes.

### **4. Agreeing formal architectures for multi-stakeholder governance, and decision making designs that foster cooperation**

Any formal arrangements for governance will need to encompass the four key 'estates' that matter in relation to the reality of networks – and balance realism about power (who has effective vetos), and inclusiveness. These can't accurately be described as nested, or concentric circles. Instead they represent distinct interests and points of view:

- National governments
- Peoples – the users of the internet
- Businesses – the other group of users and providers
- Experts – the specialists who understand the key technical choices

The general lesson of global governance arrangements is that they have to be reasonably inclusive, but also reflect the realities of power – so that powerful interests don't walk away. This is why the UN has a security council; why the IMF and World Bank are run by their main funders. The design challenge is therefore how to represent each of these in ways that make sense to their communities, and how to balance their powers to achieve compromise, while not impeding the ability to make effective decisions.

**Nations:** The existing ITU/UN frameworks provide some ways of representing nations. But other options include analogies to the Security Council or G20, smaller bodies that can bring together the lion's share of internet activity nested under the larger fully representative assembly. For example revolving chair roles from the 10 top internet-using nations. The key challenges are familiar ones in

international organisations – how to design voting weights, procedures etc to achieve a balance.

**Peoples:** Here the radical option is to offer the option of membership, or even ownership of parts of the web. The old UNA provides an analogy – a mass membership invited to act as guardians of a set of global common values, to protect against abuse. A mass membership internet guardians group might work best by combining attention to consumer protection on privacy etc with engagement on policy issues. Clearly to work well it would need some rules of membership – eg to avoid any one country becoming too dominant or gaming; and some limits of proportions – eg a log principle of representation to protect small countries against large. Whatever the solution, the spirit should be the one proposed by Tim Berners-Lee – ‘this is for everyone’ – and should make the maximum use of online platforms to generate ideas and options, and move towards consensus.

**Experts:** There are now many models for large scale expert coordination in global governance. The IPCC is probably the most sophisticated since it includes an explicit futures aspect, making visible some of the implications of decisions and allowing these to be reflected back. Around the internet the ITU, W3C and others bring together a lot of expertise for broadly consensus based technical problem solving and standards setting. There are now plenty of models for this kind of expert-based decision making and advice, usually with quite structured, or ‘chunked’ processes, and formal negotiation on conclusions through representative groups and committees.

**Businesses:** The stakes in internet governance are now huge, with the internet economy directly accounting for 10% of GDP in some countries and affecting most other economic activities to some extent, merging not just with media, entertainment and finance but also increasingly with transport, energy and other industries. In principle there should be some governance role both for incumbent businesses and insurgents, particularly to ensure viable standards. The practical organisation of this input raises questions about the relative power of businesses from different parts of the world; the duties of major businesses in paying for the ecology of regulation and standards; and legal obligations to comply. The key missing element from much business engagement in governance in other sectors is transparency – requirements for explicit statements of position; open challenge; mediation where facts are involved.

### **A peak council?**

The governance arrangements should aim to minimise hierarchy. But at some points decisions need to be made that trade off different interests and these have to be made by a legitimate body. The simplest option is to combine these interests into a peak authority or decision-making model, such that none have a majority or monopoly. This could be a Global Internet Council. It could be divided into four sections, eg each with 25 members, representing the four estates described above, and ultimately supported by treaty, with the authority to make rulings in the global public interest on the topic areas listed earlier. Some issues could be left to one estate – and a voting system devised that would incentivise each group to leave a majority of issues to one group, subject to a blocking veto.

The design goal should be to achieve habits of consensus and mutual awareness between the different estates. For this there are many options:

- Separation – separating out the key functions – agenda setting, facilitation/chairing, nomination of proposals. A particularly powerful separation distinguishes rights of policy design from rights to decide
- Circulation – for example, these roles can be circulated (eg one group playing each role for each six month period) creating strong incentives to cooperate
- Currencies – voting currencies so that blocking options supported by others is limited

## **5. The best governance arrangements combine formal and informal elements (or why the internet needs its own social movement)**

Good governance isn't the result of blueprints – or to be more precise they are necessary not sufficient conditions. The drafters of constitutions often see these as the foundation of good governance. But two centuries of social science has shown that these are as much effects of other factors as they are causes. Good governance emerges from the interaction of good laws and institutions on the one hand, and strong cultures of civic activism, oversight and engagement on the other. So in relation to the internet we should pay as much attention to how society can help governance work well as we do to the formal structures and rules.

In another paper I suggest what this might mean with the growth of a network of 'internet guardians' from civil society organising to keep the formal structures honest.

There is a potential to mobilise many hundreds of thousands if not millions into a common structure, parallel to the United Nations Associations which a few decades ago provided a civil society equivalent and support to the formal structures of the UN.

There are many options for organising this – almost certainly as a loose, networked federation, with the people most directly involved in the network as the core (programmers, hackers etc).

