

Multistakeholder Model and Stakeholders

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Outline

- 1 Introduction
 - Overview
 - Internet governance
 - Democracy
- 2 Multi-stakeholder model
 - History
 - Stakeholders
 - Examples
- 3 Challenges
 - Critiques
 - Criteria
 - The way forward

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Introduction

Why multistakeholder governance?

- National laws don't work on the Internet
- Representative democracy doesn't work globally
- Multistakeholder model can solve both problems
 - Gathers diverse stakeholders to contribute perspectives
 - Deliberative rather than representative democracy
 - Produces more inclusive and better informed outcomes

Why not multistakeholder governance?

- Theoretically sound but implementation difficult, flawed
- Wildly diverging interpretations and implementations
- Widespread skepticism/disillusionment within civil society

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What is Internet governance?

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.

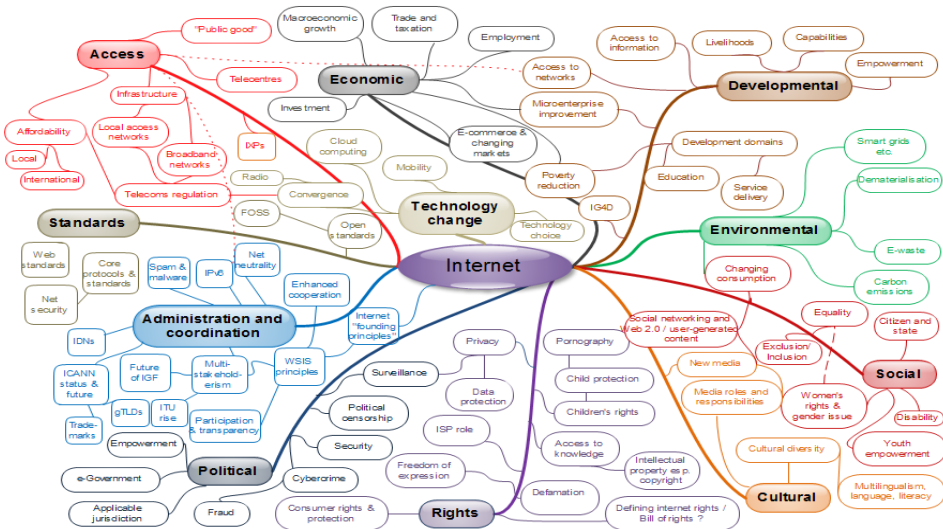
World Summit on the Information Society (WSIS), 2005

Issues included

Not just domain names and IP addresses but also:

- Other Internet technical standards (eg. HTML, HTTP)
- Internet infrastructure and standardisation
- Safety/integrity (eg. spam, security)
- Legal issues (eg. privacy, copyright, cybercrime)
- Economic issues (eg. taxation, trade in services)
- Access issues
- Socio-cultural issues (eg. free expression)

Mapping issues covered



What is governance?

- Governance is broader than government
- Exercised by several mechanisms
 - Norms/policy coordination
 - Markets
 - Standards/code
 - Rules/legislation
- And in a number of spheres
 - Technical aspects
 - Administration & coordination
 - Infrastructure
 - Services and content

