

THE INTERNET AS A GLOBAL PUBLIC GOOD: TOWARDS A CANADIAN POSITION ON INTERNET GOVERNANCE FOR PHASE II OF WSIS

Marc Raboy

Full Professor, Beaverbrook Chair in Ethics, Media and Communications, Mc Gill University and Jeremy Shtern, PhD Candidate in Communication at Université de Montréal

Introduction

This paper addresses three questions, which are entirely relevant to the development of Canada's position on Internet governance for the second phase of the World Summit on the Information Society (WSIS): What do we mean by Internet governance? Who should govern the Internet and why? How to ensure that users' needs will be taken into consideration?

Some of the issues have already been addressed through texts, which can be found both within this volume and elsewhere. Anticipating this, we intend to take a long view. We are interested in communication as a social process, and in governance as the full range of activities that influence that process. Our interest in Internet governance starts there.

What is the Internet?

Digital information and communication technologies can be defined by their translation of information into binary digital notation – a string of 1s and 0s. The first digital electronic computer is thought to have been developed in the early 1940's. In digital form, information is easily transferred to anywhere in the world, at low cost and instantaneous speed, through networks based primarily on telecommunications infrastructure. The most prominent of these digital networks, which have been developed over the last 30 years is the Internet. Personal computer processing power has increased to the point where digitized data, sound and images can all be easily transported over the Internet. As of early 2005, the Internet is estimated to have 750 million users worldwide (Gelbstein and Kubalija 2005).

Let us begin with a simple characterization of the Internet: The Internet is basically a set of protocols (software instructions) for sending data over networks. In other words, it is a means of communication.

So, to situate our questions more broadly, we might ask: what do we mean by communication governance, who should do it and why, and how do we ensure that users' needs are taken into consideration?

This is not a new issue. It has been with us at least since the invention of the telegraph. In its modern – that is to say, pre-Internet – guise, it referred largely to two sets of technologies (both of them strictly speaking telecommunication technologies): broadcasting and telephony.

Models of communication governance

It is a commonly held misconception that the notion of *governance* refers, strictly speaking, to the intervention of *governments* into some area of social or economic life. However, the similarity between these two words reflects more on their shared sense of coordination, which is derived from their common roots in the Latin verb *gubernare* than it does on one

being a function of the other.

This distinction is born out in the United Nations Development Programme's (UNDP) definition of governance as 'a neutral concept comprising the complex mechanisms, processes, relationships and institutions through which citizens and groups articulate their interests, exercise their rights and obligations and mediate their differences' (UNDP 1997).

In Canada and elsewhere, two distinct models of governance developed in the 20th century for dealing with broadcasting and telephony. These grew out of the particular nature of the technologies, of course, but also out of the historical circumstances in which the technologies appeared and were developed, as well as out of the social and economic purposes attributed to them by our societies – *especially* some would say, out of the tension between these social and economic purposes.

Broadcasting was, early on, considered to be part of the public sphere, a space for public dialogue and exchange, a medium of mass communication. Over time, a set of public institutions were created for the production and dissemination of content, as well as specifying the parameters of private sector activity in this sphere. As a means of public speech, broadcasting was – and is – expected to reflect commonly held social values.

Telephony developed on a rather different basis. Here, the public good was defined to mean universal accessibility, and content was left entirely to the discretion of the user. Where broadcasting developed as a point-to-mass communication, telephony developed as point-to-point communication. The role of governance was to ensure access while protecting freedom of use, the integrity of content and privacy.

Internet governance

Along came the Internet, and what do we have? A medium that combines the possibilities of point-to-point and point-to-mass communication. Sent as data over the series of protocols and instructions, which constitute the Internet, the same message can even be recycled as both point-to-point and point-to-mass communication. This juxtaposes, and often brings into conflict, differing traditions of media regulation. The potential for this convergence only increases with wider broadband access and computers with more processing power. In this respect, the Internet combines the possibilities of broadcasting and telephony – as models of communication – and raises all the old questions about communication governance in a very new way. Yet, the result of this 'everything over Internet protocol (IP)' medium of communication has most often been paralysis for institutions of communication governance.

Until very recently, it was almost impossible to have a serious discussion about Internet governance, in this country at least. After holding national public consultations in 1998, the Canadian Radio-television and Telecommunications Commission (CRTC) decided in 1999 that Canada "will not regulate the new media under the Broadcasting Act" (CRTC 1999). Until its May 12th, 2005 ruling on Voice over Internet Protocol (VoIP) telephone service, the CRTC had not adapted its telephone regulatory framework to the Internet either (CRTC 2005).