They are likely to be best mobilised through opposition – and through the drama of challenging governments and businesses which threaten freedom, using boycotts, shareholdings etc. These may seem like the enemies of orderly governance. In fact they are necessary for making it work.

## **6. Not all governance arrangements need to be uniform or universal: the best chances for the internet may lie in conditional, club arrangements.**

Global governance arrangements can aspire for uniformity. Indeed most of the debate about internet governance assumes that a single set of arrangements will

successfully cover the whole world. The risk of this approach is that what is agreed is a lowest common denominator.

The alternative approach is roughly opposite. It aims to establish zones, with more advanced rules prevailing, which over time become the norm and attract in the rest of the world.

This is the model of the European Union which has become an attractor for other countries, and it is the model followed by the World Trade Organisation and others.

According to this view the aim should be to create a governance framework that works for enough countries – and is sufficiently attractive that it can spread over time. This could for example set high standards on personal data handling, and require trades to abide by specified standards. We could imagine a zone of highly networked activity covering 40-50 countries with high standards for identification, protecting against cybercrime.

To succeed, this approach needs to raise the costs of being outside the zone. This is bound to be more contentious. But it could be achieved by establishing some external barriers or differentiations (eg on ease of using payments, or standards of cybersecurity), and crucially establishing limits on rights to hold personal data. Major corporates could commit to introducing new products and services within the zone first as a condition of access to public procurement.

This could increase the magnetism of the club based on higher standards. Ideally there would also be linkages to carbon and trade, so that the full benefits and costs of a more connected world are tied together.

This principle will be the hardest one to accept for many of the activists and designers of the internet, who for very understandable reasons want a universal global solution. But their assumptions in this case may clash with the very values they want to promote.

## **7. We need (some) global governance for the internet economy as well as technical issues**

Despite the huge economic significance of the internet its economic regulation has not been prominent in recent discussions. Yet the economic challenges of internet governance will require anti-trust measures implemented transnationally so as to reap the benefits, without regrets, of positive network effects.

The zero or very low marginal cost economics of digital networks make it inevitable that they will spawn monopolies and near monopolies. Google; Ebay; Amazon – all face competitors, but all are also dominant to an extent that was very rare in the industrial age.

The world long ago devised ways of handling monopoly – usually by breaking them up either horizontally or vertically. In some cases taxes were imposed on specific markets - eg Hollywood filmmaking and distribution, enabled high taxes to be levied on distribution and retail while still giving large profits to monopolistic producers.

There are some good arguments that, for now, consumers are still benefiting from the economies of scale generated by these firms, so that it would be unwise

to break them up. But at some point all will try to ratchet prices up – and the challenge is to reap the full benefits of network effects and economies without the regrets of finding ourselves locked into dependence on dominant players with such political power that they can't be challenged.

This means that within the governance structures there will need to be a capacity to address market openness – drawing on the competition authorities of the US, Europe and elsewhere and able to make recommendations. Here again there is a case for shared diagnosis to be separated from prescription, with a common approach to diagnosing excessive market dominance and abuse.

## **8. How to get there?**

To develop new governance models all experience suggests the need to go through a series of phases – rather than jumping straight to ideal solutions or technologies.

Unfortunately the typical models of multi-stakeholder engagement and large consultative conferences are not well designed for doing this. They can often multiply confusion rather than offer collective intelligence.

Strong processes should include careful sequencing:

- Framing – how to define the key questions, frames and capture the variety of perspective which will be relevant
- Issue identification – how to define the specific issues/questions that arise
- Idea generation – multiplying options and quick methods for narrowing down
- Idea commentary and improvement – slower, more deliberative processes for refining
- Decision-making – institutions or decision-makers explicitly engaging with the process (ideally having been involved earlier on as well)
- Co-implementation – of both formal and informal actors
- Scrutiny and feedback – what is and isn't working
- ... and then a loop back to the beginning for an iterative process of adaptation

The usual error of open processes is to skip over the first stages; to follow groupthink in framing; to fetishise specific policy ideas before achieving understanding of the problems and the frames; to involve the real holders of power and knowledge too late; to conceive of the process as a one-off rather than continuous. The ideas set out in this paper are intended to be inputs to stages 3 onwards of this process.

## **Conclusions**

The challenges of internet governance will be hard to solve in a multi-polar world with strong pressures towards nationalistic big power sovereignty, and away

from cooperation. But the networked world offers reasons for hope. Although the ITU is often portrayed as the villain – representing the dead hand of bureaucracy – in some respects it is a unique story of success, with its roots in the rules governing river traffic in Europe; postal services; and then the telegraph, it pioneered methods of governance that brought together experts and practitioners, governments and business, to negotiate rules that benefited everyone. It is hard to think of a more successful example of global collaboration. This is why we should not only be hopeful that new forms of open, evolutionary, aspirational approaches to governance can be achieved, but also that elements of these new models of networked governance can be spread into other fields too.

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