What if we all governed the Internet?

Advancing multistakeholder participation in Internet governance

UNESCO Series on Internet Freedom

UNESCO started in 2009 to commission this flagship series publications of Internet Freedom, aiming to explore the changing legal and policy issues of Internet and provide its Member States and other stakeholders with policy recommendations aiming to foster a conducive environment to freedom of expression on the Net.

This is the 11th edition of the series, with previous editions presented as below:

Survey on Privacy in Media and Information Literacy with Youth Perspectives

Media and information literate individuals are more empowered to make informed decisions about their privacy online and offline, among other things. Accordingly, governments and policy-makers who are committed to ensuring that the privacy of citizens is respected should also be committed to media and information literacy (MIL) for all. If they are not, then their efforts will be less sustainable. Equally, private and public enterprises that genuinely want to respect the privacy of citizens should purposefully contribute to MIL awareness among users and citizens.

Protecting Journalism Sources in the Digital Age

This research provides a comprehensive review of developments that can impact on the legal frameworks that support protection of journalistic sources. Interviews, panel discussions, thematic studies and a review panel ensured the input of legal and media experts, journalists and scholars. This in-depth study thus seeks to assess the evolution of protective legal frameworks over the eight years from 2007-2015, and provides recommendations for the future of journalistic source protection.

Human rights and encryption

The study provides an overview of encryption technologies and their impact on human rights. It analyzes in-depth the role of encryption in the media and communications landscape, and the impact on different services, entities and end users. It highlights good practices and examines the legal environment surrounding encryption as well as various case studies of encryption policies. Built on this exploration and analysis, the research provides recommendations on encryption policy that are useful for various stakeholders.

Privacy, free expression and transparency: redefining their new boundaries in the digital age

This study analyzes the interactions between the right to freedom of expression, the right to privacy and the value of transparency in the Internet environment. It covers the legal frameworks and current mechanisms for balancing rights, and presents specific issues, cases and trends. The interplays between multiple players – State actors, Internet users, ICT companies, civil society organizations, the judiciary, security services — are envisaged and recommendations for stakeholders are provided.
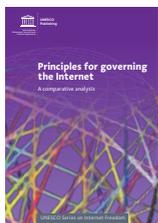
Principles for governing the Internet

As the sixth edition in the UNESCO Internet Freedom series, this study encompasses both quantitative and qualitative assessments of more than 50 declarations, guidelines, and frameworks. The issues contained in these documents are assessed in the context of UNESCO's interested areas such as access, freedom of expression, privacy, ethics, Priority Gender Equality, and Priority Africa, and sustainable development, etc.

Anri van der Spuy

What if we all governed the Internet?

Advancing multistakeholder participation in Internet governance

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Foreword

We owe the Internet to its history of multistakeholder participation which has underpinned the decisions that have shaped its evolution and use. This specific modality of governance has brought together the perspectives and wisdom of a wide range of actors, producing an unprecedented technical facility for humanity.

This has been made possible by a range of stakeholders, in many ways, contributing to the shared norms, rules, decision-making procedures, and programs that constitute the governance of the Internet.

Not everyone has decided on everything. Nor is this what is meant by multistakeholder participation. Instead, what we have seen is that all significant groups have directly or indirectly helped to shape the governance ecosystem – a context which to date has seen the Internet grow to become a key enabler for a future that achieves inclusive and sustainable development for all.

Today, however, this history is being challenged, with corresponding risks to the Internet's continued path in this direction. Amongst the challenges is the phenomenon that unilateral decision-making is on the ascendant. Sometimes this is by individual states – even acting outside of multilateral frameworks; sometimes it is by Internet companies working in a silo on their terms and services on issues like privacy and freedom of expression.

However, those actors acting unilaterally vis-à-vis the Internet risk missing out on the intrinsic value of engaging with multiple stakeholders at different moments of their processes.

Such narrow practice also reduces the likelihood that the resulting policies and terms of service will be inclusive of diverse interests and registered as legitimate by the actors affected accordingly. It certainly weakens prospects for alignment to sustainable development and respect of universal human rights. Even more, it impacts on the vitality of the Internet continuing as an inter-operable, open and global platform which integrates significant interests and thrives on the basis of broad-based knowledge, effort and energy.

This is why there is so much value in transparent multistakeholder experiences such as the Brazil's CGI.br, the annual Internet Governance Forum and the annual fora of the World Summit on the Information Society. The Global Network Initiative, along with local and regional convenings of Internet Governance Fora, are also important instances for co-operation.

It is in this light that UNESCO has commissioned this Study, the 11th edition of UNESCO flagship publications series on Internet Freedom. Our mandate is to promote the multi-stakeholder approach and we seek to achieve this by promoting a better understanding of its meanings and its benefits.

The research in these pages covers the theory around multistakeholder participation in Internet governance through a review of relevant literature. It also analyses case studies from Kenya to Brazil, South Korea, and the Internet Governance Forum (IGF), which illustrate how multistakeholder approaches to Internet governance are applied in practice in diverse places and on different issues. In two of these cases, the outcome had legal repercussions that advanced the role of the Internet in terms of respect for rights; in the other two, the impact was positive for wider norms and processes.

This Study was elaborated as part of UNESCO's Internet Universality framework (R.O.A.M.), which advocates for a human-Rights-based, Open and Accessible Internet, governed by Multi-stakeholder participation. Specifically, it responds to action recommended by the Outcome Document of the CONNECTing the Dots conference, and which was endorsed by UNESCO Member States in 2015. The Document urges that UNESCO "support Member States in ensuring that Internet policy and regulation involves the participation of all stakeholders, and integrates international human rights and gender equality".

This Study is also part of our mandate to "engage as relevant with partners outside of the UN system, such as individual governments, civil society, news media, academia, private sector, technical community and individual users; including by providing expert advice, sharing of experience, creating fora for dialogue, and fostering development and empowerment of users to develop their capacities" – as specified by UNESCO's Connecting the Dots conference outcome document.

UNESCO expresses its thanks to Ms Anri van der Spuy, for having delivered this comprehensive and in-depth assessment. UNESCO also thanks the Internet Society and ICANN for supporting this Study and also those international experts who have kindly reviewed the draft and provided their valuable inputs.

In a world where trust is under pressure and Internet becomes ever more complex, the practice of transparent and respectful multistakeholder dialogue on Internet issues is a way to build consensus and legitimacy. And to ensure that we enter the future with a flourishing Internet, not a broken one.

In this light, we commend this new knowledge resource as a basis for international dialogue and collaboration on the multistakeholder approach to Internet governance. It is part of our contribution to building Knowledge Societies for sustainable development.

Frank La Rue

Assistant Director General
for Communication and Information

Executive summary

In the Internet's relatively short history, its governance has become somewhat synonymous with multistakeholder participatory mechanisms and approaches. It is these that have enabled the Internet to develop in relative autonomy from any single power centre or category of actors with an interest in capturing the network for exclusive benefit. But while some may take multistakeholder participation in Internet governance for granted as being inherent to the way in which the Internet was designed, the Internet is very different today than it was when it was created. As the Internet has become increasingly central to societies and economies, more stakeholders like governments have started jostling for greater involvement in Internet governance challenges. Some of the ways in which the Internet ecosystem has traditionally been governed thus face strain; risking not only the benefits associated with such approaches, but also the universality, openness, and freedom of the Internet.

The notion of multistakeholder participation in Internet governance is therefore not only in need of a realistic assessment, but it must adapt to meet new challenges as the Internet becomes more central to knowledge societies. Failure to address some of these challenges could have negative consequences for the future of the Internet and its ability to support sustainable development. To strengthen UNESCO's role in the field, this Study therefore provides the results of a comprehensive investigation of the evolution of multistakeholder participation in Internet governance in theory and in practice.

The Study builds upon UNESCO's Internet Universality framework, which helps to identify how the Internet can help to construct global knowledge societies by calling for decision-making about Internet-related issues to respect four principles summarized by the acronym R.O.A.M., namely: human rights-based; open; accessible to all; and with multistakeholder participation. The Study contributes to advancing the fourth principle. It highlights how multistakeholder participation in Internet governance can support UNESCO's work in general and the protection of the R.O.A.M. principles in particular.

The initial part of the Study consists of a review of literature relevant to the principle of multistakeholder participation in Internet governance and published since the World Summit on the Information Society (WSIS). In addition, the Study investigates how the principle of multistakeholder participation has been applied in practice in four case studies. Due to the primary focus of UNESCO's work, the Study focuses on cases of multistakeholder participation in Internet governance and related topics that are or were conducted with the aim of supporting Internet Universality. In no specific order, the Study's case studies move from Kenya to Brazil, South Korea, and an initiative under the auspices of the Internet Governance Forum (IGF).

The literature reviewed and the cases investigated in the Study reiterate the potential benefits of creativity in the form of multistakeholder approaches in developing "shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet" (WSIS, 2005). To support this evolution in a way that simultaneously bolsters Internet Universality, the Study identifies values that are common to effective multistakeholder approaches in Internet governance, including: inclusivity; diversity; collaboration; transparency; equality; flexibility and relevance; privacy and safety;

accountability and legitimacy; and responsiveness. It also develops eleven recommendations that can enable processes to benefit more from multistakeholder approaches.

Finally, the Study suggests that practical means and mechanisms for supporting the implementation of these values and recommendations should be developed to render the recommendations more relevant for all stakeholders. It also argues that there is a need to continuously measure and evaluate multistakeholder approaches and the extent to which they can support Internet Universality. For this reason, the Study concludes with a preliminary investigation of existing indices that could be useful to UNESCO's work to develop indicators to assess the state of Internet Universality.

Acronyms and abbreviations

ACHPR	African Commission on Human and Peoples' Rights
AUC	African Union Commission
BPF	Best practice forum (IGF)
CA	Communications Authority of Kenya
CATIA	Catalysing Access to ICT in Africa
CGI.br	Brazilian Internet Steering Committee
CSTD	Commission on Science and Technology for Development (UN)
CTS-FGV	Centre for Technology and Society at Getulio Vargas Foundation
DC	Dynamic coalitions (IGF)
DEF	Digital Empowerment Foundation
DESA	United Nations Department of Economic and Social Affairs
DFID	UK Department for International Development
ECOSOC	Economic and Social Council (UN GA)
GAC	Governmental Advisory Committee
GCIG	Global Commission on Internet Governance
GDP	Gross domestic product
IANA	Internet Assigned Numbers Authority
ICANN	Internet Corporation for Assigned Names and Numbers
ICT(s)	Information and communication technology/ies (ICTs)
IGF	Internet Governance Forum
IGO	Intergovernmental organization
IoT	Internet of Things
ISOC	Internet Society
ITS Rio	Institute for Technology and Society of Rio de Janeiro
ITU	International Telecommunication Union (UN)
IVP	User identity verification provision
KICTANet	Kenya ICT Action Network
KCSC	Korean Communications Standards Commission
MAG	Multistakeholder Advisory Group (IGF)
Marco Civil	Marco Civil da Internet
MDGs	Millennium Development Goal(s)
MDI	Media Development Indicators (UNESCO)
NETmundial	Global Multi-Stakeholder Meeting on the Future of Internet Governance
Net neutrality	Network neutrality
NGOs	Non-governmental organizations
NRI	National and Regional IGF initiative (IGF)

NSA	National Security Agency (USA)
OAS	Organization of American States
OSCE	Organization for Security and Co-operation in Europe
OECD	Organization for Economic Cooperation and Development
PSPD	People's Solidarity for Participatory Democracy (South Korea)
R.O.A.M.	Human rights-based; open; accessible to all; and with multi-stakeholder participation
RRN	Resident Registration Number
SAL/MJ	Brazil Ministry of Justice's Office of Legislative Affairs
SDG(s)	Sustainable Development Goal(s)
STEM	Science, technology, engineering and/or mathematics
Telcos	Telecommunication(s) companies
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDESA	United Nations Department of Economic and Social Affairs
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UN GGE	United Nations Group of Government Experts on Developments in the Field of Information and Telecommunications in the Context of International Security
VOIP	Voice over Internet Protocol
WCIT	World Conference on International Telecommunications
WGIG	Working Group on Internet Governance
WSIS	World Summit on the Information Society

Part A: Introduction and context

1. Introduction

In 2017, more than half of the world's population will have gained some form of access to the Internet.[1] The Internet's potential for supporting many political, economic, educational and other objectives, as well as sustainable development, has been recognised, as well as its potential for enhancing the free flow of information and ideas around the world. As a result, promoting Internet access is increasingly prioritised by many actors. However, the Internet's growing pervasiveness has also placed increasing strain on its governance systems.[2]

Like the air we breathe, the Internet has the curious characteristic of being widely recognizable yet difficult to define. Some definitions focus on what users expect, and do with the Internet, and on the benefits (and detriments) arising from their activity. Others focus on its potential for supporting human development and democracies more broadly.[3]

More technical definitions tend to focus on the Internet being a global network of networks; of distributed[4] and interconnected computers and their networks using certain protocols to communicate across layers. Some approaches assess the Internet in terms of layers (consisting of a social layer enabling peer-to-peer communication and networking, a content layer, an application layer, and the underlying infrastructure layer).[5] But taken as a whole, it has no central authority and essentially remains non-hierarchical and decentralized.[6] As the Internet Society (ISOC) puts it:[7]

> *The Internet was developed by the public and private sectors, academia, and civil society, harnessing the shared technical expertise of a global community of equals. Today, much of the Internet's infrastructure is operated across borders and by a range of different stakeholders. It is a complex but robust ecosystem where each part of the Internet can rely on many other parts working together but often independently.*

Yet while this ecosystem might appear ungovernable, the more technical aspects of Internet governance (including, for instance, infrastructure as well as domain name systems, protocols and standards) remain intricately related to the broader public policy decisions that impact the whole.[8] It is partly because these different layers rely on collaboration that the Internet's governance has become closely associated with the notion of multistakeholder participation. Simply put a multistakeholder approach, or 'multistakeholderism',[9] enables diverse stakeholders with an interest in the Internet's future to have a say in the ways in which the Internet evolves and is used.

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1   Statistics indicate that there will be 3.77 billion global Internet users in 2017, or approximately 50% penetration of the world's population. See more: https://wearesocial.com/blog/2017/01/digital-in-2017-global-overview.
2   e.g. Mozilla, 2017.
3   e.g. UNESCO, 2015b.
4   Verhulst, 2016:8.
5   c.f. Mueller, Mathiason, & Klein, 2007:246; MacLean, 2004.
6   *Ibid*, 6; Kleinwächter, 2014:115.
7   ISOC, 2016.
8   Mathiason, 2009:17; Souter, 2009:6; Solum, 2009:48.
9   Definitions are investigated in detail in section 3 below.

But while some may take multistakeholder participation in Internet governance for granted as being inherent to the way in which the Internet was designed and continues to operate, many actors are wary of the implications that multistakeholder approaches have for the use of power and its accountability.[10] The Internet is also very different today than it was when it was created as a mostly academic network almost three decades ago. As the Internet has become increasingly central to societies and economies, more stakeholders have started jostling for involvement and even dominance in Internet governance challenges. Some governments, for instance, increasingly insist on "cyber sovereignty" over other stakeholder groups whilst ostensibly supporting multistakeholder approaches.[11] The UN recognises the principle of national sovereignty, yet it can be complicated as to what combination of national actors represent that sovereignty, and matters that are inevitably cross-jurisdictional add further complexity. The Internet is fully in this tangled terrain.

The notion of multistakeholder participation in contemporary Internet governance can benefit from a realistic assessment especially if it is to adapt to meet new challenges.[12] If it does not adapt, it could become more susceptible to misappropriation and capture by special interest groups,[13] limiting the developmental potential of the Internet and its universality in the general interest. In this context, UNESCO has recognised the need for further and systematic research to better understand multistakeholder arrangements in Internet governance, as well as the changing issues within these dynamics.

UNESCO believes that multistakeholder approaches are important to both promote the developmental potential of the Internet and to maintain its universal character. The outcome document from its CONNECTing the Dots conference, endorsed by UNESCO's 195 Member States at the 38th session of the General Conference in November 2015,[14] recognised the importance of "Internet Universality". This notion embodies four principles that have been fundamental to the evolution of the Internet. These principles are: (i) that the Internet is human rights-based (ii) open, (iii) accessible to all, and (iv) nurtured by multistakeholder participation. These principles are also known as the R.O.A.M. values, and are seen to apply across all of the Internet's aspects, including those conceptualised in the layer model. They, along with UNESCO's relevant work on the Internet and its governance, are discussed in detail in Section 2 below.

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10   e.g. Riley, 2013.
11   e.g. Limbago, 2017.
12   ISOC, 2016.
13   Raymond & DeNardis, 2015:573.
14   UNESCO, 2015c.

This Study, jointly sponsored by the Internet Society (ISOC) and the Internet Corporation for Assigned Names and Numbers (ICANN), was commissioned by UNESCO within the framework of its new strategy of Internet Universality and serves as a further edition to UNESCO's Internet Freedom series. It is intended to promote a better understanding of the ways in which multistakeholder participation in Internet governance has evolved in the past decade since support for it was first explicitly endorsed at the World Summit on the Information Society (WSIS).[15] The Study investigates both the theory around multistakeholder participation in Internet governance by reviewing relevant literature, and summarises a number of case studies that illustrate how multistakeholder approaches are applied in practice.

The Study highlights the importance of multistakeholder participation in Internet governance arrangements, and investigates certain challenges that make the implementation of such approaches difficult in practice. Without being prescriptive, it concludes with certain recommendations that can, when applied to specific situations, strengthen multistakeholder approaches in practice. It also suggests ways in which these recommendations can be translated into more tangible indicators to assess multistakeholder arrangements in practice.

The remainder of **Part A** provides more information about the R.O.A.M. principles and other work undertaken by UNESCO in the field of Internet governance. The final section of Part A contains a note on the terminology used in this Study, including the ways in which the Study interprets the notion of multistakeholder participation in Internet governance. A description of the methods used in this Study can be found in Appendix 1.

Part B, which includes the results of a review of relevant literature, provides a general overview of the ways in which stakeholders' understanding of multistakeholder mechanisms in Internet governance has evolved since the WSIS. The definition, nature and benefits of multistakeholder approaches are also investigated, followed by a summary of some of the challenges and criticisms facing the application of multistakeholder approaches.

Part C contains a summary of the findings from four diverse case studies, including examples in Kenya, Brazil and the Republic of Korea, as well as a global multistakeholder initiative. These studies were conducted to better understand the ways in which multistakeholder approaches have been applied in situations relevant to promoting Internet Universality in practice. Each of these cases offers valuable lessons for the implementation of multistakeholder participation methods. Yet a general lesson is that multistakeholder arrangements – including issues like which stakeholders are involved, how they are involved, which interests are represented, and what values are driving the process (e.g. openness, transparency, etc.) – need to be targeted to the specific context and issue at hand.

In the final part of this Study, **Part D**, practices and values are identified that have had a positive impact on policymaking, and recommendations are extracted to constitute a basis for shared understanding of the meaning, benefits, and limits of multistakeholder participation in Internet governance. This part of the Study highlights the significance of the preceding sections to different constituencies in terms of how they might take forward the debate and the practice. It also suggests how multistakeholder participation in Internet governance might be unpacked to contribute towards UNESCO's objective of evolving specific Internet development indicators aligned to the R.O.A.M. model with reference to existing principles and indicators.

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15   The WSIS deliberations are discussed in detail in Part B, section 4.3.1 below.

2. Context: UNESCO's work on Internet governance

This Study builds upon UNESCO's new framework of Internet Universality, which helps to identify how the Internet can help to construct global knowledge societies and the United Nations' 2030 Development Agenda by decision-making about Internet-related issues that respects the R.O.A.M. values. The Internet, as recognized in the outcome process of the UN's World Summit on the Information Society (WSIS+10), is key to all Sustainable Development Goals (SDGs). UNESCO also notes the particular relevance to the Internet of SDG 16.10 on "public access to information and fundamental freedoms".

As a UN organization of 195 Member States, and with a mandate in education, culture, science, social science and communication and information, UNESCO has a natural interest in the development of an Internet that is universal. One contribution to this was the launch in 2009 of the Organization's flagship Internet Freedom series. The series consists of nine reports published with twin objectives, first capturing the complex dynamics of Internet governance, and second equipping UNESCO Member States and other stakeholders with policy recommendations to enable and foster a conducive online environment for freedom of expression and other human rights to flourish in knowledge societies.

Alongside this, UNESCO's work on Internet freedom has reflected a growing awareness of the importance of multistakeholder participation in Internet governance. In 2013, at UNESCO's first WSIS+10 Review Event, the Organization affirmed the utility of the multistakeholder participation principle in a statement subsequently endorsed at UNESCO's 37th General Conference in 2013.[16] It noted that multistakeholder processes offer 'essential and unique' approaches for engagement in issues affecting knowledge and information societies. Among other things, stakeholders were invited to:[17]

> *Coordinate and cooperate in a multi-stakeholder and inclusive manner at regional and international level in order to ensure that the appropriate enabling environment is created for the further development of the ICT ecosystem.*

UNESCO's *CONNECTing the Dots* conference,[18] held in March 2015, reinforced the Organization's role in supporting its Member States to ensure that 'Internet policy and regulation involves the participation of all stakeholders, and integrates international human rights and gender equality'.[19] Conference participants discussed the first draft of the UNESCO study *Keystones to foster inclusive Knowledge Societies – Access to information and knowledge, Freedom of Expression, Privacy and Ethics on a Global Internet* ('the *Keystones* study'). The *Keystones* study was mandated by Resolution 52 of UNESCO's General Conference Resolution in November 2013, which called for UNESCO to address key issues concerning the Internet for knowledge societies.[20]

Member States at this 37th session affirmed that UNESCO is an appropriate forum to facilitate and lead discussions on various issues within its mandate, including access to information and knowledge, freedom of expression, privacy, and the ethical dimensions of the knowledge society. The Conference also affirmed that the same rights that people have

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16   UNESCO, 2013a.
17   *ibid.*
18   UNESCO, 2015a.
19   *ibid*, para 7.3.
20   UNESCO, 2013b.

offline must also be protected online, and endorsed the Internet Universality concept and its framework of four R.O.A.M. principles.

The *Keystones* study was launched at the 10th Internet Governance Forum (IGF) meeting in João Pessoa, Brazil, on 13 November 2016. It was the culmination of an almost year-long process which involved, among other things, rounds of consultation with Member States and other stakeholders, as well as almost 200 responses to an online questionnaire. The *Keystones* study presented global perspectives on new and emerging trends shaping the Internet – including the notion of multistakeholder participation in Internet governance. The framework not only illustrates how UNESCO's work has a bearing on certain challenges pertaining to the governance of the Internet, but also how Internet Universality itself has relevance to UNESCO's work in many related areas.[21]

The *Keystones* study notes that Internet policy and practice 'exists within a broad ecology of policy choices'; leading to various complexities and unanticipated outcomes, and thereby demanding 'multistakeholder involvement and research' to prevent 'increasing compartmentalization of the Internet, such as increasing control over the Internet by national governments and regulators in ways that undermine its open and trusted global nature'.[22] It also designates a role for UNESCO through 'its convening and bridge-building power' to 'support the processes of elaborating principles globally through inclusive multistakeholder processes'.[23]

The *Keystones* study also provides a more detailed and comprehensive stakeholder classification than is contained in the Tunis Agenda (discussed in more detail below). It identifies eight diverse categories of Internet stakeholders, namely: states, business and industry, non-governmental organizations (NGOs), civil society, international governmental organizations (IGOs), research actors, individuals, and other stakeholders. It confirms that these stakeholder classifications may often overlap and be interdependent, but all have 'more or less unique stakes in the future of the Internet'.[24] Besides these distinct stakeholder categories, the report also, and importantly, emphasizes the importance of users as cross-cutting stakeholders and the need for promoting a 'user-centric approach to the design of technologies, and applications, such as privacy protection'.

All the above provides a useful foundational insight for this Study.

3. A note on terminology

Multistakeholderism or multistakeholder participation?

The Study adopts the terms 'multistakeholder participation' and/or 'multistakeholder cooperation' in Internet governance to refer to a specific governance approach whereby a multitude of diverse stakeholders can participate in the collective development and shaping of the evolution and use of the Internet.[25] While some of the literature and informants refer to the concept as 'multistakeholderism', this Study prefers to steer away from this term as it could be misconstrued as an ideological commitment rather an organizational

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21   UNESCO, 2015c.
22   UNESCO, 2015b:79.
23   *ibid*, 84.
24   *ibid*, 19-20.
25   Adapted from WSIS, 2005.

modality.[26] It also refrains from using the term 'multistakeholder Internet governance', which could be interpreted too broadly.

To understand the term 'multistakeholder participation in Internet governance', it is important to also know what the terms 'Internet', 'governance', 'Internet governance', and 'stakeholders' mean. These terms are briefly investigated in the following section. Because some aspects of these definitions relate to more substantial questions covered in the literature, certain aspects relevant to the definitions are only covered in Part B below. These different parts of the Study should be read and interpreted together.

The Internet

The Internet is a 'network of networks'[27] that enables communication between networks on a global[28] and mostly public[29] scale. While some have argued that the Internet is distinct from other telecommunications networks, this Study adopts the approach that the Internet's development as a communication medium that is central to knowledge societies is not unique and should be considered contextually. This approach requires consideration of several factors – including circumstantial and historical features, stakeholders, and the issues involved with the Internet and its governance.

Governance

Any description of the term 'governance' (as opposed to 'government') must be rather broad to accommodate these factors and to recognise the involvement of multiple stakeholders.[30] One writer has proposed that governance in the context of media systems can be understood as 'the entirety of forms of rules that aim to organise media systems'.[31] Some have used the analogy of steering a ship to explain how governance works;[32] noting that the Internet can be 'governanced' but not governed.[33] In many ways, however, the Internet is far, far bigger than the proverbial "oil-tanker" should any actor wish to turn it, and there is also no single captain with a single steering wheel. A combination of many acts contribute to the ever-evolving logics which organise and make possible the Internet.

Internet governance

Although some argue that Internet governance 'as a unitary regime may in fact be an impossibility',[34] a broader conceptualisation of governance recognises both the entirety and the diversity of governance activities that steer the "ship". While there is no shortage of available definitions[35] for Internet governance, this Study goes wider than consideration

26   c.f. IGF BPF Multistakeholder on Strengthening Multistakeholder Participation Mechanisms, 2015:6; Kummer, 2013; Doria, 2013.
27   Mathiason, 2009:7.
28   Mueller, Mathiason & Klein, 2007:244.
29   MacLean, 2004:77.
30   Meier & Perrin, 2007:337.
31   Puppis, 2004:139.
32   MacLean, 2004:80; Mansell & Raboy, 2011:10; Mathiason, 2009:17.
33   Mathiason, 2009:7.
34   Mueller & Wagner, 2014:12.
35   e.g. Solum, 2009:51; Mueller *et al.*, 2007:245; Collins, 2007:9; WGIG, 2005.

of only formal rules , and instead adopts the working definition in the Tunis Agenda for the Information Society,[36] (despite some criticism of this conception (see Part B below)).

> …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.

The definition is still used as a benchmark today for 'legitimacy of any institution or mechanism in the field',[37] and many authors are enthusiastic about its holistic, broad[38] and flexible[39] nature. Some commentators however feel that the definition is 'too narrow' in its consideration of the term 'governance',[40] while others feel that it adequately encompasses 'every type of governance' and is perhaps even 'too broad to be particularly useful.[41] What is evident however is that the definition recognises an inter-related ecosystem ranging from the role of principles and norms through to procedures and programmes, rather than concentrating on rules in isolation.

