Multistakeholder Internet governance: A pathway completed, the road ahead

By Stuart N. Brotman

> "The multistakeholder model of Internet governance is the best mechanism for maintaining an open, resilient, and secure Internet because, among other things, it is informed by a broad foundation of interested parties – including businesses, technical experts, civil society, and governments – arriving at consensus through a bottom-up process regarding policies affecting the underlying functioning of the Internet domain system."
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> — Assistant Secretary of Commerce for Communications and Information Lawrence E. Strickling, Administrator of the National Telecommunications and Information Administration

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I. WHAT'S AT STAKE IN INTERNET GOVERNANCE

The Domain Name System (DNS) is a critical component of the Internet's global infrastructure. It allows users to identify websites, mail servers, and other Internet destinations using easy-to-understand names (e.g., brookings.edu) instead of numeric network addresses (e.g., 170.110.226.153), in order to retrieve information on the Internet. In effect, DNS functions as an "address book" of the Internet.

In June 1998, following a public comment process, the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce—which had created an ad hoc DNS process derived from the historic U.S. support of Internet development—released a DNS White Paper. There, it concluded that the core functions related to the DNS should be performed instead under private sector management to facilitate global participation in Internet operations.

To accomplish this objective, NTIA entered into an agreement with a new not-for-profit corporation that was formed by private sector Internet stakeholders to coordinate and manage policy for the DNS. This entity, the Internet Corporation for Assigned Names and Numbers (ICANN), became party to a Memorandum of Understanding (MOU) that vested DNS coordination and management functions to it, subject to oversight by NTIA.

By 2000, the MOU was replaced by a sole source, no-cost-to-the-government contract with ICANN that included ICANN's performance of all Internet Assigned Numbers Authority (IANA) functions. These are a set of interdependent technical functions that enable the ongoing efficient operation of the Internet. IANA functions include the coordination of the assignment of technical Internet protocol parameters and the allocation of Internet numbering resources. The organizations responsibilities include administering several IANA registries, such as a Root Zone WHOIS database that includes current and verified contact information for all Top Level Domain operators (e.g., .com, .org, .net). ICANN is the entity that performs these functions, as well as applies the policies developed by the customers of the IANA functions. The ICANN Board of Directors does not have any authority to make policy decisions or changes on its own.

NTIA's involvement was delegated by the President rather than by Congress, so there historically has been no statutory authority for this Internet governance approach. The agency envisioned that it would discontinue its contract with ICANN when it became assured that private sector management of the DNS and IANA functions was complete.

By 2009, NTIA expressed satisfaction that ICANN's accountability and transparency to its stakeholders was in place. It entered into an Affirmation of Commitments with ICANN to endorse a permanent multistakeholder, private-sector led governance model; had ICANN commit to act in the interests of global Internet users; and established mechanisms and timelines for continuing reviews of ICANN's execution of core tasks. The success of the Affirmation's Framework has depended upon the full participation of stakeholders in reviewing ICANN's performance.

Through an Accountability and Transparency Review Team, a broad array of international stakeholders from industry, civil society, the Internet technical community, and other governments, along with NTIA, have provided a level of accountability to evaluate ICANN's progress and recommend improvements that have been implemented.

Consequently, by 2013, NTIA concluded that after the expiration of its latest contract with ICANN in September 2015, it would hand over all responsibilities to a global multistakeholder community that would work with ICANN directly.

The U.S. also was facing increasing pressure from the world community at large, which did not want to have the U.S. remain as the sole country with oversight authority over the DNS and IANA functions. Some governments, particulary authoritarian ones, also began to use the U.S. stewardship of ICAAN as a basis for advocating that greater government control should be pursued both in a sovereign and multilateral manner.

II. THE PATHWAY TO A MULTISTAKEHOLDER GOVERNANCE CONSENSUS

At the World Conference on International Telecommunications, convened in Dubai in December 2012, members of the United Nations International Telecommunication Union (ITU) split over whether the ITU, comprised of member governments, should have control over the Internet. A majority of countries there supported greater government control, but with the United States and key allies in opposition, there was a stalemate regarding which approach to follow. The U.S. position echoed that of the Organization for Economic Cooperation and Development, which earlier had adopted a set of Internet policymaking principles that found "multistakeholder processes have [been] shown to provide the flexibility and global scalability required to address Internet policy challenges."