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Example

ICANN makes contracts with domain registries

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Example

The IETF makes standards through voluntary RFCs

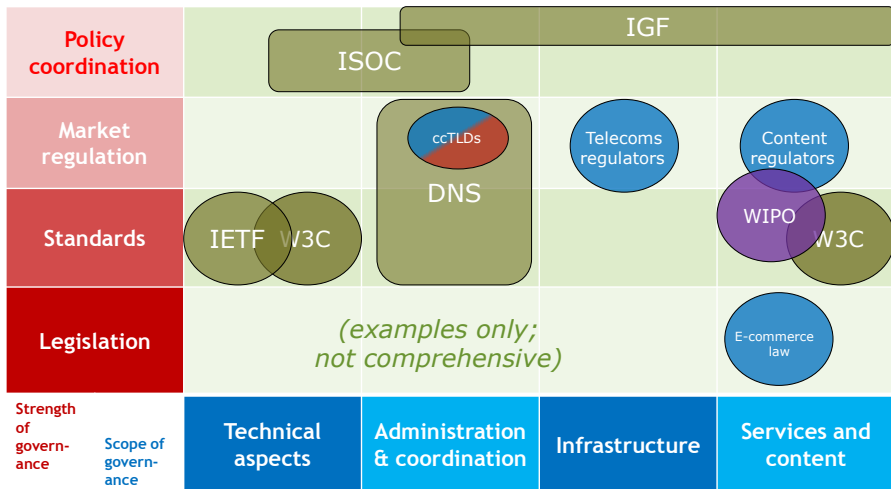
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Example

The EU Data Protection Directive regulates collection of personal data online.

Mapping the Internet governance ecosystem



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How meaningful is democracy?

On the surface the democratic principle is a simple one:

All those who are affected by a decision should have a say in it.

But this breaks down where:

- There is no correct way of balancing competing preferences
- There is no elected representation of global networks of users
- Decisions by private entities may be unamenable to regulation
- No remedy when majority decisions impact on minority rights

In short, democracy as we know it can't govern the Internet

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Two conceptions of democracy

Do we conceptualise of democracy...



As a mirror?

- John Adams
- Populist (Brexit)

Or as a filter?

- James Madison
- Powerful elites

Deliberative democracy

- Deliberative democracy can solve these problems
 - It does not depend upon proportionate representation
 - It does not depend upon national electorates
 - It is not as vulnerable to populist majoritarianism
 - It works well with mechanisms of governance besides law
 - It does not trump formal institutions (parliaments and courts)
- Representative democracy is designed for **decision-making**
- Deliberative democracy is also designed for **opinion formation**
 - *Free, reasoned and equal* deliberation
 - Aiming to achieve a rational consensus
- Exists in practice in various forms and sizes
 - 21st Century Town Meeting
 - Citizens' jury/citizens' assembly/consensus conference
 - Deliberative Poll

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Democratic safeguards

- In addition to democratic processes to reflect and filter people's preferences, we also need to protect against the regression of democracy into oligarchy
- Accountability includes
 - Top-down, such as mechanisms of review and appeal
 - Bottom-up, such as regular elections or public consultation
 - Peer-to-peer, such as competition from other institutions
- Transparency includes
 - Maintenance of records
 - Public access to those records
 - Access to decision-making processes

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The rise of multi-stakeholderism

- Has a long but slow history
 - The ILO has been a multi-stakeholder body since 1919
- The 1992 Earth Summit influenced WSIS a decade on
- The technical community embraced it soon afterwards
 - Existing “private sector led” processes redefined as “multi-stakeholder”
- Apex of multi-stakeholder rhetoric reached 2006-2012
 - WSIS, IGF, OECD Internet Policy Principles, ITU WCIT

World Summit on the Information Society

- An huge United Nations summit initiated by the ITU
- Held in two phases: 2003 in Geneva and 2005 in Tunisia
- Civil society and the private sector were invited to the table
- But states controlled this and kept them on a short leash
- Geneva Declaration of Principles
 - Sets out 11 general public policy principles including “management of the Internet ... should involve all stakeholders” “in their respective roles” (see next slide).
- Geneva Plan of Action
 - For pursuing these 11 principles (such as capacity building)

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Respective roles of stakeholders

- 1 Policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues.
- 2 The private sector has had, and should continue to have, an important role in the development of the Internet, both in the technical and economic fields.
- 3 Civil society has also played an important role on Internet matters, especially at community level, and should continue to play such a role.
- 4 Intergovernmental organizations have had, and should continue to have, a facilitating role in the coordination of Internet-related public policy issues.
- 5 International organizations have also had and should continue to have an important role in the development of Internet-related technical standards and relevant policies.