Who has a (legitimate) stake in Internet governance?

While this Study takes due cognisance of attempts to map stakeholders (see Part B), it does not attempt to define stakeholders in more concrete or certain terms. This is because it accepts that relevant stakeholder classifications, or the specific stakeholders that should be involved in a particular process or issue, depend on the nature of the Internet governance challenge at hand. Instead, it therefore interprets the notion of stakeholders broadly, considering that anyone or any entity with a legitimate a *bona fide* interest in a particular Internet governance issue as a 'stakeholder'. It recognises that not all stakeholders automatically self-realise or self-identify as stakeholders, and not all multistakeholder processes include all stakeholders. It further recognises that multistakeholder-based participation represents interests-based participation, rather than undifferentiated, individual or idiosyncratic involvement by members of the public (as important as these latter aspects can be in other forms of social life and public participation).

In this regard, it should be noted that the term '*bona fide*' is used in an attempt to establish 'legitimacy' and exclude from this definition so-called 'bad', malicious or disruptive actors who 'participate' in a process with the purpose of disrupting it, or who seek to damage trust and outcomes through obstructive participation (sometimes described as 'trolling'). These terms are used lightly because it is difficult to identify the motives and intentions for participation. Multistakeholder approaches should welcome and not exclude disagreement and minority or less-popular viewpoints,[42] but may justifiably exclude disruptive actors who deploy disagreement to unreasonably disrupt the process or to damage trust.

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36   WSIS, 2005.
37   GCIG, 2016:78.
38   Drake, 2005:255.
39   Maciel & Affonso, 2011:4.
40   Mueller, 2010:9.
41   Malcolm, 2008:29.
42   See the IGF BPF Multistakeholder on Strengthening Multistakeholder Participation Mechanisms, 2015, for a list of actions that could be construed potential examples of 'bad actors" conduct in specific situations.

Gender

The Study recognises that gender divides are a significant and pressing challenge facing the Universality of the Internet ecosystem – ranging from women's ability to access and benefit the Internet to their ability to participate meaningfully in multistakeholder processes. Gender itself can be described as 'the social and cultural constructs that each society assigns to behaviours, characteristics and values attributed to men and women, reinforced by symbols, laws and regulations, institutions, and perceptions.'[43] Where relevant, this Study takes due cognisance of the important gender variable and the effect it has on stakeholder' roles, responsibilities, constraints, opportunities, needs, and ability to participate in the Internet ecosystem. While the importance of gender relations and related factors are not always explicitly pointed out in the Study, they need to therefore be kept in mind.

Women and girls

Lastly, all references to 'women' in the report should be construed as including girls and anyone identifying as a woman or girl.

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43   See GEM's definitions of gender here: http://www.genderevaluation.net/gem/en/understanding_gem/genderanalysis.htm.

Part B: Reviewing multistakeholder approaches in principle

4. Trends in relevant literature

4.1 The Internet and multistakeholder participation

Multistakeholder participation and governance mechanisms may be a 'rather recent invention', but they have a longer tradition as an 'organizing principle and political practice'.[44] Such approaches are far from unique to Internet governance; with claims of their application and use especially prevalent in topics with cross-border or international relevance.[45] Examples include labour relations, environmental protection, finance, human rights, and sustainable development.

Where the Internet is concerned, multistakeholder participation in its governance seems to possibly be both intrinsic – and more complicated – than in many other instances of multistakeholder participation. The ways in which the Internet was designed has both allowed and disallowed specific types of behaviour online;[46] meaning that the actions that led to the creation of the Internet were already acts of governance (albeit most likely unintended[47]). Although some have argued that the Internet is free from any regulatory oversight[48] or jurisdictional restraints[49] and should remain so, the Internet internally was never entirely a rule-free nor a 'law-free zone', nor was it a different universe to external legal constraints.[50]

Due to its unique design and composition, many have argued that the Internet requires non-traditional forms of governance – and particularly governance forms encouraging the participation of more stakeholders in addition to governments (democratic or otherwise), which have been the key agent of governance in the Westphalian system of national states. The Internet is often cited as not only one of the prime examples of multistakeholder participation in governance,[51] but sometimes described as inherently 'multistakeholder'.[52] The Internet is defined by open, distributed, interconnected, participatory, and bottom-up processes[53] – features that match multistakeholder participation in specific regard to its governance. Vint Cerf, one of the authors of the Internet Protocol (IP), has similarly noted that:[54]

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44   Hofmann, 2016:29.
45   Maciel, 2014:99.
46   Weiss, 2008:xiv.
47   GCIG, 2016:8.
48   e.g. Barlow, 1996.
49   Johnson & Post, 1996; Maier, 2010; *Yahoo Inc. v LICRA* (2006).
50   Sunstein, 2001:139.
51   e.g. Belli, 2015:3; Kleinwächter, 2014:115; Milan & Hintz, 2014; Doria, 2013; Malcolm, 2008:520; Antonova, 2007:1.
52   Esterhuysen, 2014:57.
53   ISOC, 2016.
54   Cerf, 2011:78.

There is no question in my mind that the diversity of players in the Internet universe demands a multi-stakeholder approach to governance in the most general sense of the word.

The debate around how the Internet is or should be governed has in some ways evolved from a discussion of how/whether the Internet can be governed to one concerning 'whether there is (or should be) something new and different about the way we do so'.[55] Cerf's words 'in the most general sense of the word' are important, as they also underpin the view that an understanding of multistakeholder approaches should not be approached in a dogmatic manner. This is important to keep in mind as one investigates the way in which the notion of Internet governance has been understood from the time its working definition was drafted – as is done in the next section.

4.2   The evolution of multistakeholder participation in Internet governance

The demand for and value of multistakeholder participation in Internet governance was first explicitly expressed at the WSIS, which took place in two phases between 2003 (in Geneva, Switzerland, with a focus on principles) and 2005 (in Tunis, Tunisia, with a focus on implementation).[56] In the first part of this section, the WSIS deliberations are discussed, followed by an investigation of multistakeholder participation since WSIS.

4.2.1 The WSIS and Internet governance

The overarching objective of WSIS, as expressed in the Declaration of Principles, was to help 'build a people-centred, inclusive and development-oriented Information Society'.[57] WSIS was not only 'a significant inflection point'[58] for Internet governance, but also important in terms of a realization of the enabling role that the Internet and other information and communication technologies (ICTs) can play to support sustainable development – today reflected in the 2030 Agenda for Sustainable Development.[59]

WSIS and the Working Group on Internet Governance (WGIG), which developed thinking on Internet governance between WSIS' two sessions, should be regarded in its historical context. Some argue that there might have been discomfort at the time with the USA government's reserve authority in the management of domain names and "critical Internet resources" through the Internet Corporation for Assigned Names and Numbers (ICANN).[60] Others point to a more profound distrust of traditional concepts of public policy and related institutions' perceived inability to deal with the 'complex, globalized and interrelated challenges' pertaining to the Internet.[61] The WSIS process also signified, according to some authors, a transformation from a 'relatively closed system' of national and intergovernmental regulation to 'a more open ecosystem' with broader interaction and challenges caused as a result of the cross-border nature of the Internet itself.[62] One author takes the view that:[63]

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55   Mueller, 2010:1.
56   See CSTD/UNCTAD, 2015:142.
57   WSIS, 2003.
58   Mueller, 2010:13.
59   UNGA, 2015.
60   Raymond & DeNardis, 2015:587; DeNardis, 2014:62, 227; Mueller, 2010:11; Malcolm, 2008:335.
61   Maciel, 2014:99.
62   Calandro, Gillwald & Zingales, 2013:32.
63   Mueller, 2010:253.

> …[WSIS] was just the most public symptom of the Internet's profound impact on the global politics of communication and information.

WSIS' first phase led to an agreement upon process criteria for international Internet governance arrangements, noting that such arrangements should be 'multilateral, transparent, democratic, and with the full involvement of governments, the private sector, civil society, and international organizations'.[64] Used in this way, the term "*multilateral*" can be interpreted as equivalent to "multistakeholder"; unlike its use in other contexts where the term is used to contrast exclusively intergovernmental relations with "multistakeholder" arrangements in the sense of both governments and other actors involved.

Insight emerges from a study of approximately 30 initiatives between 1999 and 2015 that 'articulate a set of political rights, governance norms, and limitations on the exercise of power on the Internet'. One of the Study's observations is that the WSIS Principles are symptomatic of, at the time, 'a proliferation of documents with an explicit focus on international governance and which also address 'the broad policy implications at the intersection of digital technology and human rights'.[65]

The WGIG was established in 2004 by the UN Secretary-General in response to an inability during WSIS' first phase to reach consensus between those believing no new governance mechanisms for the Internet were required; proponents of a more open, transnational and pluralistic multistakeholder approach; and those who preferred traditional governmental and/or intergovernmental controls.[66] (These are themes that have continued at the root of many disagreements about the governance of the Internet.) The WGIG consisted of 'a balance of all stakeholder groups and geographical regions' as well as 'a reasonably broad demographic and gender distribution',[67] and has been described as one of the first examples of multistakeholder participation in Internet governance because of its composition. Participants and commentators differ on whether it was a *positive* example of multistakeholder participation, although impressions in the literature of stakeholder participation in WGIG tend to be more positive than in WSIS.[68]

Importantly, the WGIG was responsible for drafting a first (and lasting) working definition of Internet governance, as explained in Part A above. While the definition is not without criticism (discussed below), the WGIG's definition and WSIS' outcomes more generally have still been described as substantial contributions to both the meaning of Internet governance and a more general understanding of the importance of multistakeholder participation in the Internet's governance.[69]

The WSIS definition, along with other characteristics, benefits and challenges with multistakeholder participation, is discussed in more detail below. First, the ways in which multistakeholder participation has been approached and examples of how it has been applied since WSIS are briefly discussed.

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64   WSIS, 2003.
65   Gill, Redeker & Gasser, 2015:10-11.
66   Calandro, Gillwald & Zingales, 2013:32; Mueller, 2010:10; Drake, 2005:254.
67   Malcolm, 2008:336.
68   c.f. Raymond & DeNardis, 2015:587; Calandro, Gillwald & Zingales, 2013:9; Musiani, 2013:8; Lucero, 2011:37; Mueller, 2010:10; Souter, 2007; MacLean, 2005:23.
69   e.g. Malcolm, 2008:334; Drake, 2005:255; MacLean, 2005:22.

4.2.2 Multistakeholder participation beyond WSIS

The importance of multistakeholder participation in Internet governance arrangements has not only influenced discourses among Internet governance organizations since WSIS,[70] but has also translated into several other commitments evident in theory (e.g. various declarations and documents) and in practice (e.g. in activities or events where multistakeholder participation was effectively encouraged). These commitments and incidences are briefly investigated in this section before considering contemporary challenges facing the notion of multistakeholder participation.

a) Recognition in theory

Since WSIS, various international and multilateral organizations have endorsed the need for multistakeholder participation, including the Organization for Economic Cooperation and Development (OECD) in 2008 and 2011; UNESCO at a WSIS+10 Review event in 2014; the Council of Europe in 2009; the International Telecommunication Union (ITU) in 2010 and 2014; the G8 at Deauville in 2011; and the African Union in 2014.[71] At the UN General Assembly's ten-year review of WSIS in 2015, the continued relevance of both the model and the working definition was confirmed, with the explicit addition of technical, academic and 'all other relevant stakeholders':[72]

> *We reaffirm, moreover, the value and principles of multi-stakeholder cooperation and engagement that have characterized the World Summit on the Information Society process since its inception, recognizing that effective participation, partnership and cooperation of Governments, the private sector, civil society, international organizations, the technical and academic communities and all other relevant stakeholders, within their respective roles and responsibilities, especially with balanced representation from developing countries, has been and continues to be vital in developing the information society.*

Besides these developments, commitments to multistakeholder principles now 'appear in almost every institutional agreement on ICTs or the Internet'.[73] In the aforementioned study, the authors identify broad themes and categories in the 30 initiatives they mapped. They identify multistakeholder and participatory governance as a frequent theme in such initiatives or documents, noting that the general gist of the content indicates agreement that because the 'Internet is a shared, collective resource for public benefit', all 'those affected by decisions about Internet governance should have a right to participation and representation in that process'.[74] They note that the documents indicate that 'the need for government intervention, protection of vulnerable groups, and international cooperation in the realm of Internet governance has become a source of consensus'.[75]

This observation is also reflected in other literature. The GCIG, for instance, explains that the Internet 'challenges traditional hierarchies and cultural boundaries' and that its governance must therefore be based on 'both formal mechanisms and evolving norms'.[76] UNESCO's Internet Universality principles of Rights, Openness, Accessibility and Multistakeholder

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70   Hofmann, 2016:35.
71   ISOC, 2016; Belli, 2015:5; WSIS+10, 2014; DeNardis, 2014:228; Kleinwächter, 2011:8, Kummer, 2014:26.
72   At para 3. UNGA, 2015.
73   Souter, 2017c.
74   Gill, Redeker & Gasser, 2015:8.
75   *ibid*, 18.
76   GCIG, 2016:iv.

participation furthermore suggest that any decision on balancing rights, which is normal to constitutional governance, needs to take cognisance of not only traditional methods such as proportionality and necessity, but also the Internet-specificities of how such balancing relates to Openness, Accessibility and Multistakeholder participation.[77]

Another study that forms part of UNESCO's Internet Freedom series, *Principles for governing the Internet: A comparative analysis*, analyses more than 50 declarations, guidelines, and frameworks developed in the past 25 years that contain Internet governance principles. It finds that approximately 70 percent of the documents reviewed (39 out of 52) address the issue of participation in Internet policy decision-making matters. While many of the documents analysed indicate broad recognition of the importance of participant diversity, transparency, accountability and inclusiveness, 'most of the statements considered are lacking an extensive analysis of the different facets of multistakeholderism'. The study explains that:[78]

> Only in recent years, the declarations, guidelines, and frameworks started to consider multistakeholder participation in more detail; even if the contours of possible models are not yet clear and the terminology is not settled, the key message can be seen in the need to increase the participation of more societal voices.

b) Recognition in practice: some examples

Besides commitments to multistakeholder participation in declarations and documents, there have also been noteworthy practical applications of multistakeholder participation in the past ten years. One such event, which not only also saw the endorsement of certain Internet governance principles but also impacted Internet governance discourses more broadly, was the 2014 NETmundialmeeting.[79] Convened by the then-president of Brazil, Dilma Rousseff, in conjunction with ICANN, NETmundial reiterated the need to involve more stakeholders in Internet governance processes in a bottom-up manner.[80]

Among other things, NETmundial issued a set of Internet governance process principles, including one that acknowledges that the roles and responsibilities of stakeholders should be interpreted flexibly:[81]

> Internet governance should be built on democratic, multistakeholder processes, ensuring the meaningful and accountable participation of all stakeholders, including governments, the private sector, civil society, the technical community, the academic community and users. The respective roles and responsibilities of stakeholders should be interpreted in a flexible manner with reference to the issue under discussion.

Another pertinent experience in regard to Internet governance arrangements is the transition of ICANN's Internet Assigned Numbers Authority (IANA) functions from the

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77   UNESCO, 2013b.
78   *ibid*, 64.
79   The NETmundial meeting must be distinguished from the contentious NETmundial Initiative, which was launched after the NETmundial meeting with the aim of providing "a platform that helps catalyze practical cooperation between all stakeholders in order to address Internet issues and advance the implementation of the NETmundial Principles and Roadmap". See website here: http://netmundial.org/initiative-basics.
80   NETmundial, 2014:10.
81   *ibid*, 6.

USA government to a (multistakeholder) institution.[82] Key aspects of this were finalised in October 2016. [83] Describing this 'groundbreaking effort'[84] as 'a new phase in the ongoing development of multi-stakeholder Internet governance', the GCIG notes that this 'test of the efficacy of the multi-stakeholder model' also debuted an adaptable new model of Internet governance wherein legitimacy arises from the process itself through the full engagement of stakeholder groups. Despite extreme differences in terms of the groups' internal structures and workings[85]:

> … *each was required to find a way to collaborate in a complex, multi-layered process, and each succeeded.*

At the same time, different cases relevant to digital communications norms and policies have had different resonances for various, often justifiable, reasons. These concern the extent to which they have comprised only a single stakeholder grouping or a limited assembly of stakeholder groups, as distinct from being accessed by the range of interested actors. Some examples include:

- The 2012 World Conference on International Telecommunications (WCIT)[86] process was primarily limited to Member States of the International Telecommunication Union (ITU), with some participation by telecommunication(s) companies (telcos) and sector members such as ISOC.

- Discussions of norms for cyber conflict in the Group of Government Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (UN GGE) have been led solely by Member State representatives. The group was established by the UN General Assembly in 2004 with five working groups being created to date (the latest for the period 2016/17) to examine existing and potential threats arising from the use of ICTs by states.[87]

- The industry-based Telecommunications Industry Dialogue[88] was launched in 2008 and consists of eight major telcos that focus on addressing freedom of expression and privacy rights in the telecommunications sector in the context of the UN Guiding Principles on Business and Human Rights. In 2016, seven of the Industry Dialogue's eight members decided to join the multistakeholder Global Network Initiative (GNI) to jointly advance freedom of expression and privacy.[89]

- The aforesaid GNI on Protecting and Advancing Freedom of Expression and Privacy in ICTs was founded in 2008 and is a more encompassing multistakeholder network with participants from the private sector (particularly ICT companies), academics, investors, and civil society organizations but not governments. It aims to support ICT

82   While the IANA transition serves as a strong example of multistakeholder collaboration, it was not selected as a case study due to ICANN's role in supporting the production of this Study. As one reviewer furthermore noted, some aspects related to the transition, in particular Workstream 2 on jurisdiction, are yet to be finalised.
83   ICANN, 2016.
84   GCIG, 2016:84.
85   GCIG, 2016:85.
86   See: http://www.itu.int/en/wcit-12/Pages/default.aspx.
87   See a useful summary here: https://dig.watch/processes/ungge.
88   See: http://www.telecomindustrydialogue.org.
89   Read more about the partnership here: http://www.telecomindustrydialogue.org/the-global-network-initiative-and-the-telecommunications-industry-dialogue-join-forces-to-advance-freedom-of-expression-and-privacy/.

companies to navigate challenges that may impact human rights, and has created a framework of principles and implementation guidelines based on international human rights standards and a high-level forum to deliberate on the challenges of corporate responsibility in the ICT sector.[90]

Part C below examines, besides NETmundial and the IANA transition, other examples of how the notion of multistakeholder participation has been interpreted in practice. Before delving deeper into these cases, however, it is important to highlight some questions and concerns about multistakeholder participation that have remained or arisen since WSIS.

4.3   To what does (Internet) governance apply?

To better understand multistakeholder participation, one must start with the definition of Internet governance drafted by the WGIG as briefly addressed in Part A above. The broad definition,[91] which signals the elements of governance across the range of (interconnected) layers of decision-making (i.e. from norms and principles to rules and procedures to programmes), has implications for, among other things, the different objects to which the notion of multistakeholder participation may apply (for example, to norms as distinct from rules, etc.).

Diverse facets in the spectrum of decision-making activities that shape governance may entail different arrangements of participants and power at each component of the spectrum. It is clear, for instance, that not all arrangements amount to fully-fledged multistakeholder ones. This would include cases when government delegations are made up of different stakeholders, which is different to those cases of exclusive and official governmental composition. A mixed membership of delegations is more likely to enrich processes than when a delegation relies solely on the expertise of officials. Nevertheless, accountability of mixed-composition delegations is still to one centre (government), and such a delegation still ultimately engages as representative of the governmental constituency.

While some prefer to limit the concept of Internet governance to the technical layer of the network, it seems artificial to consider this aspect separately from other layers. The example of governance where privacy is concerned is a case in point. Privacy operates at all levels in an interconnected way, even if there may be fragmented governance - such as privacy regulation via data protection policies which operate in disjuncture with privacy-by-design in software development. It is for this reason that Internet governance is best understood as a holistic approach that extends beyond the technical dimension. The objects of governance decision-making may also vary, for example, from processes (technical standards, design of algorithms, deployment of encryption, Internet of Things (IoT) connections, etc.) through to people and their behaviours (e.g. bloggers, advertisers, engineers, government officials, privacy commissioners, etc.).

Given this complexity, it is now worth assessing the diverse stakeholder groups and diverse understandings of inclusive multistakeholder representation.

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90   Read more about the GNI here: https://www.globalnetworkinitiative.org.
91   WSIS, 2005.

4.3.1 Who has a stake in Internet governance?

The WSIS definition cites very specific stakeholder groups, namely governments, the private sector, and civil society. This signals that while governments are supposed to represent the combined interests of their States, they also have particular self-interests, and further that the Internet engages very specific interests that may otherwise be neglected or over-ridden in the way that governments may interpret general interests. Consequently, Internet governance is not a matter for governments alone, but governments are recognised as one of several stakeholders – with its participation based on its role which in turn is not seen to subsume the roles and interests of others. Such participation does not mean forfeiting the role of government, but of placing it in an interactive context that can feed into broader governance issues for the wider range of actors, as well as inform the specific actions of a State in regard to the appropriate realm in which it sets certain rules and regulations.

Some observers have expressed concerns about what they see as the primary or too 'prominent'[92] listing of 'governments' in the definition. Others argue against the subsequent inclusion of technical and academic communities, saying that these should have been recognized as cross-cutting and not distinct stakeholder groups.[93] Some have further pointed out that categorising stakeholders is not useful without scrutinising the diverse interests that diverse stakeholders have in the outcomes of multistakeholder processes,[94] and that the classification is inadequate because it obscures diversity, perspectives, priorities, and conflict of interests within and amongst stakeholder groups.[95] One writer, for instance, compares the classification with the world's continents, and points out:[96]

> Yes, there are common characteristics/challenges/priorities across, say, Europe or Asia – but there are also huge differences between, say, Ireland and Ukraine, or Egypt and South Africa. So it is, for example, within the private sector and within civil society.

What this points to is that actual stakeholder groups and interests are not fixed, and that fissures may mean that particular issues and occasions evoke variations within (and between entities) even if they may share broad interests at a different level. An illustration of different interests within the private sector is evident where network (net) neutrality is concerned. Telcos and others involved in broadband supply tend to argue against net neutrality, in contrast to application and content providers, and smaller internet companies, who favour net neutrality, for instance.

4.3.2 How is multistakeholder participation understood today?

A simplistic application of the WSIS stakeholder categories can lead to 'systematic ignorance of the discrepancies in power, capacities and resources' among different stakeholders.[97] The need to 'think outside the WSIS box'[98] to ensure a more nuanced understanding of participation demands considering, for instance, the specific issue at hand and which specific stakeholder interests should be involved in it.

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92   DeNardis, 2014:38.
93   Doria, 2013; Maciel & Affonso, 2011:5.
94   Belli, 2015:5.
95   Souter, 2017b.
96   *ibid*.
97   Esterhuysen, 2014:56-7.
98   Souter, 2017b.

Differences between developed and developing countries among the government stakeholder group, and/or variances between supply and demand side businesses in the private sector stakeholder group, are some examples.

The question of how representative given actors are of particular stakeholder sectors is also something that can affect who participates in Internet governance issues. An example illustrating this took place at UNESCO'S 'CONNECTing the dots' conference in 2015, where some participants sought specificity around the definition of multistakeholder engagement, with one person arguing that it should be defined as 'democratic multistakeholder' participation. Most conference participants advocated a more flexible view whereby the multistakeholder modality could accommodate different configurations, in which some engagements might be led by technical experts, others by civil society, or industry or governments, depending on the issue at hand, and yet always striving to involve all relevant stakeholders in their various roles.

The important issue was less proportionality in terms of democratic representation, and more one of seeking to enable access to multistakeholder processes, especially for individuals and groups lacking the resources to take part and contribute their views.[99] In this perspective, multistakeholder participation is an attempt to ensure equitable access to different interests, without being conflated with processes of democratic elections as such. The aim is to take decisions through the interaction of participating interests, rather than resorting to power being exercised by a single sector, interest group or even representatives of a simple majority position. Evidently, this may not be possible or even desirable for every aspect in Internet governance. But such interaction has proved successful in many cases.

4.3.3 What does 'in their respective roles' mean?

Another contested aspect of the WSIS definition – and of multistakeholder approaches more generally – is the term 'in their respective roles'. The roles and responsibilities assigned by WSIS are defined in paragraph 35 of the Tunis Agenda, which affirms that Internet governance concerns both technical and public policy issues and 'should involve all stakeholders'. It further delineates roles and responsibilities for each stakeholder group. The 'sovereign right' of policy authority for international Internet-related public policy issues belongs to States, while private sector should continue to have an 'important role' in developing the Internet on 'technical and economic fields'. International organizations are tasked with the development of Internet-related technical standards and relevant policies, while civil society should continue to play an 'important role on Internet matters, especially at community level'. Intergovernmental organizations, in turn, have 'a facilitating role' in coordinating public policy issues of relevance.[100]

Some feel that the definition duly 'gives all stakeholders a place',[101] but others have argued that 'one of the unfinished tasks of Internet governance'[102] is to better unpack and define the notion of 'respective rights and responsibilities,[103] while recognizing 'the dynamic nature of respective roles of the stakeholders in Internet governance'.[104] One author points out that:[105]

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99   UNESCO, 2015:33.

100   WSIS, 2005.

101   Kleinwächter, 2011:7.

102   Doria, 2013.

103   e.g. Nwakanma, 2014:110; Esterhuysen, 2011:58.

104   Doria, 2013.

105   Maciel & Affonso, 2011:5.

…the lack of an agreed parameter that would guide the roles and responsibilities of actors has been one of main reasons why public interest and private interest have been mixed and given similar weight on the discussions about internet governance.

On the other hand, complete rigidity and hierarchy about where and when power roles come into play in the development of policy, norms, rules, etc., and the implementation thereof, is not necessarily a helpful formula for optimising the value that each interest can contribute to the governance issue at hand, even if different roles and responsibilities do come into play at various moments. Flexibility in multistakeholder processes is not incompatible with the broad respective roles of stakeholders and their domain of authority or influence on the Internet.

4.4   What are the benefits of multistakeholder participation?

Multistakeholder approaches tend to be favoured either because supporters want a change in governance (usually by diluting the power of governments and/or companies) or they want to improve the Internet by adding diversity and expertise and by encouraging consensus-building on the issues being governed.[106] Unlike some other traditional policy processes, multistakeholder methods at least ostensibly endorse principles like openness, transparency, and the broad-based collaboration and equal participation of those affected[107] in 'decision-finding (and possibly decision-making)'[108] on a particular issue.[109] ISOC takes the view that multistakeholder approaches offer a set of tools or practices that share one foundational understanding, namely by having 'individuals and organizations from different realms participating alongside each other to share ideas or develop policy.'[110]

Besides sharing ideas and taking decisions, one core justification claimed for multistakeholder approaches is that they lead to 'better, more inclusive Internet governance'[111] that 'enhances transparency' and helps decision-makers take into account diverse viewpoints[112] in a way that is suggested can even help to deepen democracy.[113]

In summary, it is often argued that multistakeholder participation is better, at least in principle, 'than governance by governments alone', as it can uphold the interests of non-elected actors in relation to governments (most of which are elected, although others not). In addition, governments may lack the necessary competence and/or adequate political will in relation to expert and benign Internet governance.[114] Multistakeholder participation more broadly can be posited as a way to prevent capture of the Internet by one constituency to the expense of another – whether this is capture by various state actors and their interstate organizations, or by private sector interests nationally or internationally. In other words, governments themselves have an interest in multistakeholder modalities as a way to prevent Internet capture by other power centres.