Here's what has transpired since then:

In March of 2014, NTIA announced that it did not intend to renew its contract with ICANN. NTIA, however, also indicated that it would require, as a precondition for its withdrawal, that an acceptable transition plan be developed through ICANN.

NTIA Administrator Lawrence E. Strickling, in making the announcement, expressed confidence in ICANN "convening stakeholders across the global Internet community to craft an appropriate transition plan."

He also set forth four principles that NTIA established for any transition plan that ICANN would develop:

• Support and enhance the multistakeholder model.

• Maintain the security, stability and resiliency of the Internet DNS.

• Meet the needs and expectation of the global customers and partners of the IANA services.

• Maintain the openness of the Internet.

The multistakeholder model for Internet governance was reinforced further by bipartisan resolutions in the U.S. House of Representative (H. Con. Res. 127) and Senate (S. Con. Res. 50), which indicated that NTIA should not accept any transition proposal that offered a government-led or inter-governmental solution.

Secretary of State John Kerry articulated his view of the multistakeholder governance model as essential to the continued global vitality of the Internet, as well. He emphasized that "a technology founded on freedom needs rules to be able to flourish and work properly. Unlike many models of government that are basically top-down, the [I]nternet allows all stakeholders – the private sector, civil society, academics, engineers, and governments – to all have seats at the table."

The community of nations also has coalesced around an Internet governance transition plan centered on multi-stakeholder governance. In April 2014, the Global Multistakeholder Meeting on the Future of Internet Governance was convened in Brazil. It was hosted by a High-Level Multistakeholder Committee comprised of ministerial repre-sentatives of twelve countries – Argentina, Brazil, France, Ghana, Germany, India, Indonesia, South Africa, South Korea, Tunisia, Turkey, and the United States. Also attending were members of the International multistakeholder community, including representatives from the European Commission, the International Telecommunication Union and the UN's Department of Economic and Social Affairs.

The result was a nonbinding statement in favor of consensus-based decision making, with dissenting views articu-lated by countries such as Russia, China, and Iran. This minority bloc favored multi-lateral government oversight of the Internet rather than broader multistakeholder management.

By May 2014, the momentum favoring multistakeholder Internet governance continued with a report supporting the Net Mundial statement in Brazil, which was released by the Panel of Global Internet Cooperation and Governance Mechanisms (convened by ICANN and the World Economic Forum with assistance from the Annenberg Foundation).

In June 2015, India, the world's largest democracy, ended its previous preference for multi-lateral rather than multi-stakeholder governance at the BRICS summit in Russia. There, in a statement by Ravi Shankar Prasad, the Minister for Communication and Information Technology, it broke ranks with both the host country and with China. With the exception of national security matters, where governments would have a supreme right of control, Minister Prasad said that India's view was that the Internet should be managed through a multistakeholder approach. "Every Indian must have the capacity to participate in global decision-making on how we manage this common resource – and so must every global citizen."

This major power shift added further support to multistakeholder governance as the optimal way forward. By May 2015, about 150 countries voiced support for the shift of ICANN oversight authority away from the U.S. government to a global representative multistakeholder group encompassing governments, civil society, businesses, and others.

III. THE U.S. PRECONDITIONS FOR IMPLEMENTING MULTISTAKEHOLDER INTERNET GOVERNANCE

The contract between the U.S. and ICANN, scheduled to expire at the end of September 2015, now has been extended since the anticipated multistakeholder transition plan being implemented by ICANN has not yet been finalized. This plan is due in October 2015, which would allow the handoff to occur in the summer of 2016. If the transition plan does not fully meet the U.S. requirements previously articulated, a further contract extension to 2017, and even beyond, is possible.

Congress now is fully engaged in this transition, on a bipartisan basis. Leadership in the Senate Commerce Committee and its Communications Subcommittee is likely to follow the lead of the House Communications Subcommittee, which unanimously approved the Domain Openness Through Continued Oversight Matters (DOTCOM) Act to provide a framework for Congressional oversight of a multistakeholder governance model.