Thus, despite being the world's first national regulatory body to be charged (since 1976) with a mandate for both telecommunications and broadcasting, it was not until a full ten years after the Internet began to be commercialized that the CRTC acknowledged that Internet governance has more to do with social values than it does with technology. In its decision on

Voice Over IP, "The Commission note(d) that the focus of the Act is on telecommunications services rather than on the underlying technologies that are used to provide the services" (CRTC 2005).

We now realize – most of us well before the CRTC finally did – that all media are converging on the Internet and that the logic that led us to intervene in broadcasting and telephony also applies to the Internet.

That logic has been driven by one fundamental principle, which we argue, must be maintained. And that is that **communication is a public good**. Or more precisely, the Internet is a public good. Indeed, the Internet is a *global* public good. Or at least it could and should be.

When one person uses the Internet, its utility for other people is not diminished. In fact, it is just the opposite – additional users only increase the utility of the Internet as a communication network. In this respect the Internet is unequivocally a *nonrivalrous* resource, the first of two characteristics, which Kaul, Grunberg and Stern (1999) use to define a public good. The Internet is also a *nonexcludable* resource, the second characteristic of a public good. That is to say that the political, economic and social costs of legislating and enforcing a restriction on the use of the Internet to certain segments of the population would be far greater than any benefits gained from doing so.

The acknowledged existence of numerous so-called 'digital divides', or uneven levels of access to information and communication technologies, underscores the extent to which the Internet is a public good whose governance structures do not presently allow its full potential to be met nor take into account the interests of all of the groups who might benefit from it. What's more, the groups who might benefit from the Internet include different countries, populations within countries and sets of generations both present and future. In this sense, the Internet is not only a public good, but a global public good.

As the inequalities in access to the Internet increase, it will only become more challenging to justify a governance approach, which treats it as a global public good. This paradox illustrates precisely why the stakes are so high in the discussion of Internet governance, which is going on through the WSIS process.

The Internet governance debate in the WSIS

The first phase of the WSIS delivered a mandate to the Secretary-General of the United Nations to set up a Working Group on Internet Governance (WGIG) with the aim of defining Internet governance, identifying the relevant public policy issues, developing a common understanding of the respective roles and responsibilities of all stakeholders (governments, existing international organizations and other forums as well as the private sector and civil society) and producing a report for discussion at Phase II.

The formation and composition of the WGIG holds some promise for serious discussion. Created at the end of 2004 after extensive multi-stakeholder consultations, its 40 members are broadly representative of the full range of interests engaged in the WSIS process – and beyond. It is essential to understand that the WGIG is not a negotiating body, that the substantive power to shape the institutional structures, which will govern the Internet – even at the international level – still lies primarily at the level of the nation state. The power of the WGIG is that it is setting the agenda according to which Internet governance is likely to

develop.

The potential contribution of the WGIG lies in its ability to use its issue-constructing mandate to fast-track the discussion of Internet governance to the point so that the inevitable divergence in intergovernmental opinion can only shape the negotiations, not determine whether or not there will be any. The challenge facing the WGIG is to define the parameters of Internet governance as a field of issues, which must be dealt with, so that political bickering does not derail the debate.

As this was being written, the WGIG had produced papers on more than 25 policy issues, compressed these into four issue 'clusters' and then produced 12 more papers analyzing the existing governance mechanisms in these areas. Though it had yet to establish its final 'working' definition of Internet governance, the inclusion of, and attention given to these public policy issues seemed to suggest that the WGIG was working with a broader notion than merely the technical coordination functions commonly associated with the pre-WSIS framework of Internet governance.

This was reflected in the unofficial 'draft' working definition of Internet governance made public by the WGIG during PrepCom 2 in February 2005. It read as follows:

First *descriptive* sentence:

Internet governance means the collective rules, procedures and related programs intended to shape the social actors' expectations, practices, and interactions concerning Internet infrastructure and transactions and content.

Second *prescriptive* sentence:

Internet governance should be multilateral, transparent and democratic, with the full and balanced involvement of governments, the private sector, civil society, and international organizations. It should encompass both technical and public policy aspects, ensure an equitable distribution of resources, facilitate access for all and maintain the stable and secure functioning of the Internet, taking into account multilingualism (Desai 2005 p.3).