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106   Souter, 2017c.
107   World Bank, 2016:293; Gill, Redecker & Gasser, 2015:8.
108   Earth Summit, 2002, cited in Musiani, 2013:2.
109   e.g. Verhulst, 2016:15; World Bank, 2016:36.
110   ISOC, 2016.
111   Esterhuysen, 2011:58.
112   Hellmonds, 2011:46.
113   de la Chapelle, 2011; Esterhuysen, 2011:58.
114   Souter, 2017a.

In general, the participation of more stakeholders can inject expertise and reflect a diversity of needs.[115] The legitimacy thus ascribed to multistakeholder decision-making is closely tied to 'the expectation of a higher quality of policy outcomes',[116] or simply 'better governance'.[117]

4.5 Does multistakeholder participation meet expectations for better outcomes?

Besides positive examples like NETmundial, the IANA transition, and others investigated in Part C below, the available literature indicates that multistakeholder approaches in Internet governance sometimes also do not deliver agreed outcomes.[118] Such disappointments have become more apparent as the Internet becomes more widely available[119] and more commercial as compared to what it used to be when it was first developed, or when WSIS first explicitly endorsed multistakeholder approaches for its governance. The rise of problems such as online hate speech, "fake news", privacy intrusions, trolling, and cyber-security threats has also challenged the ability of multistakeholder modalities to find swift solutions to thorny issues.

4.5.1 Has multistakeholder participation become a mere fiction?

More and more organizations and processes in the Internet governance arena today claim to adhere to principles common to multistakeholder participation and to therefore 'be multistakeholder'. Authors and stakeholders in fact warn that the notion of multistakeholder participation in Internet governance is at risk of becoming 'overused'[120] and evolving into, among other things, a smokescreen,[121] a mere slogan,[122] a catchphrase,[123] a new 'ism',[124] a buzzword,[125] and/or a proxy[126] for something not quite as multistakeholder as it seems to be.[127] One author, for instance, warns that the 'multistakeholder Zeitgeist' has 'elevated the concept to a value in itself' while failing to critically examine what it is obfuscating.[128] Another points out that:[129]

> *Too many initiatives are being judged on whether they are multistakeholder rather than on whether they're effective or whether they effectively represent the different communities that need to be involved. The real test should not be who's allowed in the room; it should be whether the decisions that result are genuinely better than those that would be made by other means.*

On a more positive note, even if the concept of multistakeholder participation may on occasion have become little more than an end in itself, one observer points out that it may

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115   *ibid.*
116   Hofmann, 2016:33.
117   Souter, 2017a.
118   Souter, 2017c; GCIG, 2016:33; Maciel, 2014:101; Milan & Hintz, 2014; Doria, 2013; Mueller, 2010.
119   e.g. Souter, 2012:2.
120   GCIG, 2016:9.
121   Milan & Hintz, 2014.
122   Belli, 2015:10.
123   Verhulst, 2016:6.
124   Mueller, 2010:264
125   Raymond & DeNardis, 2014:575.
126   DeNardis, 2014.
127   e.g. Hofmann, 2016:33; Raymond & DeNardis, 2015:603; Mueller, 2010: 265.
128   DeNardis, 2014.
129   Souter, 2017c.

also be performative in the sense that many stakeholders 'identify with its tale of inclusion, diversity and bottom-up policymaking' and therefore 'strive to make it a reality'.[130]

At the same time, it is evident that questions about multistakeholder participation in Internet governance not only indicate cases of disappointing process outcomes,[131] but are symptomatic of concerns regarding discrepancies between theory and its implementation, or, as the same observer argues, 'incongruences between the ideals driving the process and the messy reality'.[132]

4.5.2 What are some of the challenges for multistakeholder mechanisms?

The reality of multistakeholder participation – including positive as well as disappointing results – is investigated in more detail in the case studies in Part C below. In general, however, the literature indicates that the reality of multistakeholder participation is sometimes challenged by issues that relate both to the nature of the Internet itself – including jurisdiction and enforcement,[133] scale, and the pace at which it changes and grows[134] – as well as challenges pertaining to its governance.

For example, the literature indicates that there is continued disagreement about what the definition of multistakeholder participation in governance actually is or should be (as was mentioned above),[135] issues of due recognition,[136] the scope of participation and unequal nature of representation – particularly from developing countries and civil society participants,[137] the (in)ability to reach consensus,[138] the exclusivity of some ostensibly inclusive processes and the unwillingness to listen to different views,[139] attempts to establish legitimacy,[140] the sometimes slow pace of multistakeholder mechanisms,[141] as well as the increasing number of stakeholders and complexity of challenges involved as the importance of the Internet to everyday life and economies becomes increasingly clear.[142]

All these challenges are significant and sometimes they differ depending on the context and issue or topic at hand. However, three general concerns that are frequently mentioned in the literature, relate to (a) the conspicuous dominance or absence of certain participants, especially the private sector; (b) how multistakeholder mechanisms should be balanced with multilateral arrangements; and (c) what the relationship between Internet governance at national and international levels is or should be. These challenges are discussed in the next three sections before turning to future developments.

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130   Hofmann, 2016:30.
131   e.g. Raymond & DeNardis, 2015; Kummer, 2014:25; Milan & Hintz, 2014.
132   Hofmann, 2016:32.
133   Satola, 2007:56.
134   *The Economist*, 2016; ISOC, 2016; de la Chapelle, 2011; Malcolm 2008:18, 90.
135   c.f. Hofmann, 2016:33; Verhulst, 2016:6.
136   Collins, 2007:1.
137   Souter, 2017e; Verhulst, 2016; Belli, 2015: 11; Dickinson, 2014:67; Esterhuysen, 2014: 60; Doria, 2013; Calandro, Gillwald & Zingales, 2013:5; Maciel & Affonso, 2011:17; Drake, 2011:69; Mansell & Raboy, 2011:12; Cogburn, 2006:62; Siganda, 2005:155.
138   Mueller & Wagner, 2014:12; Mueller, Mathiason & Klein, 2007:237.
139   Souter, 2017c.
140   Collins, 2007:16.
141   Souter, 2017c.
142   c.f. GCIG, 2016:8; World Bank, 2016:37; Raymond & DeNardis, 2015:609; Wagner, 2014; de la Chapelle, 2011; Mueller, 2010:253.

a)   What happens when some stakeholders become or are too dominant or powerful?

One challenge to the legitimacy of multistakeholder approaches to Internet governance is that some stakeholders support the notion of multistakeholder participation in some areas while asserting their dominance in others. States may promote multistakeholder participation in some issues (e.g. law-making, for public participation, and/or for education on certain issues), but reserve unilateral decision-making for cyber-security policy, for instance. Private stakeholders, in some cases, are becoming so powerful (in terms of their role in governing aspects of the Internet) that they do not need to participate in multistakeholder mechanisms, but take decisions (e.g. on terms of service) entirely alone or only in conjunction with, for example, a government. Thus, many of 'the most important decisions' are start and end within boardrooms and research and development facilities of global businesses.[143] The effect is that other interests, not least users, government, civil society and academia, are often excluded from prior discussion or post-assessment of the decision-making of a particular entity.

Other examples where processes – even at the normative level - include clandestine cooperation between governments and private companies under the rubric of protecting citizens from terrorism; or the use of covert surveillance and other cyber tactics which could constrain digital innovation and the free flow of information and disproportionly limit the right to privacy.[144]

b)   What is the relationship between multistakeholder and multilateral governance mechanisms?

The ways in which multilateral and multistakeholder approaches might be mutually accommodated are rather ill-defined. There have, for instance, been continued negotiations since WSIS about what 'enhanced cooperation'[145] in Internet governance means: whether it refers to inter-governmental co-operation or whether it has a wider remit concerning all stakeholders[146] (an issue that is also relevant to the next topic, which looks at governments' roles in Internet governance).

One author stresses that multistakeholder approaches should not compete with multilateral approaches (or the governance role of state institutions, particularly those representing an electorate), but should work towards a harmonious relationship.[147] The two, however, can be posited as being co-dependent:[148]

> *Multilateral institutions benefit from multistakeholder engagement in them, because it brings greater expertise and diversity to bear on complex problems whose solutions need widespread consent as well as quality decision-making.*

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143   Souter, 2017c.
144   Kovacs, 2017; Shephard, 2016; GCIG, 2016:10.
145   Paragrah 71 of the Tunis Agenda called for stakeholders to join in the 'process towards enhanced cooperation involving all relevant organizations and all stakeholders in their respective roles' (WSIS, 2005). A more in-depth discussion of the complex issue of enhanced cooperation is beyond the scope of this paper.
146   e.g. Souter, 2016; Kummer, 2012.
147   Souter, 2017c.
148   Souter, 2017d.

c)   What are governments' roles in Internet governance?

Many concerns about achieving legitimacy in Internet governance arrangements relate to power imbalances in ostensibly equal Internet governance mechanisms. With most nations or governments being 'latecomers' to the process of defining and guiding Internet governance,[149] there have also been arguments that most governments have neither the capacity nor the capability (also due to jurisdictional constraints[150]) to regulate the Internet.[151] Others, in turn, favour multilateral governance arrangements where governments and intergovernmental organizations would play a more dominant role.[152]

Today, a number of governance issues pertaining to the Internet are increasingly being decided at regional and national level. Some fear that national governments and courts have embarked on a 'legal arms race' to 'impose a maze of national and regional rules, often conflicting, in the digital realm'.[153] While such forms of governance can help to accommodate 'real and important differences among peoples in different places', they can also enable some stakeholders to replicate national violations of rights in the online arena.[154]

An increasingly frequent[155] example of a crisis of governance at national levels is that of Internet shutdowns, or intentional disruptions of the Internet. Internet shutdowns prevent access to everything from select (social media) services to entire networks. Less extreme but still highly significant is blocking to restrict access to information (or related services) that is either illegal in a particular jurisdiction, is considered a threat to public order, or is objectionable for a particular audience.[156] In many cases, blocking lacks fulfilment of the international standards of legality, necessity, proportionality, transparency and legitimate purpose.

In May 2015, Internet shutdowns or 'kill switches' were condemned by the UN Special Rapporteur on Freedom of Opinion and Expression and representatives from the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS), and the African Commission on Human and Peoples' Rights (ACHPR).[157] And in 2016, the UNHRC unequivocally condemned measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and called upon all states to refrain from and cease such measures.[158] Yet such tools are increasingly being questioned as to their use as political tools to stifle legitimate dissent or citizen debate.

Some authors have warned that increasing tensions between national policy and global norms may indicate a loss of trust among nations. These tensions have raised questions about the efficacy of international Internet governance arrangements, and may hamper the positive potential of the Internet for innovation and the enjoyment of human rights.[159] While

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149   With the exception of the US government, of course.
150   The Internet & Jurisdiction Policy Network, for instance, aims to address jurisdiction challenges by enabling the development of shared and transnational cooperation frameworks and policy standards. See: https://www.internetjurisdiction.net/about/mission.
151   Lessig, 2006:3.
152   World Bank, 2016:36.
153   *The Economist*, 2016.
154   Goldsmith & Wu, 2006:viii.
155   ISOC, 2017a; AccessNow, n.d.
156   ISOC, 2017b.
157   UNHCR, 2015.
158   Para 10, UNHCR, 2016.
159   World Bank, 2016:36; GCIG, 2016:32.

states do have sovereign right of policy authority (as also recognised by WSIS), unilateral decisions outside of a multistakeholder process miss out on the likelihood of other interests (including transnational) being taken into account. In turn, this can weaken the legitimacy needed for the implementation of policy decisions.

4.6   The future of multistakeholder participation in Internet governance

Failure to understand and/or address some of the challenges affecting multistakeholder participation in Internet governance, its expectations and its credibility, could have negative consequences for the future of the Internet and its developmental potential. A certain level of global cooperation is required between governments and other stakeholders to keep the Internet operational[160] and global, and to prevent it from fracturing or 'splintering'[161] – especially at a time when the Internet is becoming increasingly important to everyday life.[162]

In UNESCO's *Keystones* report, it was concluded that multistakeholder involvement as well as research is necessary to better foresee and reconcile conflicts and challenges that:[163]

> …*could result in an increasing compartmentalization of the Internet, such as increasing control over the Internet by national governments and regulators in ways that undermine its open and trusted global nature.*

It is for this reason, perhaps, that the Global Commission on Internet Governance (GCIG) recently argued that Internet governance has become 'one of the most pressing global public policy issues of our time'.[164] As more and more users gain access to the Internet, governance choices urgently have to be made to determine what kind of future the Internet will have – as well as whether it will live up to expectations for supporting sustainable development as expressed in the 2030 Agenda for Sustainable Development[165] and the protection and promotion of human rights online (among other things). The GCIG argues:[166]

> … *for this future to deliver its promise of greater digital freedom, security, trustworthiness and accessibility for all, governance of the Internet across all its dimensions must be an obvious priority around the world.*

The fact that the concept of multistakeholder participation is sufficiently flexible to evolve to cater for the changing requirements and challenges of Internet governance is arguably one of its strengths.[167] Yet even with the ability to evolve, multistakeholder approaches need to exhibit certain values – e.g. the ability and willingness to include diverse stakeholders in a collaborative manner; the need to be open, accessible, transparent and accountable – in order to be considered legitimate measures of shaping norms, gaining consensus or making decisions regarding a particular problem or issue related to Internet governance.

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160   Raymond & DeNardis, 2015:586.
161   World Bank, 2016:296; Drake, Cerf & Kleinwächter, 2016.
162   Raymond & DeNardis, 2015:609.
163   UNESCO, 2015b:79.
164   GCIG, 2016:i.
165   c.f. UNGA, 2015.
166   GCIG, 2016:iii.
167   World Bank, 2016:296.

Meeting these needs may be more difficult in theory than in practice, as is illustrated in the next part, which investigates the application of multistakeholder participation measures in practice in diverse cases, from a global initiative to cases in South Korea, Brazil, and Kenya.

Part C: The application of multistakeholder theory in practice

5. Introduction

Because theory on multistakeholder participation is often different from how such approaches are implemented in practice, this Study also investigates the ways in which multistakeholder participation has been interpreted in diverse instances of Internet governance. The four case studies in this section focus primarily on examples of multistakeholder participation in Internet governance that in effect correspond to UNESCO's concept of Internet Universality (including the need for openness, accessibility, and a human rights-based Internet, summarised as the R.O.A.M. principles).

The summaries for each case assume a narrative approach to reflect processes, general lessons, achievements, and other observations specific to each case. While the cases are very different, common trends and lessons are extracted in the final part of this Study, Part D. These cover Kenya, Brazil, South Korea, and a global multistakeholder initiative under the auspices of the IGF.

6. The case of KICTANet

6.1 Introduction

The WSIS was not only influential in creating the IGF (discussed in more detail below), outlining a working definition for Internet governance, and recognising the importance of multistakeholder participation (among other things). It also stimulated multistakeholder approaches for Internet policy formulation at national levels.[168]

One noteworthy example of this is found in Kenya,[169] whose government included non-governmental stakeholders in its WSIS delegations and also contributed prominently to the deliberations.[170] Kenya is widely regarded as a leading developing country participant in the global Internet governance field and has one of the most vibrant Internet governance communities in Africa.[171] ICTs have also contributed substantially to the growth of Kenya's economy, reportedly having been responsible for up to one quarter of its gross domestic product (GDP) over the past ten years.[172] Two writers recently argued that:[173]

> When historians write Africa's digital story, Kenya will likely assume its place as the cradle of [the] ICT revolution on the continent.

168   Adam, James, Munyua & Wanjira, 2007:6; APC & Third World Institute, 2007:165.
169   Souter & Kerrets-Makau, 2012:21.
170   Interview, Munyua, 2017; Souter & Kerrets-Makau, 2012:21.
171   Souter & Kerrets-Makau, 2012:76.
172   Munyua, 2016:206.
173   Ndemo & Weiss, 2017:4.

Referring to a country which once banned the use of computers in public offices 'for fear that the new technology would take away secretarial jobs',[174] this is a rather significant claim to make. Kenya's ICT evolution, explains Professor Bitange Ndemo, who previously served as Kenya's Permanent Secretary for ICT, was catalysed during President Mwai Kibai's administration (2003-2013).[175] This 'golden decade'[176] for ICT innovation spurred numerous policy developments in the country's ICT sector, along with corresponding success stories like the innovative mobile financial service M-PESA.[177] It saw the creation of not only the world's first national and regional IGF initiatives,[178] but also an oft-lauded[179] multistakeholder platform for deliberation on policy and other developments pertaining to the ICT sector in October 2004, the Kenya ICT Action Network (KICTANet), which is the subject of this case study.[180]

6.2   'Let's talk though we may not agree'

In the early 2000s, it became clear that Kenya needed a new national ICT policy framework that would not only deepen liberalisation efforts, but would be more capable of addressing new challenges such as convergence in the sector.[181] Yet the civil society and private sector stakeholders who could work with and lobby government for such a framework were 'pulling in different directions'.[182] As Muriuki Mureithi, one of KICTANet's founders, explains:[183]

> Multiple players lobbying for a new ICT policy ended with divergent perspectives and strategies, resulting in loss of synergy.

Alice Munyua, who was part of Kenya's civil society delegation to WSIS, explains that shortly after WSIS she was commissioned to support the development of Kenya's ICT sector as a part of Catalysing Access to ICT in Africa (CATIA), a development programme which was supported by the UK Department for International Development (DFID). Recognizing the ICT policy gap in Kenya, Munyua commissioned research to determine which stakeholders would need to be consulted or engaged in developing a new ICT policy for the country.[184] As she later advised in a co-written volume:[185]

> It is useful to carry out a stakeholder analysis at the beginning of a multi-stakeholder process to ensure that there is a clear understanding of who should be involved in the process, to what extent, and at what time during the process.

Using the results of the Kenya stakeholder analysis, participants from the media, business, civil society, academic, and development sectors were invited to an initial meeting in

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174   In 1983. Ndemo & Weiss, 2017:5.
175   Ndemo, 2017:341.
176   Ndemo & Weisser, 2017:xxiii.
177   Ndemo, 2017:371.
178   Souter & Kerrets-Makau, 2012:21.
179   e.g. Ndemo, 2017:354; Souter & Kerrets-Makau, 2012:50; Adam, James, Munyua & Wanjira, 2007:28; APC & Third World Institute, 2007:166; Mureithi, 2007:ii.
180   Rather than delve into the specifics of what KICTANet does and has achieved, this investigation looks at the organization and considers, in general terms, the way in which it has evolved since its creation.
181   Mureithi, 2007:6; APC, 2007:165; Adam, James, Munyua & Wanjira, 2007:6.
182   Adam, James, Munyua & Wanjira, 2007:28.
183   Mureithi, 2007:6.
184   Interview, Munyua, 2017.
185   Adam, James, Munyua & Wanjira, 2007:11.

October 2004.[186] KICTANet was created as a loose alliance[187] at this meeting with the specific aim of developing an ICT policy framework for the country.[188] It was specifically designed to welcome multistakeholder participation due to the 'perceived strength and effectiveness in joint collaborative policy advocacy activities, which would be based on pooling skills and resources,'[189] as opposed to wasting resources in 'competing, overlapping advocacy'.[190] Its operating slogan was the title of this section, 'let's talk though we may not agree'. [191]

Various interviewees point out that the network's creation and initial successes (discussed in more detail below) were a consequence of the political environment at the time. President Kibaki's administration adopted a 'participatory',[192] 'hands-off' governance style[193] and was 'much more technically aware' and less secretive and centralised[194] than its predecessors,[195] with a new Ministry for Information and Communication specifically created to deal with ICTs[196] and open to 'collaboration with non-governmental actors'.[197] Tina James, who worked with CATIA when it supported the creation of KICTANet, points out: 'the creation of KICTANet was just the right process at the right time.'[198]

When the Ministry of Information and Communication published a draft ICT policy in February 2005, 'a window of opportunity for KICTANet to encourage a multistakeholder process of policy dialogue' was opened.[199] The network created a working group to develop an action plan and proposals to guide a multistakeholder response to the policy development process,[200] relying to a large extent on an email-based process to facilitate comment collection. It also organized a national convention in March 2005, where KICTANet was officially launched and where progress on the development of an ICT policy was reviewed. In May that year, KICTANet was invited to participate more officially in the final analysis of the draft policy and to organize a national multistakeholder workshop to finalise the policy. The KICTANet submission on the draft policy was used as a working document by the Ministry,[201] and the Kenya ICT Policy was finally approved by the country's Cabinet in March 2006.[202] Most of KICTANet's submissions were included in the policy,[203] thereby 'heralding the beginning of a new form of policy-making, which was more participatory and collaborative in nature,' according to Munyua.[204]

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186   More specifically, participants were from Kenya's Media Council, the Telecommunications Service Providers Association of Kenya (TESPOK), the Kenya WSIS Civil Society Caucus, a research and consultancy firm (Summit Strategies), APC, and CATIA were at the first meeting.
187   Munyua, 2016:212.
188   Adam, James, Munyua & Wanjira, 2007:7.
189   *ibid*, 26.
190   Munyua, 2016:213.
191   Mureithi, 2007:ii.
192   Munyua, 2016:212.
193   Interview, Mutung'u, 2017.
194   Munyua, 2016:212.
195   For a more detailed overview of how previous administrations in Kenya differed in their approach to ICTs, see Munyua, 2016:208-212.
196   Interview, Munyua, 2017.
197   Munyua, 2016:211.
198   Interview, James, 2017.
199   APC & Third World Institute, 2007:165.
200   Adam, James, Munyua & Wanjira, 2007:26.
201   Summarised from Mureithi, 2007.
202   Adam, James, Munyua & Wanjira, 2007:13.
203   *ibid*, 2007:28.
204   Munyua, 2016:213.

In addition to the catalytic role that KICTANet played in facilitating the participatory development of an ICT policy framework in Kenya,[205] the network quickly achieved trust and social legitimacy among at least policymakers, international institutions, and some parts of the Kenyan ICT sector and broader public.[206] It became highly influential in creating more opportunities for engagement and raising awareness in ICT and Internet governance,[207] for example by launching and organizing the first regional IGF, the East African IGF, in 2008; the Kenyan IGF from 2008 until today; as well as hosting the annual IGF in Nairobi in 2011.[208] Some authors argue that KICTANet helped to foster levels of multistakeholder discussion and engagement unusual in many other African and/or developing countries.[209]

Munyua points out that beyond the 'very, very specific goal' of helping Kenya to develop a national ICT policy framework, there was no long-term plan or strategy for KICTANet, and the network's founders did not originally intend the network to continue after the policy was adopted. Yet it became 'natural' for government to 'depend' on KICTANet every time public participation was required; even if government was not initially perceived as a stakeholder of the network, which mostly acted as a forum for dialogue between civil society and the private sector.[210] Ndemo, for instance, points out that when he was Permanent Secretary he used to 'bounce' any policy proposal on KICTANet's mailing list and that no one could, as a result, complain that there was no opportunity to participate. The network, he feels, offered 'the best way of public engagement' and communication 'because in a very short period you could reach so many people'.[211]

6.3   KICTANet and multistakeholder participation today

With government and other stakeholders apparently relying on it, KICTANet therefore continued after the ICT policy was adopted, leading to 'quite a lot of successes' like the 2010 Kenya ICT Master Plan, as well as the regulatory approval of M-Pesa and Voice over Internet Protocol (VOIP) services in the country.[212] It also, for instance, participated in discussions that led to the drafting and passing of the National Cybersecurity Strategy (2014) and coordinated public participation in consultations like the 2014 African Union Convention on Cybersecurity.[213]

Today, KICTANet has almost 4000 members[214] and continues to help organize the national Kenya IGF along with a new annual Kenya School of Internet Governance.[215] By managing a website and mailing list with almost 800 participants from diverse stakeholder groups,[216] it has been described as 'perhaps the biggest virtual convener of ICT stakeholders in Kenya'.[217] John Walubengo, who has been involved in various capacities with KICTANet since its inception in 2004, explains that the network is now 'basically a multistakeholder platform

205   Interview, Walubengo, 2017; Adam, James, Munyua & Wanjira, 2007:6; APC & Third World Institute, 2007:164.
206   Adam, James, Munyua & Wanjira, 2007:6.
207   Interview, James, 2017; Interview, Githaiga, 2017; Interview, Mutung'u, 2017; Souter & Keretts-Makau, 2012:50-53.
208   Munyua, 2016:214; Souter & Keretts-Makau, 2012:50.
209   Souter & Keretts-Makau, 2012:52-43.
210   *ibid*, 2012:50; Adam, James, Munyua & Wanjira, 2007:27.
211   Interview, Ndemo, 2017.
212   Munyua, 2016:213; Interview, Munyua, 2017.
213   Sambuli, Maina & Kamau, 2016:17.
214   Ndemo, 2017:359.
215   Interview, Githaiga, 2017.
216   Interview, Walubengo, 2017.
217   Sambuli, Maina & Kamau, 2016:17.

where we float ideas related to ICT evolution and development in Kenya'.[218] A participant from the technical community, Mwendwa Kivuva, notes that he became involved in KICTANet through its mailing list, which he describes as 'very vibrant', 'informative' and 'entertaining'.[219]

Grace Githaiga, the current co-convenor of KICTANet, explains that the network's *modus operandi* is normally that an issue or challenge of concern is identified or highlighted by a stakeholder and is then, for a specific period, discussed on the mailing list. For the sake of transparency, she says, a report containing all verbatim comments is produced by the KICTANet Secretariat along with a collated report in which a summary of the debate is provided and then submitted to the relevant ministry or regulator (if applicable). When necessary, KICTANet also hosts workshops and informative sessions to promote understanding of topics.[220]

Githaiga feels that the network has become 'trusted' and sees significant participation from diverse stakeholders, including frequent input from the Communications Authority of Kenya (CA).[221] Rachel Alwala, Assistant Director of Communications and External Affairs at the CA, says she finds KICTANet to be a useful platform for communicating regulatory news or inviting comments 'because KICTANet has all kinds of constituencies involved'.[222]

While Grace Mutung'u, a KICTANet associate responsible for policy and regulatory analysis, notes that there is 'a whole new generation of Kictanetters' now getting involved in the network's work, Walubengo estimates that only 50 of KICTANet's mailing list subscribers are actively engaged, with most participants only being observers. A company like Facebook, he explains, will be quiet until the discussion might affect Facebook's business or reputation. This, he assesses, is 'not great'.[223] Alwala notes that an informal barrier might exist in that some stakeholders are more active than others on the mailing list, sometimes limiting others' opportunity to voice concerns. Yet she notes that, to her, KICTANet is much less dominated by particular individuals today than it used to be.[224]

It is sometimes difficult for newcomers, Mutung'u notes, to gain the same kind of feedback and responses on the mailing list as participants who have been involved for a while.[225] Walubengo, similarly, notes that most of discussions on the mailing list tend to be 'dominated by the usual suspects', and newcomers are sometimes 'scared to make the maiden speech'.[226] Various interviewees note the need for building capacity to increase the number of 'Kictanetters' who can actively participate in local and global Internet governance debates, and also highlight capacity-building activities like the Kenya School of Internet Governance, which was launched by KICTANet in 2016. Nevertheless, Mutung'u worries that Kenya's Internet governance capacity is still limited to a 'small bubble'; leading to doubts about what the network's actual capacity and influence is in the country today.[227]

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218   Interview, Walubengo, 2017.
219   Interview, Kivuva, 2017.
220   *ibid.*
221   Interview, Githaiga, 2017.
222   Interview, Alwala, 2017.
223   Interview, Walubengo, 2017.
224   Interview, Alwala, 2017.
225   Interview, Mutung'u, 2017.
226   Interview, Walubengo, 2017.
227   Interview, Mutung'u, 2017.