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Three key stakeholder groups

How all three stakeholder groups participate in the international system

- Governments
 - Some supranational like the UN and EU
 - Some IGOs represent non-state parties, eg ILO
- Private sector
 - Informally through lobbying, eg in passing TRIPS
 - Formally through peak bodies like ICC/BASIS
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 - Central in environmental and human rights reform
 - 1998 Aarhus Convention now sets this as a standard

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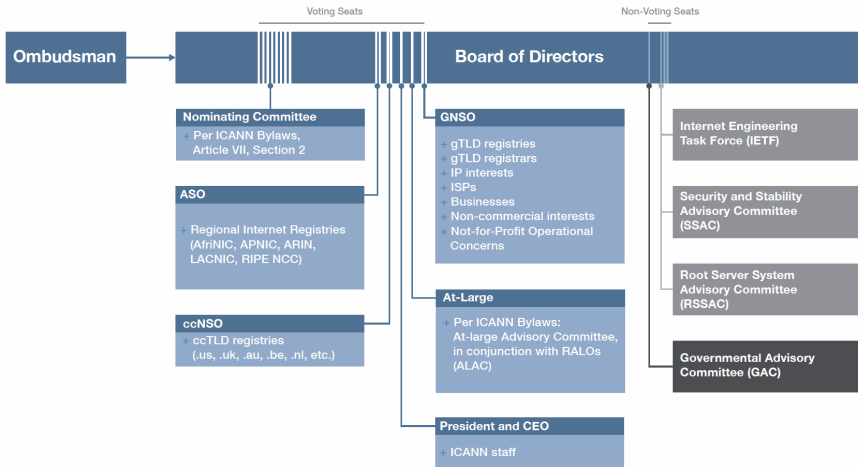
Other stakeholder groups

- The Internet technical community
 - WSIS recognized it as a cross-cutting constituency
 - OECD, IGF, CSTD now treat it as a stakeholder group
- The academic community
 - Often lumped together with the technical community
- Governmental blocs
 - At WIPO and WTO, governments organize into blocs
- Business sectors
 - ICANN's Registrar and Registry stakeholder groups
 - Constituencies (ISPs, IP owners, commercial users)
- Users?
 - NETmundial treats users separately from civil society
 - ICANN's NCUC and NPOC

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ICANN



OECD

- System of advisory committees
 - Business and Industry (BIAC), Trade Unions (TUAC), Civil Society (CSISAC), Technical Community (ITAC)
- For the OECD, a multi-stakeholder approach
 - offers a way for governments to improve their policy performance by working with citizens, civil society organisations...businesses and other stakeholders to deliver concrete improvements in policy outcomes.*
- Governments remain firmly in the driver's seat
- Probably better termed *participatory democracy*

NETmundial

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.

Note

Unlike WSIS, ICANN and OECD definitions, no fixed roles for stakeholders—neither always “equal footing” nor always government-led

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The fall of multi-stakeholderism

- Government support for multi-stakeholderism a platitude
- What (most of) civil society now thinks of the multi-stakeholder model is:
 - Corporations writing the rules to govern themselves
 - Time-wasting, ineffective, distraction, achieves nothing
- This is:
 - A misconception based on bad examples and misuse
 - Damaging to those advancing multi-stakeholder initiatives
 - Unnecessary if we can find a better way to describe what we *really* mean

Example: U.S. 2016 election platform

Hillary Clinton's Initiative on Technology & Innovation:

Hillary believes that internet governance – the coordination of the technical systems that allow the internet to function seamlessly across the globe – should be left to the global community of engineers, companies, civil society groups, and internet users, and not to governments. That is why as Secretary of State she championed the “multistakeholder approach” to internet governance and vigorously fought back against efforts by national governments to control the internet through government-led multilateral organizations, such as the International Telecommunications Union.