This interest in not only the carriage but also the content of the Internet as a medium of communication, in notions such as 'transparency', 'democracy', 'equitable distribution of resources' and 'access for all', held out a promise that the WGIG would be able to frame the debate on Internet governance around the sorts of issues and questions, which have defined the Canadian experience in broadcasting and telecommunications governance. Though pre-WSIS approaches to Internet governance itself have typically stopped short at the descriptive definition, Canada's pre-Internet approach to communication governance has always been interested in the prescriptive.

What remains to be seen in the WSIS process is whether the WGIG will receive enough support from national delegations for an approach to Internet governance, which includes a prescriptive component. Canada has a critical role to play here.

National positions

The initial statements of certain national governments, made in response to the WGIG's preliminary report, seem to support such an approach to Internet governance. Delegates from developing countries, including Brazil, South Africa, Argentina and India, voiced concern about the role of United States law and business in governing and managing the Internet. The European Union expressed a similar desire about "the question of internationalization of the management of the Internet's core resources", adding that "a new cooperation is needed in order to confer the WSIS principles regarding the crucial role of all actors within Internet governance" (E.U. 2005).

In contrast, the U.S. sees communication governance as a substantially more narrow activity, which is focused on the coordination and management of technical functions. The U.S. position prefers that the private sector lead Internet governance, that regulation be as minimal as possible, and that the emphasis be placed on competition and system security.

The tension between these positions essentially questions whether communication is a global public good or a local private good.

Canada's Position?

Where does and should Canada weigh in on this debate and what, more broadly speaking is the role for the Canadian position on Internet Governance? The recent CRTC decision that VoIP constitutes merely a telephone call made on a new kind of phone and thus will be governed according to the established institutional framework for telephony in Canada, suggests that there is growing awareness that Canada's traditional approach to communication governance is not incompatible with this new set of technologies. Furthermore, the inclusion and extensive discussion of public policy issues by the WGIG in regards to Internet governance would seem to necessitate that each national delegation in turn consider what public policy issues are relevant to communication governance in its own national context. From this perspective, the forthcoming WGIG report should be seen as a baseline.

The Canadian approach to communication governance suggests that a myriad of public policy issues are brought to bear in decisions about the governance of communication. As such, it is incumbent upon the Canadian delegation to make a statement, which not only supports the broad definition of communication governance that may or may not emerge from the WGIG, but goes beyond it as a counterbalance to the narrowly technical coordination approach, which is contrary to established Canadian communication policy.

It is incumbent upon Canada to go as far as, for example, Norway does in suggesting that "the Internet has now become an integrated and vital part of the basic infrastructure in most nations and also part of a new global public infrastructure" (ITU 2005). Norway has argued that the Internet should be seen as a global public good.

The Internet as a global public good

If we can agree with that starting point, all the rest will fall into place.

It means that we need to develop a blended set of regulatory mechanisms, aimed at maintaining a vibrant public sphere (borrowing from the broadcasting model) as well as private uses by individuals (borrowing from telephony). With the Internet, though, the "we"

has changed, and we can no longer do this strictly at the national level – and this is where WSIS comes in.

The Internet also gives us a more sophisticated understanding of communication as a holistic process involving multiple sets of actors – the best depiction of this is in the work of Lawrence Lessig (1999), who describes Internet governance as the result of a set of four interdependent factors: the legal/regulatory framework, the impact of markets, the social uses brought to bear by users, and what he calls “code” (the software and system architecture).

We now recognize that communication systems do not develop on their own, but are driven by such a combination of factors: legal/regulatory, economic, social, and structural. Asking who should govern is to ask which interests should rule. In turn, Lessig’s framework makes a compelling case that the tension surrounding the question of Internet governance is not one of whether or not the Internet *should* be governed as it has so often been framed in Canada and globally. Instead, the implication is that the Internet *is* being governed regardless of what formal arrangements exist for doing so. As such, the question becomes whether we want a formal arrangement, which is as democratic and transparent as possible or if we want to continue to leave the Internet to actors whose interests and agendas remain hidden and unaccountable to public policy? In considering our response, we should perhaps keep in mind Canadian political philosopher Darin Barney’s caveat that “arguments, which insist that networks are technically exempt from legal authority cannot be separated from the ideological belief that such exemption is politically desirable as well” (2000, p. 328).

This is why we insist so strongly that the starting point to this discussion has to be agreement on a broad but simple guiding principle: communication is a public good, the Internet is a public good, the Internet is a global public good.

If we have a message to send to the Canadian government, it should be: let your policy on Internet governance be driven by this principle. When you go to WSIS, look at the proposals through this lens, bring this message to the world community, and perhaps the Internet will meet at least some of the great expectations that are being voiced in its name.

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