Munyua thinks 'the limitations' of multistakeholder participation have become more apparent than when she was leading KICTANet, with participation being less diverse today than ten years ago in her view. This is particularly so where government and private sector stakeholders are concerned. The latter, Munyua argues, 'don't need KICTANet' today as they can 'go directly to parliament' since they have 'enough gravitas and political power to negotiate on their own behalf'.[228] Mutung'u, similarly, feels that private sector stakeholders have a direct interest in maintaining good relationships with the government, and international corporates tend to be 'mum' on local issues that civil society is then left to address alone. Private sector stakeholders' direct relationship with government, in her view, 'dilutes the benefits of multistakeholder participation'.[229]

Whereas government stakeholders used to participate actively in KICTANet's work,[230] Githaiga notes that government stakeholders from the ministry in particular rarely participate nowadays,[231] and generally only when 'the heat is too much' or when 'they are misquoted'.[232] Ndemo similarly argues that the current ministry – which has two KICTANet founders in its employ – makes much less use of KICTANet's community than when he was in office, and thinks that this might be because 'you need a thick skin' when participating on such platforms. In his view, the administration under which he served allowed more participation and delegation than its successor, and thus tended to favour approaches which 'the majority of stakeholders wanted'. Today, he feels, it is very different, even despite a new Constitutional requirement mandating public participation in policymaking in the country (addressed in the next section).

6.4 Does public participation equal multistakeholder participation?

Kenya's 2010 Constitution requires public participation as a national value and principle.[233] The Constitution also compels public bodies to consult stakeholders in matters that might affect them, and gives citizens the right to petition any public body on any matter under their authority.[234] Public bodies therefore have an obligation to take positive steps to ensure citizens have an opportunity to exercise their right to political participation to a reasonable extent – and not only by voting in an election, but in any process that might affect them.[235] Alwala notes that while a lot of public bodies might have welcomed consultation before, it is now 'more intensive' and some public bodies, like the CA, have thus become 'more engaging' through a multiplicity of platforms.[236]

Some interviewees and authors tend to conflate public participation with multistakeholder participation; stating, for example, that KICTANet has become an example of public participation in policy development for other sectors in Kenya.[237] Munyua, for instance, argues that 'one of the most significant aspects of the multi-stakeholder approach in Kenya

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228   Interview, Munyua, 2017.
229   Interview, Mutung'u, 2017.
230   Interview, Ndemo, 2017; Interview, Munyua, 2017.
231   This does not include the CA.
232   Interview, Githaiga, 2017.
233   Kenyan Law Reports, 2010.
234   Art 118(1)(b), for instance, requires Parliament and its committees to 'facilitate public participation and involvement in the legislative and other business of Parliament and its committees'.
235   c.f. *Doctors for Life International vs. Speaker of the National Assembly and Others (CCT12/05) [2006]*
236   Interview, Alwala, 2017.
237   e.g. Interview, Mutung'u, 2017; Interview, Githaiga, 2017; Sambuli, Maina & Kamau, 2016.

was the development and promulgation of the new constitution in 2010'.[238] Mutung'u, on the other hand, stresses that multistakeholder and public participation are two very different things. Public participation, to her, is more of a tick-box for legislators to say they have met the constitutional requirement. Multistakeholder participation, she notes, starts outside parliament, in wider society, and is much more encompassing – but also more difficult to achieve.[239]

Other interviewees fear that the constitutional requirement, along with the conflation of 'public participation' with 'multistakeholder participation', might lead to the political exploitation of a platform like KICTANet. Githaiga also points out that whereas there is a constitutional requirement for public participation, there is no framework for evaluating it.[240] Walubengo similarly warns of potential risks because public bodies have different ways of evaluating what public participation is in practice. He argues that there is a need for 'some published standard' that not only measures the quality of public participation, but that also explains what is done with the 'participation'. In other words, he believes there is a need for a 'feedback loop' that tells the public what government has done with their participation or input in a more transparent manner.[241] While Alwala agrees with the need for more transparency and the consideration of stakeholder views in the regulatory processes, she points out that there is a fine line between public participation and demanding that every comment, point and argument made by stakeholders should be taken on board.[242]

When a review of the 2006 ICT Policy was conducted in 2016, for example, KICTANet was intricately involved and it invested a substantial amount of time in gathering and compiling stakeholders' views.[243] Informants expressed concerns because KICTANet has received no feedback or indication of what happened with their input 'despite numerous requests for information' in the six months that passed since the network submitted its views to the Ministry. Walubengo says this left him feeling 'disappointed and betrayed', as he felt that government had abused 'our platform to tick the public participation box'. Because there is no framework for measuring public participation or demanding more transparency from the Ministry, Walubengo notes, 'we now just have to wait and see'.[244]

6.5   Towards a KICTANet 2.0?

In 2007, Mureithi conducted a strategic analysis of KICTANet and advised that 'to remain strategic and relevant', the network would have to 'position itself to be the frontier buster on ICT issues'.[245] A decade later, there seems to be some disagreement among informants about the network's continued relevance and future direction.

Munyua and Ndemo, neither of whom is still closely involved with KICTANet, appear somewhat sceptical of the network's continued relevance. However, Ndemo argues in a recent book chapter that mechanisms for involving 'as many stakeholders as possible' in policy development are 'critical',[246] and notes that multistakeholder organization like

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238   Munyua, 2016:210.
239   Interview, Mutung'u, 2017.
240   Interview, Githaiga, 2017.
241   Interview, Walubengo, 2017.
242   Interview, Alwala, 2017.
243   Interview, Mutung'u, 2017.
244   Interview, Walubengo, 2017.
245   Mureithi, 2007:1.
246   Ndemo, 2017:360.

KICTANet offers 'the best way' of enabling public participation.[247] Nevertheless, during an interview, he expressed concern that KICTANet is 'no longer as relevant' and 'had been taken over 'by some players'. It is neglecting some topical issues, he argues, and needs to better prioritise 'truly important' issues.[248]

Munyua, in turn, feels that KICTANet has not adequately evolved as times and technology, along with the dynamics between stakeholders and stakeholder groups, have changed. This, she feels, makes collaboration increasingly difficult. She takes the view that 'rather than work so hard to maintain the front of being multistakeholder', there is a need for KICTANet to reposition itself.[249] She is particularly concerned about civil society's position and what she calls its 'wastage of resources' on ostensibly multistakeholder approaches that 'promise more than it can deliver'.[250] She feels civil society 'is being left behind' and needs to create a new niche for itself in the country. If she was still managing KICTANet, she says:[251]

> I'd dismantle it and re-strategise. I would create a new and different relationship with each constituency. Maybe we need a KICTANet 2.0 or something.

Others are more optimistic and have less drastic recommendations for KICTANet's future, which to a large extent involves gaining more sustainable resources to be able to extend the network beyond its mostly volunteer-based support. Some point out that while there might have been a 'lull' on KICTANet's mailing list in 2014 and 2015, when a new government came into power, the beginning of 2017 has seen 'an upward trajectory' in stakeholder participation on the network's mailing list.[252] KICTANet has already, some informants point out, developed and started implementing a new strategy[253] that 'realigns its goal, mission and objectives' for the future. KICTANet 'is now, more than ever, relevant, focused, dynamic, restructured', some participants from KICTANet's steering team and other informants note.[254]

Various informants state that KICTANet is also working towards involving more stakeholders. Alwala, for instance, sees a need for 'more robust' ways of engaging and promoting meaningful discussions on topical issues through the network. She also stresses the need to involve a wider cross-section of stakeholders – including people in rural areas and women, for instance.[255] Walubengo, similarly, notes that KICTANet's participation must be extended beyond the capital, Nairobi, to reach new participants.[256] Mutung'u, in turn, notes that to remain relevant, KICTANet needs to gain more sustainable funding in order to grow from a volunteer organization, to gain more structure, more employees and more subject matter experts.[257] Kivuva agrees with the need for more stability in terms of structure, funding and employment, as these requirements, in his view, are vital to reaching out to more

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247   Interview, Ndemo, 2017.

248   *ibid*.

249   Munyua, 2016:217.

250   *ibid*.

251   Interview, Munyua, 2017.

252   In statistics shared with the researcher, for instance, it was pointed out that KICTANet has had 8814 threads shared on its mailing list between 15 March 2005 and 9 April 2017, with an average of 2,539 messages per year. In the first quarter of 2017, however, more than 1000 messages have already been shared on the list. No details as to the substance and contributors of the messages were made available (personal communication from Githaiga, Kivuva, Walubengo, Husein, Orembo & Kapiyo, 10 April 2017).

253   The strategy was not available for distribution at the time of communication.

254   Personal communication from Githaiga, Kivuva, Walubengo, Husein, Orembo & Kapiyo, 10 April 2017.

255   Interview, Alwala, 2017.

256   Interview, Walubengo, 2017.

257   Interview, Mutung'u, 2017.

stakeholders and doing the necessary capacity building the country needs to promote awareness of Internet governance.[258]

Some informants note that KICTANet is already making progress toward fulfilling these and other needs, with various activities hosted by the network (e.g. the Kenya School of Internet Governance and Kenya IGF) being 'over-subscribed'. They also point out that KICTANet is still seeing some engagement from the Ministry of ICT, and has welcomed the participation of various private sector and civil society stakeholders recently:[259]

> *This is in our view a strong indication of the public confidence and recognition of the robustness, effectiveness, ability and continued influence of KICTANet in catalysing reforms in Kenya.*

6.6   Learning from the KICTANet experience

KICTANet was created in the year between the two phases of WSIS, at a time when multistakeholder participation was, as one interviewee put it, 'the flavour of the day'. Its work since then has, one interviewee feels, put it 'on the right side of history'.[260] Alwala notes that Kenyans are now 'using the multistakeholder language', but is of the opinion that 'more conversations need to take place in order to deepen understanding of the diverse opinions'.[261] Munyua, similarly, warns that multistakeholder networks like KICTANet should not become 'an end rather than a means', and should continuously strive to listen and understand other stakeholders' sides.[262] To remain relevant as a multistakeholder network, it needs to enable broader stakeholder participation to ensure continued relevance and impact on policies, laws, regulations and practices by government and private actors. The evolution of KICTANet's role in Internet governance in Kenya has shown the need for ongoing reflection and reform in the face of ups and downs in multistakeholder participatory mechanisms.

While there are therefore challenges KICTANet might have to address, there is little doubt that it has already had a significant influence on Internet governance and the governance of ICTs in Kenya. This influence has also extended beyond Kenya.[263] Ndemo, for instance, notes that when he was in government, other African countries were surprised at the extent to which the Kenyan government promoted civil society and other participation in policymaking through KICTANet: 'It was beginning to provide leadership.' Such leadership, in Africa and in Kenya, will be crucial if the country is to benefit from the potential that ICTs have for development. As two writers argue,[264]

> *There will be even more promise if we continue to adopt ICT instead of fighting it.*

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258   Interview, Kivuva, 2017.
259   Personal communication from Githaiga, Kivuva, Walubengo, Husein, Orembo & Kapiyo, 10 April 2017.
260   Interview, Githaiga, 2017.
261   Interview, Alwala, 2017.
262   Interview, Munyua, 2017.
263   Interview, Walubengo, 2017.
264   Ndemo & Weiss, 2017:12.

7.   The Marco Civil

7.1   Introduction[265]

Another example of multistakeholder participation in Internet governance at a national level (but with broader impact) can be found in Brazil. The *Marco Civil da Internet*, otherwise known as the Brazilian Internet Bill of Rights or the Brazilian Civil Rights Framework for the Internet, was sanctioned by then president Dilma Roussef at the time of the NETMundial meeting in 2014 (see section 4.2.2 above).

This case is not only interesting because of what it signifies for Brazil and its local landscape, but also because it is viewed as one of the first attempts for initiatives to become more concrete, formal, accountable and tangible, rather than merely aspirational,[266] and identifiable therefore as being covered by what has come to be known as the 'digital constitutionalism umbrella'. The Marco Civil process also shows that multistakeholder processes are 'a compelling hallmark of digital constitutionalism', with such processes being central in over half (17) of the 30 documents between 1999 and 2015 reviewed in the study mentioned earlier (see section 4.3 above).[267] (Further information about 'digital constitutionalism' as a framework for considering evolutions of multistakeholder processes is presented later in this study.)

The first part of this summary outlines a brief timeline of the development of the Marco Civil, which took approximately seven years, while the second part contextualises the development of multistakeholder participation in Brazil and outlines some of the challenges that emerged during the process.

7.2   Understanding the Brazilian context

The Marco Civil must be viewed in the context of its development in Brazil[268] and the country's prior experience with multistakeholder governance through the Brazilian Internet Steering Committee (CGI.br).[269] Founded in 1995, CGI.br continues to play an important role in the coordination and development of Internet governance in Brazil. Today, CGI.br is a consensus-driven forum established by presidential decree, and responsible for, among other things, managing the .br domain, proposing policies, recommending standards for regulating Internet activities and procedures, and undertaking relevant research.[270]

Besides the development of Internet governance mechanisms through CGI.br, the absence of a clear legal framework to guide emerging regulatory challenges at a time when Internet access in Brazil was growing exponentially also impacted Brazil's legislative agenda.[271] From

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265   This case study was prepared with invaluable assistance and support from Louise Marie Hurel, a researcher at the Center for Technology and Society at FGV, Brazil.

266   Gill, Redeker & Gasser, 2015:20.

267   *ibid*:15.

268   Canabarro and Borne (2015:9-11) argue that Internet governance in Brazil has been developed in three pillars: the Brazilian Internet Steering Committee (CGI.br), the *decalogue* of principles, and the Marco Civil. This notion was echoed by some participants during the focus group held at IGF 2016.

269   More information about CGI.br: http://cgi.br/about/; Glaser & Canabarro, 2015; and Adachi, 2011.

270   Although this case study does not focus in the development of a multistakeholder model through CGI. br, more information regarding its composition, election process, and activities can be found in Decree 4,829/2003. The 2003 decree enhanced not only the mandate of the Committee but also the level of participation from civil society groups in its composition (Glaser & Canabarro, 2015:142-145).

271   Rossini, Brito, Cruz & Doneda, 2015:3.

1999, several bills[272] were introduced which would have the effect of criminalising certain online activities,[273] eventually culminating in Bill 84/1999, also known as the 'PL Azeredo'.[274] This cybercrime Bill promoted the criminalisation of certain common online practices,[275] granted more power to officials involved in investigatory processes, and proposed potential limitations for freedom of expression.[276] Fearful of the repercussions that such a legislative proposal could have for human rights online, civil society groups and academics were very critical of the Bill (which was eventually shelved).[277]

Besides legislative developments, incidents like the blocking of YouTube in the country in 2006 following the distribution of a sex video of a Brazilian model also highlighted proportionality challenges related to the regulation of online content.[278] These challenges pointed to a potential gap that was at risk of being stopped by judicial or legislative actions. As Dr Raquel Gatto, regional policy advisor at ISOC, noted during the focus group session held for this project:[279]

> At that point, we realised we, the community, didn't have any principles or any legal framework that could work with courts to avoid that kind of decision [e.g. the blocking of websites like YouTube].

To meet this need, CGI.br launched a *decalogue*[280] in 2009 highlighting ten *Principles for the Governance and Use of the Internet* in Brazil. Many focus group participants specifically stressed the significance of both CGI.br and its *Principles* for laying the foundations for the ultimate development of the Marco Civil.[281] Despite these *Principles*, rising tensions between a rights-based and a criminal-based approach to Internet regulation indicated the need for a clearer regulatory framework capable of establishing more concrete principles and guidelines for the Internet in Brazil. Following the proposal of the Azeredo Bill, Ronaldo Lemos wrote a newspaper article, arguing that: 'instead of a criminal bill, Brazil should have a 'civil rights framework' for the Internet or, in other words, a "Marco Civil"'. This was the first time the term was used in the context of the Internet.[282] As noted by Carlos Affonso Souza, director of the Institute for Technology and Society of Rio de Janeiro (ITS Rio), during a focus group convened for this research:[283]

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272 PLS 152/1991, PL 1.070/1995, PL 1.713/1996 (also known as a preceding version of what would later be included in Bill 84/1999). For a detailed explanation, see Brito Cruz, 2015:29-53 and Santarém, 2010:16-51.
273 Carlos Affonso Souza, Focus group, 2016.
274 Although the Bill was originally proposed by Luiz Piauhylino, it was only with Senator Azeredo as rapporteur that the proposal became publically known.
275 An example is IOS jailbreaking. One contributor notes that the Bill could have the effect of making more than 60% of the Brazilian population criminals overnight (Saldías, 2014:3). C.f. Brito Cruz, 2015: 38; Rossini, Brito & Cruz, 2015:3.
276 Article 19, 2012.
277 Magrani, 2014:166; Rossini, Brito Cruz & Doneda, 2015:3-4; Brito Cruz, 2015:46-52. At first, an online petition was submitted by a group of activists and academics, translated as '*defending the liberties and progress of knowledge in the Brazilian Internet.*' Part of the mobilisation of civil society groups against the approval of Lei Azeredo was known as the 'Mega Não' (literal translation: 'Huge No'). The 'Mega Não' movement, although not entirely viewed as centralised or organized, protested using various blog posts, public demonstrations, and other communication venues as a way of drawing the attention of individuals to the potential harms that this approval could cause (Brito Cruz, 2015:50; Magrani, 2014:165-167).
278 Arstechnica, 2007. The Cicarelli case was also mentioned as significant during the focus group by two participants.
279 Focus group, 2016.
280 CGI, 2009.
281 Focus group, 2016.
282 Lemos, 2015:63.
283 Focus group, 2016.

…the Marco Civil appeared to be a good way to tackle, to be the nemesis, of the proposed bill of criminal law on the Internet [i.e. the Azeredo Bill].

7.3   A new civil rights framework for the Internet in Brazil

The Marco Civil therefore emerged as a rights-based response to the 'Azeredo' Bill.[284] The process began in 2009 when the Ministry of Justice's Office of Legislative Affairs (SAL/MJ) requested the Centre for Technology and Society at Getulio Vargas Foundation (CTS-FGV) to help coordinate a process of public consultations engaging all stakeholders, including those who had been vocal in opposing the Azeredo Bill.[285] SAL/MJ enabled public consultations using a portal administered by the Ministry of Culture, *http://culturadigital.br/marcocivil*. SAL's principal reason for using this platform was that the participatory process enabled by the online platform would serve as a complementary branch to the traditional legislative process.[286] As some analysts point out:[287]

Once it became clear that Brazil needed a bill of rights for the Internet, it also became clear that the Internet itself could and should be used as a tool for drafting the legislation.

The period of public comments was divided into two phases. The first phase involved consulting with the general public regarding certain principles proposed for debate, while the second phase involved examining each article and paragraph of the proposed draft bill. A focus group participant pointed out that dividing the process into these two phases allowed stakeholders sufficient time to develop positions on key aspects of the Bill.[288]

The first phase involved collecting comments on a white paper containing themes[289] derived from individual and collective rights prescribed in the Brazilian Constitution and by the CGI.br *Principles.*[290] Most of the contributions received during this phase were focused on establishing a principles-based discussion.[291] A participant in a focus group for this Study noted that this principles-based approach was important to ensure that the Bill would remain sustainable and contemporary despite the pace of technological change.[292]

After the first phase, the Ministry of Justice drafted a Bill based on the contributions and priorities highlighted by different stakeholder groups. The second phase provided citizens and institutions with an opportunity to comment on this draft bill. Users could directly comment on each article, paragraph and chapter of the draft text.

While the online portal *http://culturadigital.br/marcocivil* served as the main platform through which online contributions could be made, SAL/MJ, CTS and other actors also followed and compiled Twitter comments related to the draft bill and hosted on-site debates throughout the country.[293] A person who participated in some of these workshops during her time

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284   CTS-FGV & CGI.br, 2012:19.
285   Brito Cruz, 2015:56
286   *ibid.*
287   2015.
288   Focus group, 2016.
289   For a full list of topics and subtopics in the first phase, see: http://culturadigital.br/marcocivil/consulta/.
290   The *decalogue* sought to establish basic guiding principles for Internet governance in Brazil as well as to orient all the stakeholders involved (Canabarro & Borne, 2015).
291   Lemos, 2014:5; Rossini, Brito Cruz & Doneda, 2015:4.
292   Focus group, 2016.
293   Lemos, 2014:5; Santarém, 2010:100.

working for CGI.br, notes that she could 'see the difference' these consultations made in explaining especially technical issues to broader audiences.[294]

More than 2000 comments were posted during both consultations. It has been noted that if one excludes comments that contained little content (e.g. yes/no simple statements, Twitter links, or external references without comments), the online consultations received 1,507 comments and attracted 287 participants (only 22 of them engaging in both phases of consultation).[295]

7.4 'And then Snowden happened'

After the process of public consultations, the Marco Civil was introduced in the National Congress on 24 August 2011. The Bill was submitted to the House of Representatives on several occasions but was unable to make further progress in parliament.[296] Souza remembers that this moment in the Bill's development coincided with a change of administration and became a 'crucial moment' with concerns as to whether the Bill would withstand political constraints and change:[297]

> *People began to wonder if the multistakeholder effort that took us so long to achieve was being put in peril because of this change of administration.*

The Marco Civil only resurfaced on the national legislative agenda in 2013[298] when Edward Snowden, an ex-National Security Agency (NSA) contractor, made revelations regarding pervasive surveillance practices by certain intelligence agencies.[299] While focus group participants agree on the importance of Snowden's revelations for taking the Marco Civil forward, they differ about whether the revelations were positive or negative for multistakeholder participation in the Marco Civil process. A participant from the private sector, for instance, argues that 'after Snowden happened, all hell broke loose… nobody was listening to anybody anymore.' A civil society participant, on the other hand, feels that after Snowden, 'the multistakeholder conflict started for real' and that civil society participants had many meetings with parliamentary members to further progress on the Bill.[300]

In September 2013, Rousseff decided that the Bill should be tabled in the House of Representatives and the Senate with constitutional urgency.[301] The Marco Civil was

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294   Focus group, 2016.
295   *Ibid.*
296   Rossini, Brito Cruz & Doneda argue that besides the challenge of balancing between a civil rights framework that protected human rights online, which included the careful negotiation of data localization and data retention, as well as takedown and intermediary liability vis à vis copyright disputes, '[o]ther factors also complicated the MCI [Marco Civil Initiative – author's insertion in early 2014. The bill found itself in a crossfire between the federal administration and its own supporting coalition, led by Representative Eduardo Cunha. Cunha started a mini-rebellion against the executive, refusing to vote for bills supported by President Rousseff. The bill thus became hostage (or a bargaining chip) in a broader political negotiation that involved non-Internet policy issues' (2015:6-7). Magrani similarly takes the view that while the Bill was before the House of Representatives, there were several attempts to modify the text, most of which concentrated on the copyright industry and in increasing investigatory powers through the expansion of data retention (2014:169, 170).
297   Focus group, 2016.
298   Rossini, Brito Cruz & Doneda, 2015:5.
299   Harding, 2014.
300   Focus group, 2016.
301   Câmara, 2013. Declaring the Bill as constitutionally urgent also meant that the Bill should be voted for during the following 45 days in the House of Representatives and, after that, voted in the next 45 days in the Senate.

sanctioned as law on 23 April 2014 during the NETmundial conference[302] (see section 4.4 above). The final version[303] explicitly notes that to aid the development of the Internet in Brazil, mechanisms must be established to enhance and guarantee multistakeholder, transparent, collaborative and democratic participation between private actors, civil society, and academia (Art. 24).[304] While the WSIS process outcomes and CGI.br *Principles* also provide important reference points for Brazil's adoption of multistakeholder approaches in international fora where Internet governance is concerned,[305] Lemos notes that the fact that the Marco Civil embeds multistakeholderism as a principle for Internet governance is important because:[306]

> … *it will influence the Brazilian position regarding internet governance at international fora, where Brazil is now, by law, on the side of initiatives promoting broader participation, and stands in opposition to the trend towards privileging the State's role in implementing internet governance.*

The approval of the general Marco Civil framework was followed by a new regulatory process that occurred in the beginning of 2015 and 2016; detailing how the law should be interpreted in a presidential degree and subsequently applied through an administrative decree.[307] The latter process also proceeded with public consultations pertaining to these provisions, using an online portal in a similar manner to the open e-rulemaking[308] process used during the first and second phases of the public consultations of the Marco Civil. In May 2016, presidential decree 8771[309] was officially published.[310] While these decrees cannot change the Marco Civil, they impact how it will be interpreted and applied.[311]

7.5 What does the Marco Civil process say about multistakeholder participation?

The Marco Civil was the first legislation in Brazil with such an explicit focus on online collaboration and participation.[312] Many focus group participants stressed the importance of these online platforms for allowing access and participation in the process by a variety of stakeholders. Marcel Leonardi, Senior Counsel, Public Policy at Google Brazil, noted during the focus group for this research that it was not the content of the Marco Civil that was necessarily so 'ground-breaking', but rather the participatory way the Bill was drafted; becoming 'one of the very first times that a public consultation process actually produced

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302   Almeida, 2014:4.
303   For a detailed analysis of the challenges and topics tackled by the Marco Civil, see Brito Cruz, 2015:96-115; Rossini, Brito Cruz & Doneda, 2015:7-14.
304   Translation of Art. 24 of Law 12.965/14. Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l12965.htm.
305   Reviewer comment by Benedicto Fonseca Filha, 2017.
306   Lemos, 2015:62.
307   Lemos, 2014:64.
308   Steibel developed the concept of e-rulemaking by applying and reinterpreting it through the Marco Civil participatory process. He argues that public consultations are an expression of *e-rulemaking*, or the creation of public policies online, and that the portal used during the Marco Civil consultations provided a way of generating integration between government and citizens in the creation of the normative framework (Steibel, 2014:19).
309   Available at: <http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Decreto/D8771.htm>.
310   While these decrees and subsequent phases are important, they were not investigated in detail in this Project due to restrictions of scope.
311   Lemos, 2014:64.
312   Lemos, Steibel, de Souza & Nolasco, 2015.

something'.[313] On the other hand, another participant felt that 'online participation can only go so far', especially once a Bill reaches Congress, which 'still works in old school ways and pretty much expects people to talk to them in person rather than just checking what's happening online'. For stakeholders who had fewer resources to attend Congress and other important events in person to talk about the Marco Civil, participation in the process was therefore constrained by a lack of resources.

Focus group participants generally agree that multistakeholder participation in the Marco Civil process was organic and not necessarily planned. Souza, for instance, pointed out that the fact that the Marco Civil was developed shortly after CGI.br finalised its *Principles* was significant, as 'the principle of collaborative, democratic governance of the Internet' was already familiar in the country. The work of the CGI.br was further significant in not only providing a longstanding history and 'culture of participation' since 1995, but also in helping non-governmental stakeholders to mobilise as a result of existing selection processes for CGI.br seats.[314] The Marco Civil process, Leonardi argued, created a legacy of expecting public consultations and participation for any major bill.[315] It similarly, Souza noted, provided 'good training' in how to put together 'a good mosaic' of particularly civil society participation, including campaigns, petitions, online platforms, social media, and news media.[316]

Some authors argue that while the Marco Civil 'was a hybrid and transparent policymaking process that involved contributions from users, civil society organizations, telecom companies, government agencies, and universities, all side-by-side', the number of commentators was still somewhat limited (287 participants, only 22 of whom commented on both stages); as were the sections that contributors were commenting on (not all sections of the Marco Civil received extensive input).[317] Yet there are examples where stakeholder comments led to changes in the proposed text between the first and second rounds for public input. Leonardi, for instance, felt that the outcome reflects a multitude of views and was an effective multistakeholder process because, in his view, 'no single sector, be it civil society, private sector, or whoever, was 100% satisfied with the final text'.[318]

Informants note that the transparency valued by the key facilitators of the process improved the openness of the debate and delivered better end results. The facilitators of the Bill, for instance, worked closely with the media, rejected contributions made over email and only accepted comments published by verifiable stakeholders online. This transparency, one focus group participant notes, was 'genius' in that it forced all stakeholders to make use of the same channels for having their opinions heard in drafting the Bill – even private sector stakeholders who are less used to having to follow such procedures in lobbying practices. Lemos *et al.* similarly note that:[319]

> These efforts helped to reduce information asymmetry and facilitate negotiations. It also helped to facilitate compromises, when necessary.