These identical bills would:

- Require the administration to submit to Congress a report certifying that the transition plans meet the United States' objective of global Internet openness.

- Require NTIA to certify that changes to ICANN's bylaws that the multistakeholder process has required as conditions of the transition have been implemented.

- Provide safeguards designed to make ICANN more accountable to the Internet community.

- Give Congress thirty legislative days to review NTIA's report before NTIA is permitted to relinquish its role in ICANN.

IV. VIEWING THE BIGGER PICTURE FOR MULTISTAKEHOLDER INTERNET GOVERNANCE

Given the NTIA contract extension, the anticipated release of the ICANN transition plan, and the expected enactment of the DOTCOM Act into law, the coming 12 months will focus both domestic and international attention regarding

the success of the multistakeholder process. The top priority will be enabling ICANN to operate outside the control of the U.S. or any other government.

Success in developing a transition plan that achieves Congressional approval and broad global support, however, will represent at best an important short-run milestone.

The longer-term outcome, which should be accounted for now rather than after the hand-off has been made, will need to be assessed in a post-transition timeframe. Put simply, will the multistakeholder process that leads to developing a workable transition plan also support a durable and successful multistakeholder Internet governance model?

An implicit assumption of multistakeholder Internet governance is that this model will be established seamlessly once a successful transition plan for ICANN is implemented. Yet it does not necessarily follow that this model will not need to be refined further once multistakeholder governance becomes the norm.

Future improvements should be focused on long-term durability and effectiveness of this governance model. Consequently, any transition plan should include well-articulated objectives and desired outcomes that are to be achieved, with appropriate milestones and metrics, when applicable.

Despite the equanimity that has been projected during recent years, there should be recognition that all stakeholders are not equally important. This reality need not undermine the fundamental wisdom of a multistakeholder governance approach, but there will be a need to differentiate the relevance of stakeholders at various stages of envisioned development.

Engagement with different stakeholders will reflect how real participation and power in the decision making process will be managed. Information sharing and capacity building will be essential tasks if all stakeholders, despite their differences in participation, ultimately achieve a buy-in to, and ownership of, the multistakeholder governance process.

Legitimacy will be a cornerstone of multistakeholder Internet governance. It must reflect two aspects: 1) an acceptance by the private and public sectors of the broad framework that the transition plan articulates; and 2) a process of negotiation and power balance that will be continuous. Issues regarding representation, inclusiveness and transparency will arise along the way, and how they are addressed will either enhance or detract from the legitimacy that is required to sustain multistakeholder governance. The forthcoming transition plan should set forth concrete ways that legitimacy will be carefully monitored and managed.

Inclusiveness will need to be balanced by efficiency – a need to sustain global Internet operations and to do so in a timely, workable way. In other words, an optimum zone will need to be established, beyond which more stakeholders or greater involvement will not improve legitimacy nor enhance effectiveness.

The picture of multistakeholder Internet governance to date conveys a number of virtues. These include limiting government and corporate power, bringing the voice of users through civil society participation, and having technical stakeholders keep policy discussions centered on operational realities.

It will be important to acknowledge the weaknesses of multistakeholder governance, too. Legitimacy may become weaker; developed countries and industry players are likely to dominate; processes may be slow and diffuse; and overall participation may be low.

Multistakeholder governance also may pose problems of accountability. Unlike traditional state-driven multilateral agreements, where states are accountable to their citizens, the non-hierarchical network structure of multistakeholder governance lacks clear accountability incentives. The ICANN transition plan needs to address this issue directly, and in detail.

In short, although the pathway toward multistakeholder Internet governance now seems well established, the contours of the road ahead largely remain undefined. Multistakeholder governance can work in practice, but when viewed in a broader context, akin to start-up companies, the chances for failure are high and the prospects for success low.

Consequently, there is a pressing need for focus on developing a post-transition plan that presents best-case and worst-case scenarios over a five-year period going forward. Measuring success, calibrating failure and making the necessary course corrections are activities that the multistakeholder Internet governance model inevitably will require over time.

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