Governments and multi-stakeholderism

OECD governments are less supportive than they claim:

- Excluding certain topics from multi-stakeholder fora
 - Security
 - Intellectual property
- Promoting “voluntary agreements” that are not stakeholder-balanced
 - EU hate speech code of conduct
 - US Copyright Alert System
- Shifting policy discussions to less inclusive fora
 - G8, ACTA, Trans-Pacific Partnership (TPP)
- Holding back the IGF
 - Opposing stable funding mechanisms for the IGF
 - Opposing non-binding policy recommendations

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Meaningful stakeholder inclusion

The following questions arise when we focus on *meaningful stakeholder inclusion* rather than mere multi-stakeholderism:

- 1 Are the right stakeholders participating?
- 2 How is their participation balanced?
- 3 How are the body and its stakeholders accountable to each other for their roles in the process?
- 4 Is the body an empowered space?

1. Are the right stakeholders participating?

The body should have access to the perspectives of all those with significant interests in a policy problem or its possible solutions.

Why?

- Unlike with voting, including all affected individuals is less important than all affected perspectives.
- Often (not always) this involves aggregating those with common perspectives into stakeholder groups.
- Also requires resourcing those whose perspectives aren't heard.

Strategies

- Being structurally and procedurally open to admit the participation of all stakeholders who self-identify as being significantly affected by an Internet governance policy problem or by the possible solutions to that problem that are within its mandate.
- A program of resourcing and outreach to ensure that the perspectives of all those stakeholders who are significantly affected by that problem or those solutions are indeed included.
- Flexibility to adapt its internal structures and processes to accommodate stakeholders within groupings that facilitate the work of the body, and can be consensually accepted by all participants as being fair and balanced.

2. How is their participation balanced?

There must be mechanisms to balance the power of stakeholders to facilitate them reaching a consensus on policies that are in the public interest.

Why?

- Roles of stakeholders will vary by issue.
- Roles can be determined *ex ante* under “constituency” model or dynamically under “deliberative” model
- Flattening of power imbalances is essential to avoid capture.

Strategies

- As a first pass, agreeing upon any unique roles of the participating stakeholders in respect of the policies under consideration, based on all relevant factors including historical roles, expertise and resource control.
- Thresholds for decision-making, such as rough consensus, that give all stakeholders an effective voice in developing policy, while minimizing the possibility of minority veto or capture by the powerful.
- Deliberative processes that flatten power differences between stakeholders and require them to defend their position in terms of their view of the public interest.

3. How are the body and its stakeholders accountable to each other?

Mechanisms of accountability must exist between the body and its stakeholders to demonstrate the legitimacy of their authority and participation respectively.

Why?

- All multi-stakeholder processes must be transparent
- Accountability can range from self-assessment to formal accreditation
- But legitimacy is not drawn only from participants but from outputs

Strategies

- Where the body exercises any authority over the stakeholders, its legitimacy to do so (whether institutional, democratic, meritocratic, or otherwise) must be generally accepted by the community of stakeholders at large.
- The body must operate transparently and follow best practices accountability mechanisms such as independent review.
- The process must include means by which the stakeholders can be held accountable for the legitimacy of their participation, as appropriate to the process and their roles in it.

4. Is the body an empowered space?

For each stage involved in governance, the body should either be directly empowered to execute it, or linked to external institutions that have the authority to do so, as appropriate.

Why?

- A body that is neither itself empowered nor linked to empowered bodies does not provide meaningful stakeholder inclusion
- But whether it should be empowered is a value judgment
- This disagreement often clouds discussion of multi-stakeholder processes!

Strategies

- The body should develop a shared understanding of the extent of its own legitimate authority (that may vary by issue, stage of governance, implementation mechanism, and over time).
- At every point where the body lacks either the capacity or the authority to act, formal or informal two-way liaison mechanisms linking its outputs to external empowered institutions should exist.
- To facilitate this, the outputs of the body should be collected, synthesized, recorded and delivered in clear, actionable forms.