Some authors argue that the multistakeholder nature of the Marco Civil process does not by itself account for the results of the process; with other forms of negotiation being vital to the outcomes. They take the view that effective results were achieved only by

313   Focus group, 2016.
314   Review comment, Benedicto Fonseca Filho, 2017.
315   *ibid.*
316   *ibid.*
317   Lemos, Steibel, de Souza, Nolasco, 2015.
318   Focus group, 2016.
319   Lemos, Steibel, de Souza, Nolasco, 2015*;* Lemos, 2015:64.

encouraging reasonable engagement in debates and negotiation, which required ready compromises between different stakeholders during the process. Where certain issues like data localisation were concerned, for instance, Souza noted that stakeholders sometimes had to adopt a 'glass half full/glass half empty' compromise with some provisions.[320]

Focus group participants agree that, to reach an acceptable outcome, leadership was vital, particularly when the Bill reached Congress. One participant pointed out that sectors were amenable to talking, formally and informally, across the invisible borders that tend to divide stakeholder groups, with the aim of reaching compromises.[321]

7.6   Learning from the Brazilian case

The Brazilian experience of developing Marco Civil is important in illustrating how participation in the digital age can be achieved by innovating in terms of institutional procedures,[322] offering new alternatives to traditional governance models, and expanding policymaking processes.[323] It is furthermore noteworthy in illustrating a trajectory from more 'informal, non-binding and aspirational'[324] efforts to 'more concrete, sophisticated proposals', as well as a similar trend to use more open, participatory and multistakeholder methods or processes of inclusion and openness in such efforts.[325]

But it is also – as some participants pointed out during the focus group – a very Brazilian process that was shaped by the country's unique history and strong prior experience with multistakeholder governance for the Internet (especially through CGI.br), the existing political situation, the prominence of local civil society stakeholder groups, and the catalytic effect of Snowden's revelations. While the Brazilian case might be difficult to replicate because of the unique circumstances of the country, one participant notes that studying the case 'can at least show that it's possible' to use multistakeholder approaches effectively.[326]

This agreement on the importance of the process is also reflected in the ways in which the Marco Civil process has potentially influenced other countries and attempts to develop more formal[327] digital rights frameworks. For instance, some of the stakeholders involved in the process and who were also participants of the focus group point out that they were invited by the Italian Chamber of Deputies to share their experiences in developing Marco Civil when Italy was developing a similar framework. The Italian *Declaration of Internet Rights*,[328] which was adopted in August 2014, is 'inspired by the Brazilian initiative' despite differences in political landscape, and is reflected in the way in which the Italian process encouraged public participation in the design of the bill.[329]

While one focus group participant pointed out that 'there is no one size fits all' for multistakeholder participation, there are still wide lessons to be learned from the Brazilian case. The importance of having open and transparent channels – online and offline – for

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320   Focus group, 2016.
321   Anonymous informant, focus group, 2016.
322   Lemos *et al.*, 2015.
323   Lemos, 2014b; Lemos *et al.*, 2015.
324   Gill, Redeker & Gasser, 2015:20.
325   *ibid*:2.
326   Focus group, 2016.
327   c.f. Gill, Redeker & Gasser, 2015.
328   An English version of the *Declaration* is available at: http://www.camera.it/application/xmanager/projects/ leg17/commissione_internet/testo_definitivo_inglese.pdf.
329   c.f. IGF, 2016.

participation was repeatedly stressed and noted as potentially replicable. Participants feel that enabling multistakeholder participation was more difficult once the Bill reached parliament, and stakeholders' ability to participate to a large extent depended on the leadership of politicians supporting or pushing the Bill (in addition to the effect of an unexpected external event like Snowden's revelations). In general, however, the willingness to 'commit to the multistakeholder model' by repeatedly facilitating participation and consulting stakeholders, 'and inviting stakeholders from all walks of life' was also stressed by a participant during the focus group.[330] Some difficulties experienced in enabling truly meaningful representation and including marginalised voices in the process, described above,[331] are furthermore not unique to the Marco Civil, having been experienced in other multistakeholder efforts in the sphere of digital constitutionalism.[332]

As many also point out, the Marco Civil's ability to protect digital rights online remains to be seen, and is to a large extent dependent on application and implementation. As one participant noted during a session at IGF 2016, 'nothing stops one parliamentarian, one congressman or –woman, to suggest amendments to the law.' This also extends to the ways in which the law has been applied by courts in the country. In July 2016, for instance, a judge ordered that WhatsApp had to be blocked after Facebook, the owner, declined to provide chat logs related to a criminal investigation. While the ban was lifted hours later by Brazil's Supreme Court upon an urgent petition from the Popular Socialist Party,[333] on three prior occasions similar bans of WhatsApp were upheld and implemented for up to three days. As Souza noted during the focus group:[334]

> …this puts not only Brazil, but the Brazil Internet Bill of Rights in a very bad light. It looks like this one law that was supposed to protect basic liberties is being used to block an application.

This example illustrates the need for ongoing multistakeholder collaboration and momentum in Brazil to ensure that the Marco Civil is implemented in ways that protect and uphold the spirit and purpose of the legislation – namely the protection of human rights online. On the other hand, it also indicates that there are cases when achieving enduring consensus is not possible, notwithstanding the use of a multistakeholder approach in the development of the framework.

8. The Constitutional challenge of a real name policy in South Korea

8.1 Introduction

Albeit a potential example of multistakeholder participation in a process rather than in decision-making per se, a constitutional challenge in the Republic of South Korea illustrates not only a multistakeholder model but also the importance of having strong institutions like an independent judiciary to protect human rights online. On 24 August 2012, the South Korean Constitutional Court unanimously ruled[335] that certain user identity verification

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330   Focus group, 2016.
331   Lemos, Steibel, de Souza, Nolasco, 2015.
332   Gill, Redeker & Gasser, 2015:20.
333   Supremo Terminal Federal, 2016 (in Spanish).
334   IGF, 2016.
335   2010 Heon Ma 47, 252. See Kim, 2012, for unofficial English translation.

provisions in the country were unconstitutional.[336] For five years, the provisions had required all major website operators in the Republic of South Korea[337] to obtain, verify, and store personal identification details from any user wanting to post anything on their platforms.

Not only does this constitutional challenge of the provisions proffer a compelling case from the perspective of how online anonymity was dealt with in the context of protecting human rights online and offline, but also – and more importantly to this Study – because of the ways in which stakeholders collaborated to bring this challenge before the Constitutional Court of South Korea. It raises the question of when a process can be defined as being multistakeholder, as well as whether multistakeholder participation can emerge as a reactive response to a single issue as compared to pro-active and pre-emptive efforts across several issues. Finally, it also enables consideration of the extent to which a successful experience can stimulate the development of a culture of multistakeholder participation more broadly, which can address potential contentious matters pre-emptively in the future.

The first part of this summary draws a timeline of the implementation of certain provisions in South Korea, followed by a brief synopsis of a community of local stakeholders' legal challenge of one provision and the Constitutional Court's judgment. The final part of the summary investigates the multistakeholder nature of the constitutional challenge in more detail, including potential lessons and themes for the broader theme regarding the evolution of multistakeholder participation.

8.2   User identity and real name verification in South Korea

In 2005, South Korea's National Assembly passed an amendment to the Election of Public Officers Act[338] to require all Korean users to verify their identities before joining and/or contributing to web portals and other major sites in the country. Promulgated after the 2002 presidential campaign, the amendment applied specifically to election-related online discussion forums to 'protect the privacy of candidates and to nurture more reliable Internet politics'.[339]

The provision was soon extended beyond election-related discussions in another legislative development. In 2007, Article 44(5) of the Information and Communications Network Act came into effect and mandated user identity verification by every Internet portal as well as professional intermediaries of user-generated content with an average daily viewership of over 300,000; plus online news media that serve 200,000 or more visitors per day.[340] Under the provisions, only users who had had their identity verified through the submission of their Resident Registration Number (RRN) and other personal details were able to express their opinions on such websites.[341] Failure to adhere to the rules could result in significant fines for website operators.[342]

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336   Park, 2012.
337   Henceforth 'South Korea'.
338   Art. 82-6(1) and 82-6(5).
339   While these provisions do not form the focus of this case study, it should be noted that they also faced constitutional scrutiny. The Constitutional Court in South Korea ruled in February 2010 that the provisions did not amount to an unreasonable limitation of freedom of expression (Kim, 2016:91).
340   Freedom House, 2016.
341   An RRN is a unique 13-digit number assigned to each Korean citizen at birth and used 'in all sorts of situations' ranging from 'forms to be submitted to public offices or to telephone and utility companies, job applications, student enrolment forms, etc.' (Kim, 2016:90).
342   UNGA, 2011a:13.

The provisions were expanded on 28 January 2009 to apply to all service providers with an average of 100,000 or more visitors per day;[343] and came into effect immediately.[344] Most of the websites adopted an alias-based discussion system, with users' real names hidden on web pages once their identities had been verified and their personal data had been stored. Foreign nationals or anyone without an RRN wanting to post anything on a Korean website had to contact webmasters individually to verify and confirm their identities,[345] leading to concerns about the effect of the provisions on foreign or expatriate Koreans' ability to express themselves freely.[346]

The provisions were reportedly promulgated following a series of protests[347] in South Korea which were accompanied by online criticism of government policies,[348] incidents of cyberbullying (one of which was linked to the suicide of a local actress),[349] and general 'social issues caused by online slanders'.[350] At the time that the provisions were enacted, South Korea was not only one of the most connected countries in the world,[351] but also believed to be the sole democracy to have resorted to restricting anonymity online in this manner.[352] The South Korea government argued that the provisions were necessary because 'character assassinations and suicides caused by excessive insults, the spreading of false rumours and defamation have all become social issues';[353] and its president at the time, Lee Myung-bak, defended the steps as a protection mechanism against 'a society rampant with excessive emotional behaviour, disorderliness and rudeness'.[354] Others,[355] like informant Professor Keechang Kim, take the view that the provisions were a 'very one-sided idea' and were introduced because 'politicians wanted to tame the online media in the lead-up to elections' because they 'didn't want vigorous debate to take place on the Internet'.[356]

The consequences of the provisions were widespread[357] and attracted both local and global criticism. For instance, Frank La Rue, then the UN Special Rapporteur on the Promotion and Protection of Freedom of Expression, undertook a mission to South Korea in May 2010 and expressed concerns about the condition of freedom of expression in the country.[358] While he acknowledged the need to protect citizens from 'legitimate concerns regarding crimes perpetrated via the Internet and the responsibility of the Government to identify such persons', he also warned about potential chilling effects and the 'impact of such identification systems to the right to freedom of expression, which is rooted in anonymity'.[359]

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343   Freedom House, 2012.
344   Note that blogs, personal homepages, members-only sites, and social network platforms were not considered 'intended for the general public' and were therefore excluded from the provision. Kim, 2012.
345   Freedom House, 2012.
346   Kim, 2016:101.
347   Choe, 2012.
348   *The Economist*, 2011; Fitzpatrick, 2008.
349   Choe, 2008.
350   Cho & Kim, 2012:3042.
351   Fitzpatrick, 2008.
352   Cho & Kim, 2012:3042.
353   Choe, 2012.
354   Fitzpatrick, 2008.
355   e.g. Choe, 2012.
356   Interview, Kim, 2017.
357   While 37 websites were affected by the provisions in 2007, the extension of the policy in 2009 saw 153 websites being subjected to the requirements of the law in 2009, 167 websites in 2010, and 156 websites in 2011.
358   UNGA, 2011a.
359   *ibid*, 13.

As Professor Kyung-Sin Park, a stakeholder from the civil society community, explains during an interview:[360]

There was a case of one news website that suddenly hit 100,000 visitors a day. Before the provision affected the site, people could leave their comments online. On the day the site reached 100,000 visitors and had to start requesting users' details, the number of comments below articles dropped to five percent of what it was before that day. Imagine how that affects a business!

Besides potential effects on freedom of expression,[361] the provisions also risked users' privacy by exposing registered users to potential data breaches.[362] In 2011, for instance, an alleged cyberattack targeted a popular portal and its social networking service in the country and reportedly stole the personal details of approximately 35 million users, including names, passwords, RRNs, mobile phone numbers, and email addresses.[363]

The provisions were also ineffective and relatively easy to circumvent. One commentator argued that real-name verification was 'a technical absurdity' in the country, as there was no way of verifying whether a user was providing his or her real name and RRN[364] and estimates for Korean visitor numbers by the KCSC were also potentially skewed.[365] It was alleged that the provisions not only risked converting the country's Internet industry into 'insular, 'intra-net' services, but encountered 'numerous difficulties' when Koreans started using global services.[366]

For example, YouTube refused to ask Korean customers for their RRNs and therefore resorted to redirecting all customers from the country-specific 'kr.youtube.com' to its international YouTube page.[367] Park notes that the YouTube example became 'a flashpoint' for local stakeholders, prompting discussions and emphasizing the need for changing the law.[368] Jae-Hoon Chung, senior policy counsel at Google in South Korea, explains that Google regarded the provisions as an unreasonable limitation of freedom of expression because restricting the company's services in some countries would inevitably affect the free flow of data globally. Another relevant hurdle to implementation by Google, he says, was the substantial cost demanded to implement and safeguard personal information sufficiently.[369]

These loopholes were problematic for Korea's domestic portals too,[370] which reportedly suffered from reverse discrimination and a resultant lack of competitiveness as Korean users preferred to use foreign portals not subject to the provisions.[371] Such concerns were aggravated when the regulator announced, in March 2011, that certain social networking platforms like Facebook and Twitter would be exempt from the provisions.[372] Local news portals started to adopt measures whereby its users would log into their Facebook, Twitter

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360   Interview, Park, 2017.
361   Freedom of expression is guaranteed in article 21 of the Constitution of South Korea, and includes the freedom of anonymous expression. C.f. 2010 Heon Ma 47, 252. See Kim, 2012, for unofficial English translation.
362   Park, 2012; Freedom House, 2012.
363   Freedom House, 2016.
364   Kim, 2016:90.
365   *ibid,* 97.
366   2016:87.
367   Kim, 2016:96; Bryant, 2012; Freedom House, 2012.
368   Interview, Park, 2016.
369   Interview, Hung, 2017.
370   Interview, Park, 2016.
371   Freedom House, 2012.
372   Kim, 2016:98.

or Google accounts to post comments without going through the verification process required by the regulator.[373] Both Park and Chung feel that the provisions were also damaging innovation, as any website reaching the trigger threshold would have to incur additional costs of collecting and storing user data; thereby compelling some to avoid developing more advanced services that would enable them to reach bigger audiences.[374]

Whether the provisions could actually serve their expressed objective of countering harmful conduct online was also debatable.[375] One study found that the provisions correlated with increased frequency of expletives in comments for some user demographics, while overall clarifying 'the muddied waters of comment systems [by] a depressingly negligent amount'.[376]

8.3 Stakeholders collaborate to challenge user verification provisions

Around 2008, certain South Korean Internet stakeholders – including academics, the business community, technical community, civil society, and participants from the legal community – started having frequent, informal meetings to discuss Internet policies and related issues. The meetings, Park explains, started taking place in 'quite a natural way', and later included many discussions about the provisions and potential responses to it.

These discussions became more vibrant after YouTube disabled its Korean page and published a blog post explaining and defending its global stance on freedom of expression.[377] Chung explains that while announcing its opposition to restrictive government policies was difficult, this step helped stakeholders collaborate in order to take a 'public stance together' against the provisions.[378] Park, in turn, remembers that when the group decided that the only way forward would be to challenge the provisions in the Constitutional Court, there was substantial pessimism as to the chances of success for such a case, particularly given the fact that similar provisions relating to user verification prior to an election had already passed constitutional muster.[379]

In January 2010, the group, informally organized under the umbrella of Jinbo Net[380] and the People's Solidarity for Participatory Democracy (PSPD)[381] Public Interest Law Centre, decided to launch a constitutional challenge of article 44(5) of the Network Act. The case was formally filed by individual users who had wanted to post anonymous comments on a news websites online, but were prevented from doing so without registering on the platform with their RRN and thus disclosing their personal information.

Park, who acted as a public interest litigator in the case, helped design the litigation framework and approach, and gathered input, examples, rationale, and research from different stakeholder communities to submit to the Court. He explains that the technical

373   *ibid*, 101
374   Interviews, Park, 2016; Chung, 2017.
375   Interview, Park, 2016; Ferenstein, 2012.
376   Ferenstein, 2012.
377   Whetstone, 2009 (in Korean).
378   Interview, Chung, 2017.
379   See footnote 317 above.
380   Jinbo Net is a non-governmental organization that aims to support the growth of civil activity and communication by providing network services. Read more here: https://www.jinbo.net (in Korean).
381   The PSPD is a watchdog organization that monitors abuse of power by government and private corporations. Read more here: http://www.peoplepower21.org/English/39340.

community provided information about, for instance, how futile it was to try to identify users accurately or to measure the number of unique visitors to a page; while the business community provided data on the costs of establishing, storing, and managing such a system safely. Civil society organizations, in turn, presented concerns to the Court about the effects the provisions were having on fundamental rights and the value of online anonymity, for instance.[382]

The Constitutional Court issued a unanimous ruling on 24 August 2012 that the provisions were unconstitutional for reasons ranging from the effect of the provisions on freedom of expression, freedom of the media, the right to privacy, and the unfair costs incurred by website operators.[383] Chung feels that the case was 'a huge win' and 'a real victory' because all stakeholders were suffering from the regulation. Kim, similarly, thinks the case and ruling had a positive impact in the country, potentially also giving 'a bit of warning to government officials that they should be a little more careful in this area'. It was also rather 'progressive', he points out, with the Court accepting almost all the plaintiffs' arguments.[384] While Kim had the impression that the justices involved might have had less detailed understanding of the technological aspects of the case, they took the legal and constitutional aspects of the case seriously:

> The constitutional values led to the decision, even though they did not fully understand the technological aspect of it.

Because of the ruling, the Personal Information Protection Act was amended in 2013; prohibiting website administrators from collecting users' RRNs and requiring them to destroy all RRNs on record. Failure to protect an individual's RRN is now punishable by fines of up to USD 455,000.[385] However, there are still some instances in which users in South Korea are compelled verify their identities, including during election periods.[386]

8.4   When does participation amount to multistakeholder participation?

Similarly to the Brazilian trigger that eventually led to the promulgation of the Marco Civil, the stimulus in South Korea was the user verification provisions in terms of article 44(5) – the provisions being a legislative response to growing concerns about online crime and expression that were feared might result in negative offline consequences. Unlike the Brazilian context, South Korea had limited prior experience of multistakeholder participation in (Internet) governance. One interviewee explains that there is no convenient translation in Korean for the term 'multistakeholder',[387] while another notes that the term 'multistakeholder' had never actually been heard by most of the parties who were involved in the challenge until well after the Court's ruling.[388]

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382   Interviews, Chung, 2017; Kim, 2017; Park, 2016.
383   2010 Heon Ma 47, 252. See Kim, 2012, for unofficial English translation. While the judgment is particularly interesting and well-reasoned, the scope of this Study does not allow a full discussion of the Court's ruling. The reasons for the ruling coincide with many of the reasons the provisions were criticised, discussed above. The only submission by the plaintiffs that was not accepted by the Court was the notion that the provisions amount to prior censorship. The Court felt that mandatory user verification did not regulate the publication depending on a review of content, but only upon the registration of the poster.
384   Interviews, 2017.
385   Freedom House, 2016.
386   Public Official Election Act.
387   Interview, Kim, 2017.
388   Interview, Park, 2017. The Constitutional Court also did not refer to the term.

On the other hand, Kim argues that the original provisions were 'one-sided' and 'bulldozed through' by government stakeholders with little or no consultation with the industry or other stakeholders. The resultant constitutional challenge, he suggests, could have been avoided had government stakeholders simply consulted with other stakeholder groups:

> *What happened in South Korea really shows some of the very serious shortcomings or negative consequences if Internet-related policies are taken in a very one-sided, top-down manner.*

Choon feels that the case is 'a great example of multistakeholder collaboration', albeit an unstructured one. Park similarly explains that the challenged provisions not only imposed burdens on companies and impacted human rights, but it related to an issue that cuts across various aspects and therefore impacted all other stakeholders. 'There was a natural opening for multistakeholder cooperation there,' he argues, even though it was an unconsciously adopted 'litigious multistakeholder process' driven by mostly experts. He feels that government stakeholders had originally acted in a one-sided manner without considering other stakeholders' views, and therefore needed to be challenged using the judiciary, often considered as another branch of government authority. While the process might not be 'particularly multistakeholder' as it excluded parliamentarians and government stakeholders (who were the indirect targets), Park feels that multistakeholder participation 'should not be a straightjacket' just because not all traditional stakeholder groups did not participate amicably in the process.

Since the case, government and other stakeholder awareness of the potential benefits of multistakeholder participation seems to have grown, albeit gradually. Kim says that academics and other opinion leaders have campaigned 'tirelessly' for government's attitude in the Internet policy field to change and for them to adopt multistakeholder approaches rather than 'the old style of industrial, government-driven policy'. Today, he feels the biggest hurdle against proper implementation of multistakeholder participation in South Korea is policymakers' 'obsession' with the need to 'catch up' (or retaining a lead) in technologies. He argues that there is immense pressure from certain industry groups for a regulatory regime that would be advantageous for certain sectors of the industry:

> *… government will selectively push some sectors or some elements in the industry in the hope that those selected elements will take the lead and pull the rest of the country. It's really very much business-driven; it's not based on an understanding of multistakeholder participation.*

8.5   Learning from the South Korea case

This case shows that reactive multistakeholder collaboration can be useful in addressing challenges, like restrictive legislation, that infringe upon Internet Universality (in this case freedom of expression and privacy rights) in one way or another. Yet it is also important that local stakeholders develop approaches that can more proactively address issues that challenge the protection of human rights. It is understandable that the issue at stake proved to be a temporary one, but it would be a loss if the experience did not inspire a future of multistakeholder cooperation on other issues.

Judging from the comments of some of the informants interviewed for this case study, an awareness of the importance of multistakeholder participation in Internet governance is growing in South Korea, leading to hope that government stakeholders (particularly in the legislative branche) will more proactively involve other stakeholders in the development

of law related to the Internet which would obviate the likelihood of future, reactive legal processes.

9.   The IGF Best Practice Forum on Gender

9.1   Introduction

Another case in which informants stressed the importance of not being constrained to traditional, straightjacket stakeholder classifications[389] is the case of the IGF's Best Practice Forum (BPF) on Gender. As a body tasked with discussing public policy issues related to Internet governance in a multistakeholder way, the IGF study is an unmissable object for any investigation into the evolution of multistakeholder participation in Internet governance.

The IGF is creature of the WSIS and, more specifically, the Tunis Agenda.[390] Despite scepticism and criticism relating to, among other things, the IGF's ability to influence policy and/or to act as an Internet governance body,[391] it has been described as integrally 'part of the fabric of internet governance[392] and as 'a type of new laboratory'[393] in which to 'promote multistakeholderism through multistakeholderism'.[394] One writer, for instance, points out that:[395]

> The IGF is the first organisation in Internet governance whose founding was explicitly based on the multi-stakeholder principle.

The work of the IGF in its entirety has attracted research on several occasions).[396] This Study therefore focuses more specifically on one of the IGF's newer[397] intersessional activities, which are activities that take place between annual IGF meetings and that are intended to be driven in a bottom-up, multistakeholder manner.[398] The IGF's BPF on Gender, more specifically, was selected due to its global focus, gender dimension, broader public policy emphasis,[399] and because the case introduces interesting questions pertaining to how multistakeholder participation is affected when disruptive actors participate in a process or activity.[400] Before delving into these details, however, a brief overview of the IGF and its intersessional activities is needed.

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389   Interview, St Amour, 2017.
390   Para 72, WSIS, 2015.
391   e.g. DeNardis, 2014; Kleinwächter, 2011:8; Lucero, 2011:39; de la Chapelle, 2011.
392   Price, 2014:5.
393   de la Chapelle, 2011.
394   Belli, 2015:4.
395   Hofmann, 2016:37.
396   c.f. Hofmann, 2016; Malcolm, 2015; Doria, 2013; Malcolm, 2008.
397   BPFs first started three years ago, and will enter their fourth year of operation in 2017.
398   See the IGF website for more information about these activities: http://www.intgovforum.org/multilingual/content/thematic-work.
399   Most the BPFs have a more technical focus (e.g. Internet exchange points (IXPs) or Internet Protocol Version 6).
400   The author acted as the consultant rapporteur for the BPF Gender in 2015 and 2016. This fact was known by all participants in the focus groups and interviews.

9.2 The IGF and its intersessional activities

The IGF's mandate derives from paragraph 72 of the WSIS' Tunis Agenda.[401] It is tasked with, among other things, discussing public policy issues related to key elements of Internet governance by facilitating the exchange of information and best practices and by making 'full use of the expertise of the academic, scientific and technical communities'. It is, at least in theory, multistakeholder in composition,[402] and should furthermore strengthen and enhance 'the engagement of stakeholders in existing and/or future Internet governance mechanisms, particularly those from developing countries'.

In 2011, the UN General Assembly Economic and Social Council (ECOSOC) Working Group on Improvements to the IGF was established to review the IGF's performance. Among other things, it called for the development of more tangible outputs to 'enhance the impact of the IGF on global Internet governance and policy'.[403] This call responded to one of the most frequent criticisms levelled at the IGF, that it does not have the mandate and has not achieved the capacity to make decisions and/or have concrete outcomes.[404] Some writers, for instance, take the view that the IGF deliberates about Internet policy rather than actually practicing Internet governance,[405] although a careful view would be that by its very nature it reinforces the principle and norm of multistakeholder participation in Internet governance, which is also relevant to rules, decision-making procedures and programmes developed elsewhere.

To enrich the potential for more tangible outputs, the IGF's Multistakeholder Advisory Group (MAG) and Secretariat developed an intersessional programme intended to complement other IGF activities, such as regional and national IGF initiatives (NRIs), dynamic coalitions (DCs) and so-called best practice forums (BPFs). The outputs from this programme were designed to 'become robust resources, to serve as inputs into other pertinent forums, and to evolve and grow over time'.[406]

Ambassador Janis Kārkliņš of Latvia, who served as Chair of the MAG from 2014 to 2016, noted during a focus group convened for this Study that the development of the intersessional programme should also be viewed in context of the ten-year WSIS review which in 2015 decided on the continuation of the IGF for a further ten years. Kārkliņš explains that the IGF wanted to start better documenting the 'wealth of information on different topics' that were being discussed at annual IGF gatherings, and that BPFs offered a good as avenue for this in that they would not necessarily demand consensus, and would thus be widely applicable.[407] BPFs have the freedom to define their own methodologies in an open and transparent way by using mailing lists and frequent virtual meetings. Kārkliņš feels that because BPFs were given this freedom, they 'turned out slightly different' than was the original idea that focused on documentation. In reference to the sometimes uneven outcomes of BPFs, he states that: 'At the end of the day, it was a bottom-up process and it was a community-based activity.' He adds: 'There are some limits of this volunteer movement, and you cannot expect it to be perfect or to have a perfect structure.'

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401   2005.
402   Malcolm, 2008:419.
403   ECOSOC, 2012.
404   e.g. Kleinwächter, 2015:120; Hellmonds, 2011:48.
405   Raymond & DeNardis, 2015:587.
406   See the IGF website for more information about these activities: http://www.intgovforum.org/multilingual/
       content/thematic-work.
407   Focus group, Kārkliņš, 2016.

While working modalities are tailored to each theme's specific needs and requirements, all decisions taken by a BPF are supposed to broadly reflect support of the participants of the activities and should be made in an inclusive and transparent manner.[408] Lynn St Amour,Chair of the MAG (since 2016), points out that BPFs are not supposed to 'dictate or set policy', but should 'discuss and encourage discussion, and promote understanding' of diverse topics as selected by the MAG.[409]

9.3   The BPF on Gender

In 2015, the MAG decided to devote one of six BPFs to a gender-related challenge facing the Internet. Jac SM Kee of the global civil society organization Association for Progressive Communications (APC), who was one of the lead coordinators of the BPF Gender in 2015 and 2016, says that gender was increasingly becoming a pressing issue in Internet governance discussions at the time, which was why she originally proposed it to the MAG. While there was debate within the MAG as to what such a BPF should be focusing on, Kee takes the view that 'because of the multistakeholder nature' of MAG meetings and programme development procedures, whatever is proposed tends to be 'taken on'.[410]

In 2015, the BPF Gender focused more specifically on online abuse and gender-based violence as 'an increasingly important and focused area' in the field of gender and Internet governance.[411] As explained in the 2015 outcome report of the BPF Gender:[412]

> There was also recognition that there are emerging and existing measures to address this issue, where the BPF is well placed to facilitate a multistakeholder discussion process in an attempt to collate research and good/best practices.

From March to November 2015, the BPF Gender conducted its work using an approach described in more detail in section 9.4 below. At the IGF's annual meeting in November 2015, held in João Pessoa, Brazil, a 90-minute session was dedicated to the BPF's work, and an outcome document of 184-pages was published shortly thereafter, along with an abbreviated version in the IGF's consolidated BPF handbook, which contains summaries of each of the BPF outcomes from 2015.[413]

In May 2016, at the IGF's first open consultations and MAG meeting,[414] the MAG decided to extend the BPF Gender's mandate. It was agreed that the BPF Gender's focus in 2016 would primarily be women and (meaningful) Internet access. As is explained in the 2016 BPF outcome report:

> Women's access to the Internet is directly related to [the] UN's 2030 Agenda for Sustainable Development,[415] and in particular SDG 5, which focuses on achieving gender equality and empowering women and girls; as well as goal 9c, which sets a target for universal access to ICTs by 2013.

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408   See IGF website: http://www.intgovforum.org/multilingual/content/best-practice-forums-4.
409   Interview, St. Amour, 2017.
410   Focus group, Kee, 2016.
411   IGF BPF Gender, 2015:60.
412   *ibid*.
413   IGF, 2015.
414   A transcript of the relevant session is available online: http://www.intgovforum.org/cms/3063.
415   UN, 2015.

Like its predecessor, the BPF Gender 2016 presented its findings regarding the barriers that women face in accessing and benefiting from the Internet at an interactive 90-minute session at the IGF's 11th annual meeting in Guadalajara, Mexico, in December 2016. An outcome document was published thereafter.[416]

9.4   'The tragedy of the commons'

The BPF Gender's work in 2016 built on its efforts and outcomes from 2015 and assumed a similar approach to the one it used in 2015, especially as far as the general process and methodology was concerned. Like other BPFs, the BPF aimed to provide an open and inclusive multistakeholder platform for the exchange of information.[417] In both 2015 and 2016, two MAG members were nominated by the MAG to help coordinate the BPF. St Amour and Kārkliņš note that as MAG chairs they deemed it important to try to have coordinators with different perspectives and from different stakeholder groups to 'broaden input'[418] and 'naturally promote' multistakeholder engagement.[419] The IGF Secretariat further appointed a consultant rapporteur to assist the BPF in coordinating, organizing and reporting on the BPF's work.

Each year the BPF coordinators and rapporteur adopted a semi-structured methodology by organizing fortnightly virtual calls to introduce the topic to stakeholders, to welcome broader participation, to define the scope of the BPF's priorities, and to investigate proposed methodologies that could encourage multistakeholder participation. In both 2015 and 2016:[420]

- a dedicated and open mailing list was created by the IGF Secretariat, and BPF status updates were frequently sent to the IGF's intersessional and BPF mailing lists with calls for input and/ or other relevant information.

- fortnightly meetings were scheduled, and after each meeting a summary was distributed and BPF's mailing lists as well as being published on the BPF's dedicated platform on the IGF's website.

- open, editable online platforms like Etherpad, Google Docs, Google Forms, and Google Sheets were used. To facilitate the involvement of participants from regions that do not allow or enable safe access to Google, documents were also made available in original MS Word format on the mailing lists.

- the BPF's draft outcome documents were published on open platforms like the IGF's review platform. Drafts were left on the platform for at least 21 days, after which all comments were collated and thematically analysed. BPF outputs from both 2015 and 2016 contain appendices that explain what happened with each comment received on the platform – i.e., how comments were incorporated, and if they were not incorporated into the text, the reasons for this decision (the reason for this approach is explained in section 9.6 below).

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416   IGF BPF Gender, 2016.
417   See IGF website: http://www.intgovforum.org/multilingual/content/bpf-gender-and-access.
418   Interview, St. Amour, 2017.
419   Focus group, Kārkliņš, 2016.
420   Summarised and collated from IGF BPF Gender 2015 & 2016.

- surveys[421] were used to gather more input on some of the substantial questions that the BPF aimed to address. Where relevant, survey responses were integrated directly into the BPF's outcome documents.

- stakeholders were encouraged to submit case studies[422] or examples of practices relevant to the BPF's work. Where possible, the stories and recommendations from these case studies were summarised in relevant sections of the outcome documents.

In 2016, the BPF also tried to involve more stakeholders from other regions by arranging onsite meetings at certain NRIs, including Brazil IGF, Asia Pacific Regional IGF (APrIGF), the IGF of Latin America, and the Caribbean (LACIGF). These sessions were used to gather local best practices and to raise awareness of the BPF's work. Where possible, lessons and stories gathered from these events were integrated into the BPF's outcome report in 2016.

One participant feels that a lot of the writing was done by the coordinators and rapporteur, and that strong leadership was vital to 'keeping everything going' and to 'collect our thoughts and tangents' in drafting outcome documents.[423] Another believes that whilst coordinators might share their beliefs and opinions, they never forced the BPF to do anything that the group did not want to do.[424] While participants seem to agree that the BPF was useful to them, and a positive experience overall,[425] one argues that the BPF also suffered from what she calls 'the tragedy of the commons'. In other words, she explains, the group suffered from some participants' tendency to harm the BPF's objectives by not delivering anything promised whilst suggesting more and more ambitious and time-consuming tasks from the group as a whole. For her and the BPF, this meant that:[426]

> *If the Secretariat doesn't step up and take the power, it would have become a bi-weekly chat group and I would most likely not have participated. The coordinators do hold the power, but without that nothing would happen.*

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421   In 2015, 56 responses to the survey were collected, the largest proportion of which derived from the civil society stakeholder group (41%), and the smallest from the technical community (4%). Of the respondents that identified their countries (52 out of 56 respondents), 25% were from Africa, 23% from Europe, 17% from Asia, 13% from Central and South America, 12% from the Middle East and 10% from North America. Within these regions, several countries were represented. From the Africa region, for instance, survey responses were received from South Africa, Zambia, Nigeria, Ghana, Tunisia, Kenya, Cameroon and Uganda. There were a limited number of countries represented in the Europe region, however, with responses only being received from the UK, Estonia, Switzerland and Germany. In 2016, 76 responses were collected, with the largest proportion of responses again submitted by respondents who identified themselves as part of the civil society stakeholder group (43.4%), followed by academia and research organisations (25%), the technical community (12%), and government stakeholders (10.5%). A significant proportion of respondents were from South America (37%), 21% were from Africa, 9% from Europe and Asia respectively, and 16% from Central and North America. Within these regions, a substantial number of countries were again represented. From the South America region, for instance, survey responses were received from Brazil, Guyana, Ecuador, Peru, Trinidad and Tobago, Venezuela, and Paraguay. From the Africa region, in turn, responses were received from Ghana, Mauritius, Tanzania, South Africa, Tunisia, Chad, Nigeria, Uganda, Kenya, and the Democratic Republic of Congo.

422   In 2015, these practices related, for instance, to the ways in which different countries, organizations and companies are attempting to deal with online abuse and gender-based violence. In 2016, these case studies related to the ways in which initiatives have been designed to address barriers that women face in gaining meaningful access to the Internet.

423   Interview, anonymous, 2017.

424   Baker, focus group, 2016.

425   E.g. Strivastava, Baker, Hurel, focus group, 2016.

426   Interview, anonymous, 2017.

St Amour points out that the concerns regarding the extent to which coordinators could influence a text are common to multistakeholder arrangements, but that at the IGF:[427]

> *We try to make sure that these processes are as open as they could possibly be, as the final reports should reflect the position of the group. Where consensus cannot be reached, these points of divergence should be identified.*

In terms of the BPF's outputs, Kārkliņš feels that there is a 'systemic problem' with the IGF to 'promote its work outside the IGF circle'. This problem, he argues, is aggravated by the limited resources available through and by the Secretariat to promote and distribute outcome reports.[428] St Amour agrees, noting that all intersessional work would be improved through more outreach generally; along with more long-term commitments and plans that extend beyond the one intersessional term[429] normally allocated to a BPF.[430]

9.5   The BPF Gender's experience with multistakeholder participation

Kārkliņš notes that when the concept of having a BPF was created, 'there was no question that it would be multistakeholder', but that he assumed the topic of each BPF would determine which stakeholders would be involved to a greater or lesser extent.[431] Kee says she also saw this with the BPF Gender's two diverse topics, with the first on online abuse and gender-based violence being more dominated by civil society, whilst the second year's focus on access attracted more diverse stakeholder participation.[432]

In terms of regional diversity, Kee notes that having coordinators from diverse regions participate helped to increase participation from different regions. Renata Aquino Ribeiro, one of the coordinators of the BPF in 2016, notes that as a participant from Brazil, she believes it is 'important to change the balance of power on a global level' by facilitating more participation from 'voices from the global South' in multistakeholder participation. She feels that the BPF in 2016 made a lot of progress in promoting better regional diversity in participation, but that it must be noted that even within regions like Brazil, for instance, there is a lot of diversity that is often not reflected in multistakeholder processes like the BPF (the differences between São Paulo populations and communities living in the Amazon, for instance). At the same time, she points out that the number of NRIs have expanded drastically in the past few years[433] and that the BPF benefited substantially from the local input it was able to gather through NRI events and gatherings in 2016.[434]

Focus group participants from India and Brazil respectively point out that the BPF's working language (English) limited input from some regions.[435] Besides language and regional

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427   Interview, St. Amour, 2017.
428   Kārkliņš, focus group, 2016.
429   An intersessional term is the period from when the BPF's mandate is approved by the MAG at or after the first open consultations and MAG meeting, and when the final report is published shortly after or at an annual IGF event.
430   Interview, St Amour, 2017.
431   Focus group, Kārkliņš, 2016.
432   Focus group, Kee, 2016.
433   While falling outside the scope of this Study, the evolution of NRIs is, in itself, a remarkable study of multistakeholder mechanisms in practice. At the time of finalizing this report, APC was in the process of conducting research for two future editions of the *Global Information Society Watch* focused on the role of NRIs in Internet governance. Once published, these may be referenced to better understand NRIs' potential importance in Internet governance at local, regional and global levels.
434   Interview, Ribeiro, 2017.
435   Focus group, Strivastava & Hurel, 2016.

diversity, Kee notes that the BPF created different opportunities for participation at diverse stages of the work. A focus group participant, Louise Marie Hurel, feels that this flexibility enriched the process and the final reports.[436]

Private sector involvement in the BPF's first year, however, was somewhat lacking. Sara Baker remembers that she had reached out to Facebook and Twitter for input, and while contacts at each were eager to provide input, they had to wait for sign-off which 'never happened'. She wonders if this was also because the first topic of online abuse was 'such a controversial issue' for platforms.[437] Another participant, Katharina Jens, feels that it was not necessarily the BPF's outreach efforts that were lacking, but more 'the nature of the beast' in that large Internet companies 'don't have much incentive to participate' and 'don't really have to answer our questions'. As a result, she points out, 'it sometimes felt a little like our work was taking place in an echo chamber'.[438]

Zakir Syed, a stakeholder from the technical community, feels that participation from the technical community can be improved and is, in fact, needed on topics such as those addressed by the BPF Gender 'because these very stakeholders [including government and private sector stakeholders] will help on the ground in addition to the civil society's vital role in highlighting these issues'.[439] Jens notes, with particular reference to the BPF's first year:[440]

> I wish we had someone who could speak about the actual technical side... just so we could understand what the platforms actually do to address abuse and how it works in practice.

St Amour, on the other hand, feels that it is 'a little unfortunate' that considerations of multistakeholder processes such as this one tend to 'get stuck' in believing all stakeholder classifications must always be involved. 'Multistakeholder participation to me does not mean every single stakeholder has to engage on a specific issue,' she says. 'I don't think that's a particularly good approach.' Ribeiro feels that the 'mathematics of balancing stakeholder groups' have 'reached a frenzy' in the IGF. Attempts to 'tick all stakeholder boxes', she feels, are unfortunate because they neglect the ideology of participants and other interests involved, along with the fact that stakeholders sometimes 'change hats' and move around from and within stakeholder groups. 'We should rather look at the issues than try to tick boxes of diversity,' she urges.[441]

St Amour similarly takes the view that it is more about the process, and that a multistakeholder process should consider the issue at hand, think about who has the knowledge to contribute to the discussion, who will be impacted, who has responsibility for implementing any outcomes or recommendations, and what the ultimate decision or outcomes will entail (e.g. a policy, a business activity, social norms, etc.). Unlike some, she believes that a multistakeholder process does not need all the WSIS categories of stakeholders, but that the stakeholders that are necessary to each process should be defined by asking these questions, not by sticking to a pre-ordained formula of what legitimate multistakeholder participation entails.[442] Hurel, similarly, notes that doing anything in a multistakeholder manner is more difficult in practice than in theory, and that she learned, through her

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436   Focus group, Hurel, 2016.
437   Focus group, Baker, 2016.
438   Interview, anonymous, 2017.
439   Interview, Syed, 2017.
440   Interview, anonymous, 2017.
441   Interview, Ribeiro, 2017.
442   Interview, St Amour, 2017.

participation in the BPF, that questions around representation are sometimes more of an ideal to strive towards:[443]

> *I see multistakeholderism more as a go-to word, a go-to concept, so when you use it, people already know you are talking about representation, and that you're trying to bring more people to the table.*

On the other hand, there is general acknowledgement that multistakeholder representation is not equivalent to political representation where power is allocated according to formal proportional criteria (whether there be individuals, institutions, size, geographical location, etc.).

9.6   What about disruptive actors in multistakeholder processes?

In its first year of operation, the BPF made use of Twitter to gather input on an aspect of its work. As a result, its participants became the targets of disruptive actors who were critical of the BPF's work and who rejected its objectives. These actors rationalised their antagonism by arguing that the BPF's work was a carefully constructed effort by intergovernmental organizations to 'shut down free speech on the Internet to protect feminists'.[444] As a result of the IGF's values of transparency and openness, the BPF published all working materials (including meeting recordings, summaries, draft reports, and correspondence) on the IGF's website, thereby providing a valuable resource for stakeholders who are unable to attend a call.[445] Yet these materials also provided fundamentally hostile actors with ample material, some of which was then taken out of context. As one participant points out:[446]

> *The BPF's values of openness and transparency backfired and were abused to supply fodder against us.*

Over one weekend, more than 25,000 tweets and retweets were sent under a specific hashtag used by the BPF to gather input. The BPF's volunteers also received personal emails, and some of the actors started attending the BPF's (open) virtual meetings using false identities and/or impersonating other (real) people. Recorded meetings and meeting summaries (published on the IGF's website) were furthermore used out of context to produce YouTube 'exposés' on the BPF and its volunteers, with most of the produced content displaying a lack of understanding of the process and civility of multistakeholder participation and/or the way in which the IGF works.

Focus group participants point out that this hostile engagement was largely threatening, misogynistic, sometimes xenophobic, and often contained graphic images of sexualised violence. 'It just blew up very suddenly,' Baker remembers. One anonymous participant, who received threatening and demeaning personal emails and felt compelled to reduce her online visibility and social media presence as a result, says the experience showed her that online abuse has offline effects: 'It was extremely uncomfortable and scary'. She also notes that it was difficult to interact reasonably with the actors, or to anticipate or act more pre-emptively:

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443   Hurel, focus group, 2016.
444   This was a phrase used in one of the videos distributed.
445   St Amour, interview, 2017.
446   Interview, 2017.

> *Trolls give little thought to what they're doing and are irrational and unstructured. There's no chance of reasoning with them.*

Baker notes that because the content was distributed on a variety of different channels, it was difficult to respond to. The content furthermore sometimes did not clearly violate any code of conduct, with certain conduct being difficult to pinpoint as harassment without being aware of the context:

> *I keep thinking about how to deal with multistakeholderism when you have bad actors who are taking advantage of, you know, vagueness in a code of conduct, or they do this on social media and they know the guidelines and they know how to get around saying certain things.*

Kee feels that the interaction had negative effects for the multistakeholder nature of the BPF. Volunteers who had been intricately involved stopped participating because they believed the BPF was now 'a hostile space'. Jens similarly notes that the incident 'definitely had an effect of silencing people' and 'chilling speech'. She thinks it is problematic that the threat of such incidents may make groups like the BPF wary of tackling controversial topics, and more likely to choose 'condoned' topics that 'won't rock the boat'. Kee notes that the incident also hampered the work that still needed to be done by the BPF, as 'you had bad actors in the space that were now impersonating other people' and causing 'unnecessary distraction'.

Focus group participants who were involved in the process feel that the response adopted by the BPF, namely to 'remain as open and transparent as possible', was difficult but the best approach under the circumstances.[447] Kee explains that when the BPF's draft outcome document was published on the IGF's review platform, for instance, it received several comments that were easily identifiable as being hostile actors' contributions. To deal with these, the group decided to use a thematic analysis approach and included an appendix to the final report[448] in which every comment was listed and given a response to – e.g. where the comment had not been implemented in the text, a reason is given for such action or inaction. Baker notes that such open responses took the actors by surprise:

> *They were expecting anger and pushback. And they got: 'Welcome, tell us what you think!' They just didn't know what to do with that.*

On a procedural note, one participant is critical of the way in which sign-up procedures work at the IGF. She notes that when she signed up to the BPF's mailing list, she was never warned that her email address and the correspondence she would send to the BPF mailing list would be publicly available and easily accessible on the IGF's website. She points out that it is important that participants can safely 'step into the public sphere to discuss controversial topics' without fearing reprisals.[449] St Amour, similarly, notes that there may be a need for BPFs to have better defined operational principles and guidelines from the outset.[450]

On a more positive note, both Baker and Kee note that the incident alerted more individuals and organizations to the importance of addressing the challenge of online abuse and gender-based violence.[451]

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447   Focus group, 2016.
448   See IGF BPF, 2015.
449   Interview, 2017.
450   *ibid*.
451   Focus group, 2016.

9.8 Learning from the BPF Gender

The case of the IGF's BPF Gender illustrates the difficulties of promoting multistakeholder participation in Internet governance when certain, especially potentially contentious, topics are involved. It similarly shows the potential chilling effects that the participation of disruptive actors might have on a volunteer-driven, multistakeholder process. In that sense, it demonstrates the need to sometimes balance the values of openness and transparency often cherished in multistakeholder processes at the IGF[452] with the need to also protect the safety and privacy of participants.

Similarly to the South Korea case, the case also asks questions about when a process can be defined as benefitting from multistakeholder participation or not. If mostly participants from one or more stakeholder groups (e.g. civil society) are involved in an open activity, can it still be defined as multistakeholder, or would it be more accurate to refer to it as an instance of open participation? Such an assessment can profitably take account of St Amour's suggestion of considering who has the knowledge to contribute to the discussion, who will be impacted, who has responsibility for implementing any outcomes or recommendations, and what the ultimate decision or outcomes will entail (e.g. a policy, a business activity, social norms, etc.), is important.

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452   e.g. Maciel & Affonso Pereira de Souza, 2011:7; de la Chapelle, 2011.

Part D: Recommendations, indicators and conclusions

10. Values and policy recommendations

10.1 Introduction

Besides presenting a picture of the trends typifying and challenging multistakeholder participation methods in Internet governance, the previous sections point to some conclusions, concerns, general values and recommendations important to the implementation of such methods to Internet governance in the future. It is clear that there is no unitary 'multistakeholder Internet governance' ecosystem; the Internet governance ecosystem is made up of different governance models, only some of which are multistakeholder in varying degrees. This Study has also shown that in many circumstances, multistakeholder mechanisms must learn to work alongside or in relation to other approaches, and in a transparent way.

The literature review and two of the case studies highlight as a growing challenge the need to encourage the participation of private sector stakeholders who either have limited incentive to participate (e.g. the BPF Gender), or have their own direct relationships with the state (e.g. the KICTANet case). Private sector stakeholders' lack of participation, or less transparent participation, along with the rise of public-private partnerships that affect the Internet and its governance, can place increasing strain on the legitimacy and efficiency of multistakeholder initiatives and should be closely monitored. At the same time, given that private sector decision-making governs much of the use (and hence the users) of services, the sector itself would benefit from practising multistakeholder consultation regarding the evolution of corporate policy and terms of service. Recognition of other interests (e.g. governmental, academic, civil society-based, etc.) can allow better decisions for business entities and the Internet as a whole.

The cases studied in this report also demonstrate that the effectiveness of a multistakeholder approach is habitually affected by external geopolitical factors or even global events. In the Brazil case, for instance, the Marco Civil stalled in parliament and was only promulgated once Edward Snowden made his revelations about mass surveillance. In the case of KICTANet, the election of a more open, collaborative government enabled the network to work closely with government stakeholders in KICTANet's infancy to elaborate an ICT policy, while a less participatory ICT ministry subsequently has apparently complicated consultations and collaboration.

The impact of external factors on multistakeholder approaches means that it is important that stakeholders have realistic expectations of potential outcomes, become creative in exploring avenues for action, and are prepared to capture opportunities for innovations. In the South Korea case, for instance, stakeholders were compelled to apply to the Constitutional Court to challenge a unilateral government policy to restrict anonymity online. While South Korea had limited prior experience of multistakeholder participation at the time of the case, stakeholders from civil society, the technical community and the private sector collaborated to explain to the Court why the government's real name provisions could be detrimental with respect to technical, business and human rights dimensions of the Internet.

10.2 Multistakeholder collaboration values

Besides general conclusions, more specific values can also be extracted from the cases and literature review to enable better understanding of multistakeholder processes. These values underpin recommendations for supporting multistakeholder mechanisms that can, in turn, support Internet Universality, and include the need for multistakeholder mechanisms to be:

1.   inclusive;
2.   diverse;
3.   collaborative;
4.   transparent;
5.   equal;
6.   flexible and relevant;
7.   private and safe;
8.   accountable and legitimate, and
9.   responsive.

These are discussed in the section below before final recommendations are presented.

Value 1: Inclusive

Inclusiveness as a value signifies that participants in a multistakeholder process collaborate, while retaining different roles and responsibilities. Closely related to R.O.A.M. values of accessibility and openness, inclusivity encapsulates the needs to overcome barriers to accessible participation and to dedicate sufficient funding and capacity-building efforts to promote the participation of a rich diversity of stakeholders.

Special provisions should therefore be made for stakeholders that tend to be underfunded and underrepresented, such as marginalized communities, women, small business entities, and/or civil society participants from developing and/or Global South regions. Potential indicators that relate to this value component could include assessments of the legal and regulatory framework for inclusive consultation and/or diverse multistakeholder participation.

Value 2: Diverse

Inclusivity is closely related to diversity, which aims to ensure that an Internet governance process can benefit from different viewpoints in addressing the complex and diverse stakeholder concerns inherent to an Internet governance challenge. Diversity in this regard relates not only to more traditional stakeholder groups, but also to diversity in terms of the interests that different actors within a stakeholder group may represent and the different perspectives they may hold, along with the need for regional, gender, and linguistic diversity.

Value 3: Collaborative

The challenge or concern which needs to be addressed should be defined clearly from the outset, and stakeholders should agree on common norms to guide working methods, including the extent of transparency, flexibility required, ways of making decisions, and means to promote and protect participants' safety and rights when participating in a multistakeholder process.

Value 4: Transparent

Not only do multistakeholder processes and working methods need to be open and transparent to ensure that any stakeholder can participate at any stage of a multistakeholder process, but the stakeholders that do participate need to be clear about their interests and affiliations. This is a further reason to emphasise diversity within stakeholder groups and interests, as in value 3 above.

Value 5: Equal

Closely related to transparency, it is important to ensure that stakeholders can participate on an equal footing in all stages of multistakeholder processes. To enable all stakeholders to participate equally, it is therefore important to understand stakeholders' interests and relationships, including relationships of power (as was noted in value 4 above).

Value 6: Flexible and relevant

Due to the pace of technological change, multistakeholder participation needs to be flexible enough to ensure that a process or activity can adapt to the changing needs of an Internet governance challenge or concern. Furthermore, multistakeholder participation should be customised to be relevant to local, regional, national and global instances of multistakeholder collaboration.

Value 7: Safe and private

It is important that adequate steps are taken to ensure that participants' safety and privacy needs are met as far as is reasonably possible, especially where potentially contentious topics related to the future and evolution of the Internet are concerned.

Value 8: Accountable and legitimate

Multistakeholder mechanisms should regularly evaluate processes, outcomes and goals to ensure that they remain legitimate, relevant, and transparently on track.

Value 9: Responsive

The frame of 'digital constitutionalism' entails a notion of institutionalised processes with foundational and possibly legal character, which gives rise - in such iterations of multistakeholder practice - to the further notion of rights and duties concerning involvement, and thence that involved parties are entitled to a feedback loop about their participation. This value links to the quest for "more tangible outputs" expected of the IGF, and to transparency about what (if anything) is subsequently done with diverse inputs by decision-makers (whether in boardrooms or governments). It entails transparency as to why particular decisions have been taken to accommodate or reject submissions, and whether independent appeal or redress opportunities exist for those who feel insufficiently heard.

10.3 From values to recommendations for effective multistakeholder mechanisms

In addition to identifying nine values that support multistakeholder participation in Internet governance, the case studies and literature review suggest a number of recommendations that can aid different stages of legitimate policymaking processes. Three caveats should

be noted, however. First, some of the recommendations that follow are more relevant to certain stakeholders than others. Second, values and recommendations alone will not be sufficient to bolster effective multistakeholder mechanisms in Internet governance. Practical means and mechanisms for supporting the implementation of these recommendations, e.g. through a toolkit approach, could be developed to make the recommendations more relevant and practical or stakeholders. Third, there is a need continuously to measure and evaluate multistakeholder approaches, including the extent to which they can support Internet Universality.