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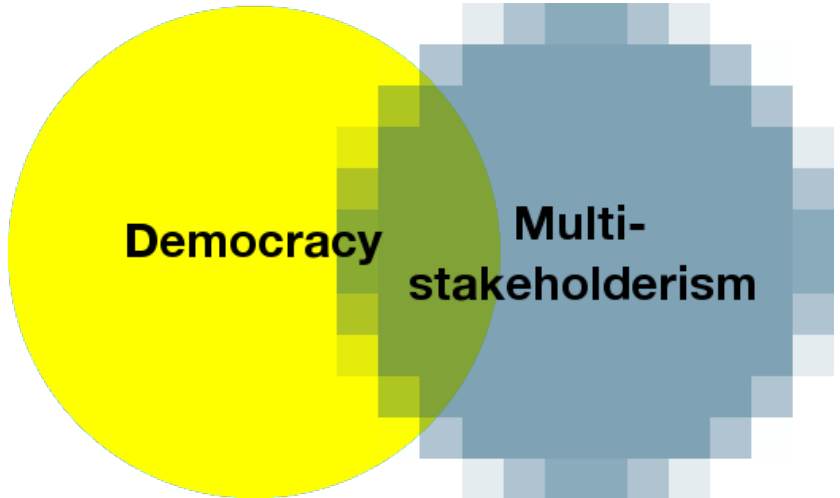
The need for multi-stakeholder approach remains

- Most (not all) Internet regulation and behaviour has border-crossing impacts
- This often (not always) requires a globally coordinated approach
- Otherwise regulation will be illegitimate (some affected have no say) and/or ineffective

A multi-stakeholder process is democratically legitimate to the extent that it incorporates the viewpoints of all affected stakeholders into the development of policies in a balanced way

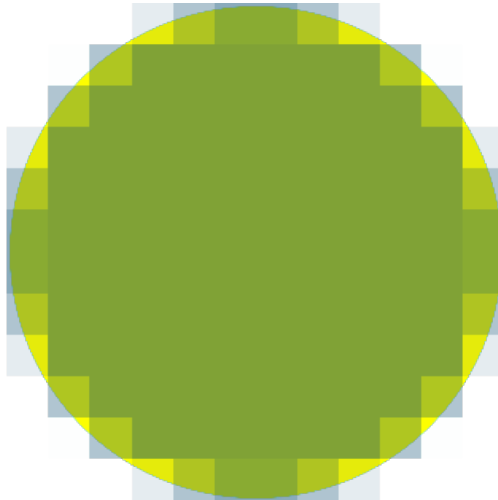
Reconciling multi-stakeholderism and democracy

We want to increase the overlap between them and smooth the rough edges



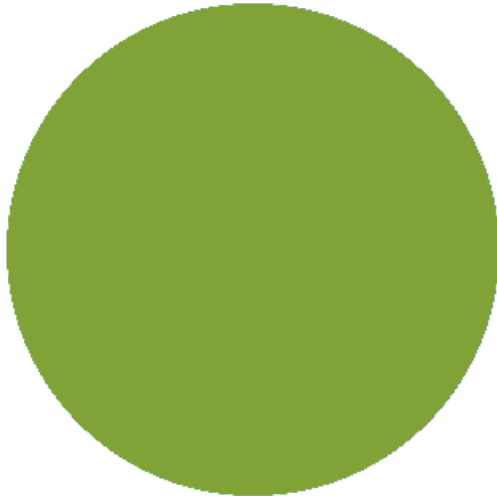
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Summary

- Inclusion of diverse stakeholders in Internet governance can produce more inclusive and better informed outcomes
- But the currency of multi-stakeholderism has been debased by:
 - The diversity of processes that share the same nomenclature
 - Their lack of adherence to criteria that reflect meaningful stakeholder inclusion
 - The arbitrary exclusion of stakeholders from certain issues and foraresulting in some processes lacking democratic legitimacy
- A return to first principles is helpful to classify and critique Internet governance processes and institutions

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Discussion

- Are trade negotiations that involve Internet governance issues a valid use case for a multi-stakeholder model, and if so:
 - What stakeholder groups might be included?
 - Is the constituency model or a deliberative model appropriate?
 - What level of empowerment of non-governmental stakeholders?
- How would you use the suggested criteria of meaningful stakeholder inclusion to critique:
 - ICANN
 - IGF
 - OECD

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