Linked to the values identified above, the following recommendations for legitimate multistakeholder participation in Internet governance can be highlighted:

1. Awareness of the potential benefits of multistakeholder approaches should be improved;
2. Multistakeholder approaches need to be specifically tailored and designed to meet the unique requirements of each Internet governance challenge;
3. Each Internet governance challenge must be clearly framed and goals must be defined before action is taken;
4. Relevant and legitimate stakeholders should be identified and involved at the outset;
5. Multistakeholder working methods must be transparent and inclusive;
6. Participants should collaborate on equal footing;
7. A diversity of platforms/stages must be provided for multistakeholder collaboration;
8. Stakeholder diversity must accommodate region, language and interest diversity;
9. Measures for promoting accountability should be built into multistakeholder processes;
10. Multistakeholder processes and outcomes must be continuously evaluated; and
11. Further research is needed into the institutionalisation and sustainability of multistakeholder governance experiences.

These recommendations are described in the remainder of this section.

Recommendation 1: Awareness of the potential benefits of multistakeholder approaches should be improved

Stakeholders' awareness of the Internet and its governance needs to be improved, along with understanding of the Internet's positive potential for promoting sustainable development. To promote the legitimacy and accountability of multistakeholder solutions, awareness should be raised about the potential benefits of multistakeholder participation in Internet governance as an alternative, or in addition to, other more traditional form of governance. Potential indicators that relate to this value (discussed in section 11 below) could measure, among other things, the extent to which awareness of and public debate on topics related to Internet governance are encouraged and fostered.

Recommendation 2: Multistakeholder approaches need to be specifically tailored to meet the unique requirements of each Internet governance challenge

One of the most important conclusions from the literature and case studies is that multistakeholder approaches, the values that define them, and the stakeholders that

participate in them, differ and need to be tailored to the challenge at hand. There is no one-size-fits-all, magic formula for enabling multistakeholder participation in Internet governance. Multistakeholder approaches themselves differ greatly in terms of the stakeholders that participate depending on the issue, the values that define an approach, and/or the ways in which responsibilities are shared amongst stakeholders (among other differences).

The need for arrangements tailored to specific circumstances is particularly clear when one considers the four cases investigated in this Study, and other examples such as the NETmundial meeting and the IANA transition (discussed in Section 4.2.2 above). While no attempt can be made to compare the cases because of the considerable differences between them, they all demonstrate that multistakeholder arrangements need to be customised to meet each specific challenge and related stakeholder needs. Some cases will be more formal and explicitly multistakeholder (e.g. the KICTANet or Marco Civil examples) than others (e.g. the South Korea case); some will have more (for instance) civil society participants than technical community participants (e.g. the BPF on Gender); some will require more transparency and openness to gain legitimacy (e.g. the Marco Civil or BPF Gender case); some will need special measures to ensure the safety and privacy of its participants (e.g. the BPF Gender).

Recommendation 3: Internet governance challenges must be clearly framed and goals must be defined before action is taken

The importance of properly framing and identifying an issue in clear and simple terms, along with objectives for targeted and sustained action, is clear from literature and the investigated cases. While this recommendation is particularly important to implement before action is taken, at the outset of a project, urgent matters might not allow sufficient time for forward planning. Yet this step, however rushed, indeterminate or open-ended, is still important for identifying all relevant stakeholders and, for example, promoting equality and inclusivity (discussed subsequently).

Framing the issue is also important in setting goals for multistakeholder action. In the Kenyan case of KICTANet, for instance, it appeared that the network functioned well when it had targeted short- and medium-term goals such as the development of an ICT policy or improving access in the country. Once such common goals were met, stakeholder arrangements shifted and KICTANet appeared to find it more difficult to influence policy, with concerns about certain stakeholder groups no longer participating as actively in the network.

Recommendation 4: Relevant and legitimate stakeholders should be identified and involved at the outset

Once the issue and objectives are clear, the stakeholders that should participate in addressing a particular challenge should be identified. While inclusiveness, accessibility and openness are important values for a collaborative multistakeholder process, not every single stakeholder needs to be involved in every single issue. As was suggested in the IGF BPF case study, key questions in determining which stakeholder and stakeholder groups should be involved are:

- who has the knowledge to contribute to the development of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet?

- who will be impacted by the application and outcomes of these principles, norms, rules, decision-making procedures, and programmes?

- who has responsibility for implementing any outcomes or recommendations? and

- what will the ultimate decision or outcomes entail (e.g. principles, norms, rules, decision-making procedures, or programmes, etc.)?

When an Internet governance process is likely to be controversial, there might also be a need to differentiate between stakeholders with a legitimate and/or *bona fide* interest in participation and actors who may seek to disrupt the process. While Internet governance processes should take care to make discussions accessible to all and should welcome divergent views, they need to also protect participants' privacy and safety in a transparent manner should actors seek to hijack them or divert them towards issues that are not germane to the process concerned. There is therefore a need to build and promote mechanisms and processes that ensure contributions that are civil and respectful at all times.

In considering these questions and concerns, it is also important to think of stakeholder groups that are sometimes neglected in deliberations or that might have less power (economic and other) to participate – because of financial or language restraints, for example. The IGF BPF Gender case, for instance, showed that it was sometimes difficult for people who did not speak English to participate in global multistakeholder initiatives.

Recommendation 5: Multistakeholder working methods must be transparent and inclusive

Once an issue is properly and clearly defined, it is important that stakeholders collaborate transparently to delineate the ways in which the issue will be investigated and/or addressed.

While some stakeholders are paid to contribute to multistakeholder processes by their employers or others, many stakeholders participate in Internet governance processes in their free time, on a volunteer basis. Case study informants from Brazil to Kenya and the IGF BPF Gender noted that an immense volume of information is shared with them, requiring a significant time commitment to enable proper engagement. Therefore it is important for multistakeholder processes to prevent overload by transparently developing, for example, a consensus about guidelines for posting content on mailing lists that would cover this (and other issues such as civility which is foundational for inclusivity). In especially voluntary and volunteer-driven forums or multistakeholder methods, participants should work towards finding ways to encourage dedicated involvement in a manner that does not require unrealistic time commitments and/or resources from stakeholders. Final outcomes should reflect the community's views and not those of only some individuals.

Furthermore, various cases signal the importance of having different stages and methods to enable participation at different times and depending on the amount of time available to the participant. One participant might have the time, for example, to attend regular online meetings, while another can only take the time to develop a case study in his or her own time or to respond to a survey. Participants whose time is paid for should be sensitive to those for whom involvement is entirely voluntary and in addition to their paid jobs.

Recommendation 6: Participants should collaborate on equal footing

It is important to avoid the dominance of one or more stakeholder groups in a multistakeholder process to promote equality and more balanced outcomes. While there is sometimes a need for a secretariat, a focal point or certain steering stakeholders to 'hold the pen', any agenda, method, or document should be a fair and balanced reflection of all stakeholders' views, for example.

In the case of the BPF Gender, for instance, some stakeholders felt that most of the actual work was done by the coordinators and facilitators, with many participants not delivering what they promised to deliver (for example, case studies). In other cases, the nature of the topic concerned might naturally attract more participants from specific stakeholder groups (e.g. civil society might be more present in fora where gender and Internet governance is discussed; while technical community actors are more likely to be prevalent in technical challenges pertaining to community networks, for instance). Yet it is important that multistakeholder processes actively elicit the input from other stakeholder groups and treat all input equally.

As is investigated in the next two recommendations, the inclusion of relevant stakeholders' views on an equal basis further demands active efforts to gather the views of those who cannot easily contribute to the process.

Recommendation 7: A variety of platforms/stages must be provided for multistakeholder collaboration

The use of different stages and platforms for participation (both online and offline) as well as diverse methodologies (like review platforms, written input, or surveys, for instance) was shown to increase stakeholders' ability to participate in both the BPF Gender case as well as the Marco Civil example.

The literature and case studies show that technological solutions, such as online participation methods (e.g. mailing lists and web platforms), offer important ways to overcome at least some challenges in improving inclusivity. At the same time, however, remote participation methods such as online meetings also require a significant amount of bandwidth which limit many stakeholders in particularly developing and remote areas from participating.

Resources for capacity-building and participation, especially in developing regions, offer important ways of involving more stakeholders in Internet governance. In the Marco Civil case, for instance, it was noted that stakeholders made use of online platforms to gather input on the development of the Bill and its content, along with in-person informative sessions in different parts of Brazil to promote awareness and understanding. Especially when newer or technological topics are concerned, such capacity-building and awareness-raising is important to increase the diversity of people able to participate in a multistakeholder process.

Recommendation 8: Stakeholder diversity must accommodate region, language and interest diversity

Resources should extend beyond mere funding to attend meetings and must involve capacity-building and mentorship, especially for underrepresented groups. For example,

without involving more women in Internet policymaking, with the capacity to better understand capacity and needs, digital gender inequalities[453] are likely to persist.

Stakeholder interests should be mapped, and the need for diversity within stakeholder groups (e.g. representing diverse businesses in the private sector stakeholder group; representing the interests of people from developed and developing countries; and representing the interests of linguistic minority groups online) should be highlighted.

Recommendation 9: Measures for ensuring accountability should be built into multistakeholder processes

Some of the case studies pointed to the need for stakeholders to remain accountable by, among other things, frequently evaluating their processes, outcomes and goals to ensure that they remain legitimate, relevant, and on track. Processes need to be suitably flexible to adapt quickly tU meet new and changing needs.

The notion of accountability is wide-ranging and could include different aspects. For example, it is not sufficient to enable stakeholders to access a process; steps should be taken to ensure that they can participate equally, that there is trust amongst stakeholders, that stakeholders collaborate effectively, and that processes are not captured by more powerful stakeholders. While multistakeholder processes do not necessarily have outcomes, when they do, such outcomes must fairly reflect and balance stakeholder views. As far as possible, there should be stages for commenting on and providing input to proposed outcomes, as discussed above.

Not only can the entry of disruptive actors derail a multistakeholder process, problems can also arise when participants fail to listen to others' views (including less popular views) or attempt to capture or co-opt a process. In the KICTANet example, for instance, it was noted that new participants sometimes found it difficult to participate, especially when processes were dominated by more vocal stakeholders, or when 'strong' stakeholders with a particular narrow agenda prioritised this above a wider interest in finding common ground. In the BPF Gender example, similarly, one interviewee said she sometimes found it difficult to participate because she felt that she knew much less and her opinion thus mattered less than some of the more experienced stakeholders' opinions. It is vital that multistakeholder processes are not only accessible, but accommodating and respectful to those with new and different opinions. At the same time, it is helpful to agree on working modalities beforehand, including how records will be kept and safeguarded.

Recommendation 10: Reflect and evaluate

Besides these insights and recommendations, it is important that stakeholders continue to evaluate and investigate the ways in which multistakeholder approaches are applied in practice. Continued scrutiny is vital to holding all stakeholders accountable to meeting expectations – e.g. openness, transparency, inclusiveness, diversity, accessibility – that accompany a multistakeholder approach in Internet governance. A process should not be deemed 'good' because it is, in some way, multistakeholder (nor necessarily condemned as 'bad' if it is not).

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453   See, e.g., ITU (2016).

The need to evaluate is also one of the reasons why UNESCO's next steps could include, first, developing a toolkit or a similar mechanism to help stakeholder adapt these recommendations for a more practical application to support multistakeholder participation in varied Internet governance challenges. Along with the need for practical support mechanisms, UNESCO could elaborate appropriate Internet indicators that will, among other things, focus on better understanding and measurement of multistakeholder participation in Internet governance – as is discussed in the next section. The final part of the next section includes a matrix balancing the recommendations above with multistakeholder participation values and existing indicators.

Recommendation 11: Further research[454]

Considered theoretically, multistakeholder practice be interrogated within perspectives such as "governance with(out) government" and "the shadow of hierarchy" (Rosenau & Czempiel, 1992; Peters & Pierre, 1998; Börzel, 2010; Risse ed. 2010; Börzel & Risse, 2010) as well as that of "societal constitutionalism" (Teubner 2004, 2012, 2013). In this vein, there is potential value in researching the constitutionalisation of multistakeholder participation so as to assess the extent to which it can endure beyond changes in government or company leadership/ownership. This approach would also assess the extent to which institutional processes can also be invoked to deal with disrupting actors (such as those in the BPF Gender). This approach highlights the importance of researching where there is an interplay between the social processes of Internet governance and the legal processes of Internet-related law-making (as in the case of South Korea).

A further angle to research is the extent to which multistakeholder constitutionalism is responsive to the needs of participants, and how this links to democracy and citizens (Post & Siegel, 2007). This issue was raised, for example, in the KICTANet case study, where public bodies were found to have different ways of evaluating what public participation is in practice. This impacts any assessment of both the quality of multistakeholder participation and what the outcomes are. To explore this, it may be useful to assess empirically the typology of international mechanisms developed by CSTD in the report *Mapping of international Internet public policy issues* (2015). CSTD identifies three different functions of organizations, processes and arenas involved in Internet governance and policy, namely to discuss, decide, and/or implement. The development of these three functions in different arenas is a key point to investigate in the future in order to grasp the variety of approaches and institutions within multistakeholder initiatives.

Amongst many additional dimensions worth further research are those related to outcomes. The development of norms and principles – which can determine more specific procedures, rules and regulations – is always hard to trace. Nevertheless, it would be of interest, for example to try and assess the part played by the BPF Gender in terms of mainstreaming gender-sensitive and gender-transformative approaches to Internet governance in particular instances.

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454   A number of these recommendations come from Dr Mauro Santaniello of the University of Salerno, Italy, a peer reviewer of this study.

11. Indicators for multistakeholder practices

11.1 Introduction

One of UNESCO's priorities, as noted in the previous section, is to establish appropriate Internet Universality indicators that can enrich stakeholders' capacity to assess Internet development, broaden international consensus, and foster online democracy and human rights towards knowledge societies engaged in sustainable development.

The proposed indicators, which are being developed as part of a separate project, are intended to act as a diagnostic research tool that can help stakeholders assess the state of Internet development and related policymaking in any given Member State. The application of these indicators should also provide stakeholders with credible and comprehensive information about key performance related to Internet development and with recommendations on policy improvements, along with supporting efforts to facilitate Internet Universality as a reality.

Indicators to assess multistakeholder participation, one of the components of the four-pronged R.O.A.M. approach (discussed in Part A, Section 2 above), will seek to facilitate useful and diverse participation of all stakeholders with a legitimate interest in shaping the development of policy relevant to the future and functioning of the Internet. These indicators can be based on the values and recommendations defined in the preceding section.

The extent and 'breadth' of stakeholder participation will differ depending on an issue – although all stakeholders with a legitimate interest should have the capacity to participate meaningfully in an issue. As was noted above, this depends – among other things – on who has the knowledge to participate, who will be impacted by the process, who has responsibility for implementing the outcomes (if any), and/or who can otherwise contribute to the development of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.

11.2 Relevant existing indicators

Existing indices offer useful guidance for the next step of developing indicators for the R.O.A.M. principles including covering means to facilitate multistakeholder and/or public debate on topics related to Internet governance in an inclusive manner.

Various existing indicators are, for example, useful in investigating and measuring the development and existence of legal and regulatory frameworks for consultation and/or public participation on topics related to Internet governance. Similarly, some indicators are also useful in measuring the extent to which marginalized groups are actively included in multistakeholder processes, along with whether and how gender diversity and equality are promoted in ensuring equality in multistakeholder processes. What follows is a brief non-exhaustive list:

APC: Gender Evaluation Methodology (GEM)[455]

GEM investigates how gender-power dynamics and gender relations intersect with ICTs to bring about social change. It requires a gendered approach in evaluating ICT projects and initiatives that disaggregates data by sex, analyses the sexual division of labour, and understands the gender disparities of access to and control over resources. Potentially useful questions from GEM's framework for assessing multistakeholder participation include:

- What was the level of women's participation in the project?

- What strategies were developed within the project to respond to gender issues?

- Did women's participation in the ICT initiative change their position or standing in the eyes of the community?

- What were women and men's roles in decision-making in the project?

- Were the project strategies gender transformative?

Global Partners Digital: Framework for Inclusive Cyber Policymaking[456]

The Framework for Inclusive Cyber Policymaking contains a set of six indicators to determine the extent to which a cyber policymaking process is suitably inclusive. While all these indicators are relevant to multistakeholder participation in at least an intersectional manner, relevant indicators to multistakeholder participation include those that measure: the level of openness and accessibility; diversity (the range of views and interests and the level of consideration given to inputs); collaboration (the existence of a common purpose and the level of trust among participants); transparency and accountability (the clarity of stakeholder interests and representation, the existence of procedures and mechanisms, systems for records and disclosure, and lines of accountability); collaboration (including the existence of a common purpose, and the level of trust among participants); the equality of decision-making powers and degree of decision-making by consensus; transparency and accountability (the clarity of stakeholder interests and representation, the existence of procedures and mechanisms, systems for records and disclosure, and lines of accountability).

ISOC: Internet Governance: Why the Multistakeholder Approach works[457]

ISOC's 2016 paper *Internet Governance: Why the Multistakeholder Approach works* contains a set of attributes that are useful in enabling multistakeholder processes to evolve 'to effectively serve the global public good'. Also suitable for application to governmental and multilateral processes that want to ensure more collaborative and effective decision-making processes, the attributes include inclusiveness and transparency; collective responsibility; effective decision-making and implementation; and collaboration through distributed and interoperable governance. For each of these, ISOC has developed a set of guiding questions for assessment and improvement.

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455   See: http://www.genderevaluation.net.
456   See: http://www.gp-digital.org/wp-content/uploads/2017/03/3.2-Diagnostics-Tool-with-Guiding-Qs.pdf.
457   See: https://www.internetsociety.org/sites/default/files/IG-MultiStakeholderApproach.pdf.

ITU: Connect 2020 Agenda for Global Telecommunication/ICT Development[458]

The Connect 2020 Agenda commits Member States to work towards the shared vision of 'an information society, empowered by the interconnected world, where telecommunication/ ICT enables and accelerates socially, economically and environmentally sustainable growth and development for everyone'. This contains a goal aimed at innovation and, more importantly for multistakeholder collaboration, partnership. Target 4.2, for instance, aims for 'effective partnerships of stakeholders in the telecommunication/ICT environment'.

NetMundial Initiative: NetMundial Principles[459]

NETmundial (see Section 4.2.2 b above) identified a set of common principles and values that may support an evolving Internet governance framework with the objective of ensuring that the Internet as a global resource is managed in the public interest. Among other things, it contains process principles for Internet governance that might be of relevance in developing indicators for multistakeholder participation. These include a recognition of the importance of 'democratic, multistakeholder processes; and the 'meaningful and accountable participation of all stakeholders'. It argues for values like openness, participation, consensus-driven, transparency, accountability, inclusiveness and equality, and agility, but it does not contain indicators for measuring the application of these values.

Ranking Digital Rights[460]

Ranking Digital Rights measures the extent to which private sector actors respect digital rights, and contains some indicators of relevance to diversity in multistakeholder participation and engagement. The index contains questions to ascertain the extent to which a private sector actor participates in multistakeholder initiatives with a focus on upholding freedom of expression and privacy based on international human rights principles; engages systematically and regularly with other stakeholder groups on these topics; and/or engages stakeholders whose freedom of expression and privacy are directly impacted by the company's business.

World Justice Project: Open Government Index[461]

The Open Government Index measures, among other things, the effectiveness of civic participation mechanisms and whether people can voice concerns to various government officers and members of the legislature, and whether government officials provide sufficient information and notice about decisions affecting the community, including opportunities for citizen feedback. Some of the indicators in this Index could be relevant to support the measurement of values of awareness and/or inclusiveness in multistakeholder participation.

The Index not only measures whether people are aware of their right to information, but also whether requests for information held by a government agency are granted (assuming the information is a public record). It measures if these requests are granted within a reasonable time-period, if the information provided is pertinent and complete, and if requests for information are granted at a reasonable cost and without having to pay a bribe.

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458   See: http://www.itu.int/en/connect2020/Pages/default.aspx.
459   See: http://www.netmundial.org/principles.
460   See: https://rankingdigitalrights.org/about/.
461   See: https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-open-government-index-2015.

World Wide Web Foundation: Web Index[462]

The Web Index measures the Internet's contribution to social, economic and political progress in countries across the world, investigates potentially relevant indicators like to what extent major civil society organizations use web-powered ICTs to raise awareness, educate, and inform citizens about government decision-making and public policy issues. While these indicators do not specifically relate to Internet governance issues, they can be construed as being broad enough to encapsulate the same.

As part of a component to measure social and environmental impact, the Web Index also measures the extent to which open data have had a noticeable impact on increasing the inclusion of marginalised groups in policy making and accessing government services; as well as the extent to which women and girls demand and claim their rights.

UNDESA: E-Participation Index[463]

The E-Participation Index recognises the importance of fostering civic engagement and open, participatory governance using ICTs. It aims, among other things, to promote participation in policymaking, albeit not specifically pertaining to governance of and on the Internet. Its self-assessment questionnaire, the *Measurement and Evaluation Tool for Citizen Engagement and e-Participation* **(METEP), contains questions that are potentially useful to developing indicators to assess multistakeholder participation, including** the political commitment of a country's top-level decision-makers for transparency, accountability and citizen participation. It also requires a ranking of the effectiveness of legislation pertaining to the right to access public information, and the protection of personal data (both including in the constitution).

UN: E-Government survey[464]

The E-Government Survey measures, among other things, the extent to which stakeholders are investing in building citizens' capacity to participate in science, technology, engineering and/or mathematics (STEM), to have digital skills, and to participate in multistakeholder debates.

World Wide Web Foundation: Digital Gender Audit[465]

The Digital Gender Audit contains 14 indicators to measure countries' progress towards closing the digital gender divide until national gender and ICT indicators are developed and data is regularly collected to monitor women's Internet access, use, and digital empowerment. Of relevance to multistakeholder participation, the Audit considers the percentage of women in technology and engineering research and development (R&D) fields (sourcing data from UNESCO). It also measures the extent to which law enforcement agencies and courts are taking action in cases where ICTs are used to commit acts of gender-based violence (using data from the Web Index) as well as the existence and robustness of national data protection laws (using data from the *Open Data Barometer)*.

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462   See: http://thewebindex.org.
463   See: https://publicadministration.un.org/egovkb/en-us/About/Overview/E-Participation.
464   See: https://publicadministration.un.org/egovkb/en-us/reports/un-e-government-survey-2016.
465   See: http://webfoundation.org/about/research/digital-gender-gap-audit/.

World Wide Web Foundation: Open Data Barometer[466]

The Barometer is perhaps more relevant to cross-cutting indicators of relevance to the R.O.A.M. model, and the measurement of openness itself, but it also measures the readiness for open data initiatives by ascertaining to what extent a country's regulatory framework facilitates the right to information, the protection of personal data, and the extent to which stakeholders can engage with government regarding specifically open data. It also considers the impact of open data on the inclusion of marginalized groups in policy making and accessing government services.

11.3 The relationship between values, recommendations and indicators

To conclude this section, it is pertinent to match the recommendations and values highlighted in the previous section with potential existing indicators, as is done in the table below. This can contribute to UNESCO's wider project of developing indicators for its R.O.A.M. principles.[467]

Towards measuring multistakeholder collaboration: recommendations, values and existing indicators		
Recommendations	**Values**	**Examples of potential existing indicators**
Awareness about the benefits of multistakeholder approaches must be raised	Inclusive; diverse; collaborative; transparent; flexible and relevant; accountable and legitimate; equal	• Open Government Index • E-Participation Index
Multistakeholder approaches need to be specifically tailored and designed to meet the unique requirements of each Internet governance challenge	Flexible and relevant; collaborative; transparent; safe and private; equal; responsive	• GEM • Framework for Inclusive Cyber Policymaking • ISOC attributes
Internet governance challenges must be clearly framed and goals defined before multistakeholder action is taken	Flexible and relevant; equal; collaborative	• Connect 2020 Agenda
Relevant and legitimate stakeholders should be identified and involved at the outset	Inclusive; flexible and relevant; diverse; equal; private and safe	• GEM • ISOC attributes • Open Data Barometer • Digital Gender Audit
Transparent and inclusive working methods	Transparent; safe and private; flexible and relevant; responsive	• Framework for Inclusive Cyber Policymaking • ISOC attributes

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466   See: http://opendatabarometer.org.
467   See: http://en.unesco.org/internetuniversality/indicators.

Towards measuring multistakeholder collaboration: recommendations, values and existing indicators		
Recommendations	**Values**	**Examples of potential existing indicators**
Participants should collaborate on equal footing	Equal; inclusive; diverse; collaborative; flexible and relevant	• Framework for Inclusive Cyber Policymaking • GEM • ISOC attributes • Digital Gender Audit
A diversity of platforms/ stages must be provided for multistakeholder collaboration	Inclusive; diverse; collaborative; flexible and relevant; responsive	• GEM • Connect 2020 Agenda • Ranking Digital Rights
Stakeholder diversity must include region, language and interest diversity	Inclusive; diverse; equal	• GEM • Framework for Inclusive Cyber Policymaking • Ranking Digital Rights • E-Participation Index • E-Government survey • Digital Gender Audit • Open Data Barometer • ISOC attributes
Measures for ensuring accountability should be built into multistakeholder processes	Collaborative; transparent; flexible and relevant; safe and private; accountable and legitimate; responsive	• Connect 2020 • Open Government Index • E-Participation Index • ISOC attributes
Evaluate, evaluate, evaluate	Collaborative; transparent; flexible and relevant; accountable and legitimate; equal; responsive	• Open Government Index • ISOC attributes

12. Conclusion

In 2004, Kofi Annan, then the Secretary General of the UN, argued that while there is a need to govern the Internet, it 'does not necessarily mean that it has to be done in the traditional way'. He added:[468]

> In managing, promoting and protecting [the Internet's] presence in our lives, we need to be no less creative than those who invented it.

The literature reviewed and the four cases investigated in this Study reiterate the potential benefits of creativity in the form of multistakeholder approaches in developing shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet. But the preceding sections also highlight the varied challenges sometimes inherent in enabling diverse stakeholders to collaborate efficiently in addressing and/or solving Internet governance challenges.

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468   Annan, 2004.

Without underestimating these challenges, the Study has sought to deepen understanding of multistakeholder participation in both theory and practice, and to identify the values that are common to effective multistakeholder approaches in Internet governance. These include inclusivity and diversity, collaboration, transparency, flexibility and sustained relevance, privacy and safety, and persistent accountability.

Confirming Kofi Annan's belief in the need for creative, non-traditional approaches to Internet governance, the Study also calls for multistakeholder approaches – including the values that define them and the stakeholders that participate in them – to be tailored to each specific Internet governance challenge at hand. To do so, it suggests certain recommendations that can not only make processes benefit more from multistakeholder approaches, but can, in doing so, support Internet Universality more broadly. These recommendations relate to ways in which multistakeholder collaboration can be supported in practical terms, including the need to promote stakeholder participation and inclusivity at different stages of a process, along with the more general need to raise awareness about the benefits of multistakeholder participation in certain circumstances.

The Study emphasises that recommendations and values alone are insufficient for effective multistakeholder mechanisms in practice. It suggests that practical means and mechanisms for supporting the implementation of recommendations should be developed to make the recommendations more relevant and practical for stakeholders. It also argues that there is a need to continuously measure and evaluate multistakeholder approaches and the extent to which they can support Internet Universality.

To conclude, the Study offers a preliminary investigation of existing indices that suggests some indicators that could be useful to UNESCO's ongoing effort to develop indicators to assess the state of the Internet Universality in accordance with its R.O.A.M. principles.

In summary, the findings of this research provide insight into the value of multistakeholder practice in the spectrum of principles and norms, etc., through to policies and regulations, and even terms of service, which together constitute the effective field of governing the evolution and use of the Internet. From the research, it is evident that a set of values is essential for an effective multistakeholder process that inoculates against capture by a single set of interests and simultaneously enriches the quality and efficacy of outcomes. In this way, multistakeholder participation stands out as an essential pillar of the R.O.A.M. principles.

The balancing of rights online, and the intersection and impact of this ongoing exercise with openness and accessibility, is always a complex matter. This is why, in the unique and even fragile ecosystem of the Internet, multistakeholder modalities for the chain of governance of both the whole and its parts, are mission-critical for the future.

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Appendix 1: Methodology

1.   General approach and objectives

The Study was undertaken in a context where references to multistakeholder participation in decisions that impact the Internet and Internet Universality are increasingly widespread. The primary objective of the Study was to contribute to a better understanding of the processes, localities and issues that are amenable to multistakeholder approaches in Internet governance. With the objective of producing an authoritative and influential knowledge resource for a range of stakeholders, the Study:

- explores the nature and diversity of multistakeholder approaches;

- clarifies complexities related to participation and other challenges;

- identifies good practices and lessons that can be learned from both theory and cases of application;

- raises awareness and builds capacity around the principle of multistakeholder participation in Internet governance; and

- enriches the way that UNESCO can use its status and networks to promote knowledge and uptake of multistakeholder approaches in Internet governance.

Besides working towards a common understanding of multistakeholder participation in Internet governance, the Study also supports the development of measurement indicators that can be applied in instances where there is multistakeholder approaches in Internet governance – irrespective of fora or permutation. To this extent, the Study builds on UNESCO's R.O.A.M. principles and its Media Development Indicators (MDI)[469] respectively. It also feeds into UNESCO's new and ongoing study, 'Defining Internet Universality Indicators', which will elaborate Internet indicators that can enrich stakeholders' capacity to assess Internet development, broaden international consensus, and foster online democracy and human rights towards knowledge societies engaged in sustainable development.

Besides this Introductory section (Part A), the Study includes three other parts: a mapping exercise that reviews the ways in which multistakeholder participation in Internet governance has been addressed in theory or literature (Part B); the selection and investigation of diverse cases to study the ways in which multistakeholder participation in Internet governance has evolved in practice (Part C); and, in conclusion, the identification of good practices and recommendations (Part D) – each of which is discussed separately in the next section.

The Study builds on a concept note (see Appendix 2) a scoping paper presented at the Internet Governance Forum (IGF) in Guadalajara, Mexico, in December 2016, and a project summary presented during a session at AccessNow's RightsCon conference in March 2017 in Brussels, Belgium.[470]

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469   UNESCO, 2008.
470   A summary of the session and the scoping paper are available at UNESCO, 2017.

UNESCO's analysis of these cases and the literature extends to the challenges currently facing multistakeholder approaches where the Internet is concerned, along with possible options for future action to strengthen multistakeholder participation in Internet governance.

2. Reviewing multistakeholder participation in principle (Part B)

Part B tracks the evolution of multistakeholder approaches in Internet governance in theory, or in principle, along with its different interpretations and applications over the past decade. Themes that will form the basis structure for this review are:

- the development and/or evolution of multistakeholder approaches in Internet governance at and since the WSIS;

- defining multistakeholder participation in Internet governance and related themes;

- investigating key attributes of multistakeholder participation in Internet governance;

- studying the criteria for and forms of stakeholder inclusion;

- identifying potential benefits of multistakeholder participation in Internet governance; and

- reviewing the challenges and problems of multistakeholder approaches in Internet governance.

The overall objective of this exercise, which will be based on a review of existing literature, is to highlight key characteristics, potential benefits, and challenges of multistakeholder approaches in Internet governance. Based on the results of Part B, questions and priorities for Part C were further delineated. Potential questions to guide the research, as identified during a preliminary scoping exercise, can be categorised according to multistakeholder participation in Internet governance as a principle (or modality) and a practice, namely:

Towards a better understanding of the principle of multistakeholder participation:

- What does it mean to 'be' multistakeholder in terms of an Internet governance modality? Which models of the multistakeholder participation modality have proved to be effective in diverse circumstances?

- What do multistakeholder participation and decision-making mean? How do they relate to democratic participation and decision-making?

- Is the broad multistakeholder modality considered 'superior' to other models for Internet governance as a generalisation? If yes, why? What justifies this assumption? What contradicts this assumption? Are there limits to this assumption?

- What are the potential benefits and detriments of multistakeholder approaches for Internet governance?

Towards a better understanding of the process and implementation of multistakeholder participation:

- Do multistakeholder modalities require a consensus model?

- How do multistakeholder modalities ensure legitimacy?

- Is the same multistakeholder modality appropriate for both technical and public policy challenges?

- How should assistance and funding be targeted to support multistakeholder benefits?

- *For both phases, questions around stakeholders in the* process and implementation *of multistakeholder participation included:*

- What are the stakeholder groups that participate in Internet governance? How are stakeholder groups disaggregated?

- What are the roles and responsibilities of the different stakeholders involved in a multistakeholder modality? Are stakeholders''respective roles' fixed, or do they change depending on the issue at stake or the stage of the process?

- How does one deal with overlapping stakeholder arrangements (e.g. when a stakeholder could be categorised as belonging to more than one stakeholder group)?

- How does one ensure that participation in multistakeholder processes is meaningful, constructive and representative?

- How can one ensure that marginalised stakeholders or stakeholder groups are fully included in multistakeholder processes? How can one address capacity and resource imbalances, along with other barriers to participation, among stakeholders?

- How can new technologies be leveraged to improve participation in multistakeholder governance processes?

- How can one safeguard against process capture?

In terms of limitations, Part B aims to identify trends at a broader level rather than trying to collect all available documents or mapping every statement and theory. The exercise was furthermore generally contained to literature published between 2003 and 2016 – i.e. since the first phase of WSIS.

3.   The implementation of multistakeholder participation (Part C)

3.1   General approach

The Study also investigates, in Part C, the ways in which multistakeholder participation has been interpreted in practice in diverse instances of Internet governance by considering and studying select cases of its application. Due to the primary focus of UNESCO's work, the case studies that support this work focus primarily on examples of multistakeholder participation in Internet governance that are or were conducted with the aim of supporting Internet Universality (including the need for openness, accessibility, and a human rights-based Internet as per UNESCO's R.O.A.M. principles). As far as was reasonably possible, different

types of cases were selected, including cases diverse in terms of levels of governance (international, regional, national), type of participation (e.g. advisory, public policy process, litigation), and region.

The selected cases (in no specific order) were:

- The Kenya ICT Action Network (KICTANet), illustrating an institution's efforts to promote multistakeholder participation in ICT governance in Kenya;

- The *Marco Civil da Internet*, illustrating multistakeholder participation in a human rights-related policy development process in Brazil;

- A constitutional challenge in South Korea, illustrating how multiple stakeholders collaborated to challenge a 'real name' verification policy and defend online anonymity; and

- The IGF best practice forum (BPF) on Gender, illustrating how a global, multistakeholder, community worked together to promote and protect women's safe and meaningful access to and use of the Internet.

Desktop research was conducted to provide a foundation for further qualitative research for each case and to identify stakeholders whom could potentially be interviewed or invited to participate in focus groups. Informants were therefore identified based on their participation as stakeholders in each of the cases. As far as was possible, the Study tried to gather input from informants with diverse roles and responsibilities, opinions and approaches, and/or stakeholders from different stakeholder groups, regions and/or constituencies.

For the case studies on the Marco Civil and IGF BPF on Gender respectively, focus groups of approximately 90 minutes each were held at the IGF in Guadalajara, Mexico, in December 2016. A list of informal questions was prepared for each group, and a facilitator, Guy Berger (Director: Division of Freedom of Expression and Media Development, UNESCO) guided and prodded the discussions with the aim of gathering insights into the practical experience of multistakeholder participation in each case. A provocateur, Mr David Souter (ict Development Associates Ltd), also asked further questions in both groups.

The case studies on KICTANet and the South Korea constitutional challenge, in turn, benefited from interviews conducted via Skype and, in one instance, over email. While the interviews were informal and aimed at gathering general thoughts and experiences, a list of potential questions for tailored for each informant based on other interviews and desktop research. The interviews lasted between 30 to 80 minutes per informant. Following the focus groups at the IGF, it was agreed that the case study on the IGF BPF on Gender would benefit from extra input from other stakeholders. As a result, further interviews were conducted with a selection of informants to gain a better understanding of this particular case. A list of informants is provided in the next section.

3.2 Informants: interviews and focus groups

The **KICTANet** case study was informed by desktop research and comments from various stakeholders who had been and remain involved in KICTANet's work. Interviews were conducted via Skype between January and March 2017 with:

- Rachel Alwala (Assistant Director/Communications and External Affairs at Communications Authority of Kenya);

- · Grace Mutung'u (associate at KICTANet; Open Technology Fund Fellow at the Berkman Klein Center)

- Grace Githaiga (KICTANet co-coordinator);

- Tina James (was involved in the UK Department for International Development (DFID) Catalysing Access to ICT in Africa (CATIA) programme, and therefore with creation of KICTANet in 2004);

- Mwenda Kivuvu (Secretary General of Internet Society Kenya Chapter; KICTANet participant)

- Alice Munyua (KICTANet founder; advisor to the African Union Commission (AUC) dot Africa initiative; representative of the AUC on ICANN's Governmental Advisory Committee (GAC);

- Professor Bitake Ndemo (University of Nairobi; immediate former Permanent Secretary of Kenya's Ministry of Information and Communication having served from 2005 to 2013); and

- John Walubengo (Dean, Faculty of Computing & IT at Multimedia University College, Kenya; KICTANet participant)

The **Marco Civil** case study was to a large extent informed by comments from various stakeholders who had been and remain involved in the process of developing the Marco Civil. These comments were gathered during a dedicated focus group held at the IGF meeting in 2016 in Guadalajara, Mexico. (Participation took place on a Chamber House Rule basis, except where otherwise specified by a participant.) Focus group participants were all involved in the multistakeholder process of developing the Marco Civil in various capacities, and included:

- Guilherme Canela de Souza Godoi (UNESCO, Brazil);

- Dr Raquel Gatto (formerly the Brazilian Internet Steering Committee (CGI.br), now ISOC);

- Marília Maciel (formerly the Centre for Technology and Society at Getulio Vargas Foundation (CTS-FGV), now Diplo Foundation);

- Marcel Leonardi (Google Brazil);

- Marcelo Saldanho (civil society; Part of the 'Mega Não');

- Dr Carlos Affonso Souza (Director, Institute for Technology and Society (ITS Rio));

- Laura Tresca (civil society; Article 19);

- Dr Mario Viola (ITS Rio).

The **South Korea** case study was conducted with desktop research and key informant interviews. An in-depth, 90-minute interview was conducted with Prof K.S. Park during the IGF in Guadalajara, Mexico. Thereafter, further interviews were conducted over Skype and Google Hangouts with Dr Keechang Kim (Korea University, Seoul) and Mr Jae-Hoon Chung (Senior Policy Counsel, Google South Korea). It must be noted that the author found

it difficult, due to language and other access restraints, to gain access to more potential informants.

The **BPF on Gender** case study was informed by comments from stakeholders who had been and remain involved in the IGF and BPF's work. These comments were gathered during a focus group held at the IGF meeting in 2016 in Guadalajara, Mexico. Focus group participants included:

- Sara Baker (Take Back the Tech, USA);

- Louise Marie Hurel (FGV, Brazil);

- Jac SM Kee (Association for Progressive Communications (APC), Malaysia);

- Janis Kārkliņš (His Excellency, Ambassador of the Permanent Mission of the Republic of Latvia to the UN in Geneva); and

- Ritu Strivastava (Digital Empowerment Foundation (DEF), India).

Further interviews for this case study were conducted in January and February 2017 via Skype with:

- Katharina Jens (BPF participant in 2015 and 2016, Norway);

- Lynn St. Amour (IGF Multistakeholder Advisory Group (MAG) chair, 2016 & 2017; USA);

- Zakir Syed (BPF participant, Pakistan); and

- Renata Aquino Ribeiro (BPF co-coordinator in 2016).

3.3   Limitations

The cases try to identify trends at a broader level rather than to collect all available documents, map every statement and theory, and speak to every relevant stakeholder. Instead of aiming to be exhaustive, it therefore strived to be meaningfully representative of available material and types of stakeholders. It therefore collected literature that was readily available with the aim of being to compare theory on cases concerned with what informants' view pertaining to a particular case are.

Language was a limitation for some of the cases, as the interviews and focus groups were conducted in English. For the case studies on the Marco Civil and IGF BPF on Gender this was not a challenge, with English being respectively a national language in Kenya and the working language for the BPF Gender. For the Marco Civil case study, the fact that a significant part of the literature on the case was in Portuguese prompted the author to request the assistance of a local researcher to assist in collecting and analysing literature and identifying informants that should be interviewed. For the South Korea case study, one of the informants was interviewed in person at the IGF, and agreed to provide assistance in providing a list of potential informants whom could be contacted thereafter.

4. Values, policy recommendations, indicators and conclusions (Part D)

From the research set out in the first two phases, the Study identifies, in Part D, good practices that have had a positive impact on policymaking, and extracts lessons to constitute a basis for shared understanding of the meaning, benefit, and limits of multistakeholder participation in Internet governance. To conclude, potential indicators for measuring values and policy recommendations are investigated and illustrated in a table.

It importantly highlights the need to develop, from the proposed values and recommendations, a toolkit or similar resource to support stakeholders in implementing the recommendations in specific circumstances; tailored to meet the needs of the Internet governance challenge at hand. It also argues for the need to continuously evaluate multistakeholder mechanisms, and offers some values that can be used to guide the development of indicators to support multistakeholder participation; thereby also investigating existing indices that may be of use to support effective multistakeholder participation in varied Internet governance challenges.

Appendix 2: UNESCO Concept note

UNESCO Concept note:

"Taking forward the Multi-stakeholder debate" –

Analysis and action

Summary

This project entails research into the debates and good practices, outputting a publication within the UNESCO Internet Freedom series and a shorter policy paper in six UN languages. Serving as an authoritative and influential knowledge resource for the range of stakeholders, these outputs will then be the core of awareness-raising and capacity-building activities with key actors around the world.

This project will impact in a context where references to "multi-stakeholder" participation in decisions that impact the Internet are ubiquitous. But many actors understand this in different ways, and real application is still the exception rather than the rule. For their part, UNESCO's 195 Member States have formally endorsed the concept of "Internet Universality" which calls for the respect of four principles in relation to decision-making about Internet-related issues. Summarised in the acronym ROAM, the four principles are: human-Rights, Openness, Accessibility and Multi-stakeholder participation. This project will strengthen the Multi-stakeholder principle, enriching the way that UNESCO can use its status and networks to promote knowledge and uptake of this practice.

Against this background, this Study that will deliver more insight into the Multi-stakeholder principle, and encourage uptake in the form of practical adoption.

It is worth noting that this Study is a key part of a broader set of interventions by UNESCO, which are unfolding under the title of "Internet Futures", whereby the Organisation is working to consolidate the ROAM norms and demonstrate their utility.

Background

The World Summit on the Information Society introduced the term "multi-lateralism" into Internet governance questions. In later years, this term has come to be counterposed to "multi-stakeholderism". There are varying interpretations of the difference between the two concepts: one approach contrasts joint decision-making by governments alone, with joint decision-making by civil society, academia, technical community and the business sector; a second approach sees multi-stakeholderism as including governments within the tent.

There are many other nuances about who should be included, and when and where the principle is best operationalised, as well as what its sub-principles are. There are some who believe "multi-stakeholderism" is a pretext for companies to avoid regulation, while

others who see it as a way to balance corporate power with the interests of other actors. A range of government actors fear that "multi-stakeholderism" undercuts their authority and responsibility, and proceed with policy and regulation in isolation.

The debate about interpretations and appropriateness of multi-stakeholderism continued into the review process of the World Summit on the Information Society, and are by no means settled. Meantime, there is no clear sense about possible differences between different actors' roles and participation in regard to the chain of normative development, policy processes, policy adoption, and policy implementation. Likewise it remains foggy how multi-stakeholderism is best interpreted with regard to the different issues and different decision-making bodies and fora involved. A recent report by ISOC has made a strong start towards clarification by highlighting key sub-principles.[471] Building on this, further work can be done by surfacing and unpacking the debates, identifying good practices, and injecting the insights into awareness-raising and capacity building activities.

Meanwhile, against this backdrop, in a wide range of instances, key decisions which impact on Internet Universality are being made with minimal consultation and participation. Arguably, the outcomes are all the poorer for their relatively unilateral character.

In addition, in the absence of momentum in developing policy and law through multi-stakeholder processes, a number of key issues are ending up in courts. Thus, far-reaching matters such as on "the right to be forgotten" and the "Delphi ruling on intermediary liability", are being settled in a manner that lacks the expertise and consensus-building that are enabled within non-judicial fora. The Apple-FBI case is another instance illustrating the potential of seeing far-reaching judicial decisions in the absence of broader policy and tailored law. By design, a court is not an institution set up to have processes which fuse diverse inputs into a consensus.

Courts have an extremely important place in giving final interpretation, and should not be put into the position of having to fill a vacuum in terms of the making policy. On the other hand, parliamentarians constitute a set of actors who can convene inclusive and representative hearings, with transparency and collaboration in mind. But they need to be sensitised to this. Similar to MPs, the range of government actors, companies, educationalists, civil society, technology communities, etc. can enrich their individual and collective decision-making through meaningful involvement of each other in key policy decisions.

What this points to is the absence of a holistic perspective about process, localities and issues that are amenable to multi-stakeholder approaches. Such an understanding could achieve widespread acceptance – and allow for greater application of multi-stakeholder sub-principles, even if applied differently in different fora and varying permutations that could be afforded. It further points to the value of having a common norm about when a process or decision should not accurately be characterised as a multi-stakeholder one, irrespective of the merits of the given case.

Multi-stakeholder claims should not be a charade or to legitimise processes that fall short of the concept.

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471   Internet Governance: Why the Multistakeholder Approach Works. www.internetsociety.org

Where UNESCO stands

The UNESCO comprehensive study, "Keystones to foster inclusive Knowledge Societies" identifies eight different groups of Internet stakeholders (page 19). The study states "Each of these categories has more or less unique stakes in the future of the Internet, but there are also areas of great overlap and interdependence.

For instance, some NGOs, are likely to prioritize the promotion of human rights; meanwhile parliaments are primary actors in defining laws to protect these rights. Still other stakeholders are key to shaping rights online, such as such as search engine providers, and Internet Service Providers (ISPs)."

Also observed is that respondents to the underlying research for the study, as well as participants in UNESCO's "Connecting the dots" conference, had supported the role of multi-stakeholderism as "the optimum process-setting modality for the creation of robust results for Internet governance. There was also recognition that this approach does not mean homogenising the different roles of the various actors in regard to any decision-making or implementation about a particular normative or policy issue under consideration." Nor is it quantitative accumulation of opinions.

During the "Connecting the dots" conference, one participant insisted on qualifying "multi-stakeholderism" with the adjective "democratic", while others leant towards a more flexible view whereby the multi-stakeholder modality could accommodate different configurations, in which some engagements might be led by technical experts, other engagements by civil society, or industry or governments, depending on the issue at hand, and yet nevertheless all still always striving to involve all relevant stakeholders in their various roles.

Access to multi-stakeholder processes was identified as an issue at the conference, especially for actors lacking resources to take part. Further complexity was unpacked in the recognition that participation may take many forms, ranging from research contributions, awareness-raising, advocacy, capacity building and technical advice, and monitoring.

It is precisely this complexity which could be clarified through expert research into the debates, and analysis of good practices of multi-stakeholderism in different institutional settings and different issues at stake. In the end, lessons can be extrapolated to serve as a knowledge resource that can build a broad consensus on meanings and practices.

Why UNESCO

UNESCO is the UN agency with a mandate to defend freedom of expression, instructed by its Constitution to promote "the free flow of ideas by word and image".

As an intergovernmental agency, the Organisation enjoys the trust and confidence of governments, and at the same time, it enjoys many collaborative relationships with academia, civil society and the private sector. With a worldwide presence, and substantive convening power, UNESCO can bring to bear the best in international experience to the key actors in different regions as well as globally. Recent examples include UNESCO impact on the 10-year review of the World Summit on the Information Society, and the 2030 Development Agenda and related Sustainable Development Goals.

As regards Internet issues, in 2013, UNESCO's General Conference of 195 Member States adopted Resolution 52, which recalled Human Rights Council Resolution A/HRC/RES/20/8,

"The Promotion, Protection and Enjoyment of Human Rights on the Internet", affirming that the same rights that people have off-line must also be protected online.

UNESCO's record of work on the Internet ranges from strong participation in WSIS, IGF and the Freedom Online Coalition, and intellectual contributions in the form of the Internet Freedom Series. For example, the study "Principles for governing the Internet" examined more than 50 Internet-related declarations and frameworks, in order to identify commonalities and gaps. An analogous operation could be conducted on "multi-stakeholderism" with the current research project.

The UNESCO Keystones study concludes: "By following up its existing recognition of the utility of multi-stakeholder participation, UNESCO can help Member States where requested by working to support the alignment of their Internet-related law and policies with international standards and good practices and utilizing a participatory basis." The proposed research would constitute an invaluable resource in this regard.

UNESCO has begun work to ensure translation of its knowledge products into diverse capacity-building activities. The ambition is to expand this, in conjunction with partners. In this way, publications such as the proposed one can be used in a range of workshops, seminars and MOOCs. UNESCO's status and convening power opens the door to engagements with particular constituencies such as parliamentarians, governments, civil servants, corporate leaders, academics and civil society – individually and/or jointly. The proposed research into "multi-stakeholderism" would add fuel to this thrust.

Meantime, the UNESCO Member States have endorsed the options for future action that were generated by the Connecting-the-dots conference, and UNESCO Secretariat is unfolding a range of activities under the rubric of "Internet Futures" which will amplify the ROAM norms and demonstrate their usefulness. The focus on Multi-stakeholderism is a central part of Internet Futures.

In part of this bigger picture, UNESCO is seeking to develop indicators for all the ROAM principles, constituting principles for Internet development from a UNESCO point of view. This builds on the influential Media Development Indicators, which were endorsed by UNESCO Member States. The research in this project will provide a strong base for an indicator to assess progress or changes in multi-stakeholder practices more widely.

Proposed contents

The study proposed will focus on below four areas:

1. *Global mapping on debates about multi-stakeholderism*

This would track the evolution of this principle and its different interpretations and applications over the past decade, setting out the issues that have been at stake (eg. range of participants, developing country participation, gender issues, method and processual issues, transparency, accountability, counter-arguments against the principle, terrains, etc).

2. *Analysis of selected case studies*

The research would identify instances within international fora, and within national contexts, which highlight different experiences with multi-stakeholderism, not ignoring difficulties.

This in-depth treatment would examine, through empirical data based on documents and interviews, how the principle was treated, why and with what effect.

3. Identification of good practices for multi-stakeholderism.

From the research set out in the first two sections, the study should identify good practices which have had a serious impact on policy making, and extract from them the lessons and systematise these, in order to constitute a basis for shared understandings of the meaning, benefit and limits of multi-stakeholderism, at the same time avoiding any prescription of a "one-size-fits-all" model. For example experiences in Kenya, Japan, Brazil, and Switzerland might be considered.

4. Policy recommendations

The study should highlight the significance of the preceding sections to different constituencies, in terms of how they might take forward the debate and the practice. It should further suggest how multi-stakeholderism can be further promoted as an international norm, and how the concept might be unpacked to contribute towards UNESCO's interest in evolving specific Internet development indicators aligned to the ROAM model.

5. Awareness-raising and capacity activities

Publications: Besides the full report in English, summaries are produced in remaining UN languages.

Workshops: at least six (as per UN regions)

We envisage 500 parliamentarians and government officials, including in developing countries, trained over an 18-month period.

Exchange programme: scholarships for targeted government officials in developing countries to attend and take part in key fora like IGF to learn about multi-stakeholder application in practice.

A visibility strategy, as well as evaluation strategy, will be developed as part of this project.

Countering Online Hate Speech

The study provides a global overview of the dynamics characterizing hate speech online and some of the measures that have been adopted to counteract and mitigate it, highlighting good practices that have emerged at the local and global levels. The publication offers a comprehensive analysis of the international, regional and national normative frameworks, with a particular emphasis on social and non-regulatory mechanisms that can help to counter the production, dissemination and impact of hateful messages online.

Building digital safety for journalism: A survey of selected issues

As technologies develop, so do opportunities as well as threats to journalism. This research explains some of the emerging threats to journalism safety in the digital era, and proposes a framework to help build digital safety for journalists. Examining 12 key digital threats to journalism, ranging from hacking of journalistic communications, through to denial-of service attacks on media websites, it assesses preventive, protective and pre-emptive measures to avoid them. It shows too that digital security for journalism encompasses, but also goes beyond, the technical dimension.

Fostering freedom online: the role of internet intermediaries

With the rise of Internet intermediaries that play a mediating role between authors of content and audiences on the internet, this UNESCO publication provides in-depth case studies and analysis on how internet intermediaries impact on freedom of expression and associated fundamental rights such as privacy. It also offers policy recommendations on how intermediaries and states can improve respect for internet users' right to freedom of expression.

Global survey on internet privacy and freedom of expression

This publication seeks to identify the relationship between freedom of expression and Internet privacy, assessing where they support or compete with each other in different circumstances. The book maps out the issues in the current regulatory landscape of Internet privacy from the viewpoint of freedom of expression. It provides an overview of legal protection, self-regulatory guidelines, normative challenges, and case studies relating to the topic.

Freedom of connection, freedom of expression: the changing legal and regulatory ecology shaping the Internet

This report provides a new perspective on the social and political dynamics behind the threats to expression. It develops a conceptual framework on the 'ecology of freedom of expression' for discussing the broad context of policy and practice that should be taken into consideration in discussions of this issue.

All publications can be downloaded at:

http://en.unesco.org/unesco-series-on-internet-freedom

What if we all governed the Internet?

In the Internet's relatively short history, its governance has become somewhat synonymous with multistakeholder participatory mechanisms and approaches. It is these that have enabled the Internet to develop in relative autonomy from any single power centre or category of actors with an interest in capturing the network for exclusive benefit. But while some may take multistakeholder participation in Internet governance for granted as being inherent to the way in which the Internet was designed, the Internet is very different today than it was when it was created. As the Internet has become increasingly central to societies and economies, more stakeholders like governments have started jostling for greater involvement in Internet governance challenges. Some of the ways in which the Internet ecosystem has traditionally been governed now face strain; risking not only the benefits associated with such approaches, but also the universality, openness, and freedom of the Internet.

The notion of multistakeholder participation in Internet governance is therefore not only in need of a realistic assessment, but it must adapt to meet new challenges as the Internet becomes more central to knowledge societies. Failure to address some of these challenges could have negative consequences for the future of the Internet and its ability to support sustainable development. To strengthen UNESCO's role in the field, this Study therefore provides the results of a comprehensive investigation of the evolution of multistakeholder participation in Internet governance in theory and in practice.