

WSIS Civil Society Internet Governance Caucus Response to the WGIG Report

SECTION/PARAGRAPH	
I. Introduction (1 to 7)	<p>1. The WSIS Civil Society Internet Governance Caucus expresses its strong support and appreciation for the process and outcome of WGIG. We believe WGIG achieved the mandate set for it by the WSIS Geneva Declaration of Principles and Plan of Action.</p> <p>2. We believe that the high quality of the report is the result of both the multi-stakeholder collaboration and the open and inclusive consultation with the wider WSIS community. We want to thank Nitin Desai, Chairperson of the WGIG and Special Adviser to the SG, and Markus Kummer, Executive Coordinator of the WGIG for their commitment and dedication to this approach, pioneering new ways of collaboration across sectors and communities demonstrating a shift from the principle of the multi-stakeholder approach to putting it in practice.</p> <p>3. We also would like to commend members of the WGIG for their openness and hard work. The successful outcome of WGIG would not have been possible without your dedication. We hope that the multi-stakeholder approach as explored by WGIG will become a reference model for future WSIS discussions, and for Internet governance organizations and processes generally.</p>
II. Working definition of Internet governance (8 to 12)	<p>4. We welcome the adoption of a broad working definition of Internet Governance. This definition allows all stakeholders to bring to the table any existing or future Internet governance related issue and facilitates the development of a holistic and inclusive global dialogue on ways to continually improve governance arrangements.</p>
III. Identifying public policy issues that are relevant to Internet governance and assessing the adequacy of existing governance arrangements (13 to 28)	<p>General</p> <p>5. With regard to public policy issues, the caucus expresses its appreciation for the background document's comprehensive coverage and prioritisation of issues requiring immediate attention, as outlined in the WGIG report.</p> <p>6. In particular, we support the emphasis on fundamental values that civil society advocates - such as freedom of expression, data protection and privacy rights, consumer rights, multilingualism, capacity building and inclusive participation in Internet governance processes. These values are cornerstones for enabling people-</p>

	<p>centered information and communication societies that are open to all.</p> <p>7. This enumeration of values helps all stakeholder groups to develop a better understanding of the variety and the interdependence of problems that need attention at multiple levels. It highlights that finding solutions to these problems will require the cooperation of all stakeholders.</p>
<p>Para 15 and 76</p>	<p>(WGIG report para 15 and 76, NTIA statement "U.S. principles on the Internet's Domain Name and Addressing System," of June 30, 2005.)</p> <p>8. We would like to underscore that unilateral control of the root zone file is a public policy issue. We agree with WGIG that in future no single government should have a pre-eminent role in global governance of the logical infrastructure of the Internet.</p>
	<p><u>Issues in need of further development or absent from the report</u></p> <p>9. We are concerned that some issues, which we consider to be priority public policy issues requiring immediate attention, are not included, or are not addressed significantly/substantially in the WGIG report. We also note that two issues, "Allocation of domain names" (para 21) and "Intellectual property rights" (para 23), are identified as important issues relevant to Internet governance, but the report makes no corresponding policy recommendation in Section V, B.</p> <p>10. The caucus does not believe that the fact that certain issues are subject to ongoing negotiations in other international forums should by definition place them beyond the consideration of either the WSIS or a future forum, if one is created. This is especially the case with respect to:</p> <ul style="list-style-type: none"> ? multidimensional issues that cannot be adequately governed by emphasizing only one dimension; ? matters that directly impact Internet governance and require Internet-specific expertise; and, ? international organizations that do not allow meaningful and inclusive participation by all concerned stakeholders."
	<p><i>a. Adapting and implementing WSIS principles</i> within existing intergovernmental and international organizations is an area that needs urgent attention. This should be a priority issue for the proposed forum to consider.</p>

<p>Paras 24 and 81</p>	<p><u>b. Human rights and Freedom of Expression (Article 19)</u></p> <p>11. We are pleased to see the recognition of the imperative of upholding universally agreed human rights in relation to measures to address security and the investigation of crimes committed online. Human Rights with specific relevance in this context include the right to a fair trial (UDHR art. 10), the right to privacy (UDHR article 12), freedom of expression (UDHR article 19), freedom of assembly (UDHR art. 20), and the right to enjoy your own culture and to share in scientific advancement and its benefits (UDHR art. 27). Furthermore, we wish to emphasise state obligations on implementation and enforcement (UDHR art. 28).</p> <p>12. We feel that the report could have been strengthened by addressing human rights as cross-cutting standards, with particular reference to the rights mentioned above, in relation to the development and application of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet. Any measure taken must effectively respect human rights such as the right to privacy and freedom of expression, including press freedom online, in conformity with UDHR art. 12 and 19. Nothing in Internet governance negotiations must impair, restrict, or contradict human rights, as they are spelled out in UDHR and international law.</p>
	<p><u>c. Privacy and consumer rights</u></p> <p>13. We support the recognition of the importance that these issues have in the Information Society and the consequent recommendations of the WGIG. However, notwithstanding efforts in some fora, there is no global and inclusive policy process regarding these issues. As a consequence, privacy and consumer protection policies are defined by governments and industry without the meaningful involvement of the Internet users they affect.</p>
<p>Paras 17 and 79</p>	<p><u>d. Internet Stability, Security and 'Cybercrime'</u></p> <p>14. Invasions of privacy must be prevented, and when necessary, there must be clear rules setting forth the conditions for surveillance, subject to independent judicial authorisation and oversight. We strongly support paragraphs 24, 25 and 81, 83 of the report. Measures taken in relation to the Internet on grounds of security, stability or to fight crime must not violate rights to freedom of expression or rights expressed in Article 19 and Article 12.</p>
<p>Para 23</p>	<p><u>e. Intellectual property rights</u></p>

	<p>15. Whilst we welcome that the vastly divergent views on the fairness of the current intellectual property rights regime have been acknowledged, we would like to raise three public policy issues of concern:</p> <p>i. The application of traditional IPR rules to cyberspace creates unique challenges that necessitate the need for assessment in forums other than the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO).</p> <p>ii. New instruments to govern Intellectual Property on the Internet (such as WIPO's Internet Treaties, and the UDRP) have been developed without effective consideration of the rights of users. In a similar vein, the WIPO's proposed Broadcasting Treaty raises troubling issues about the proper balance between particular industries' ambitions and the broader public interest in promoting an open public sphere of ideas and information, including in the Internet environment. We support the proposals in WIPO for a significant Development Agenda and consideration of an Access to Knowledge Treaty.</p> <p>16. We believe that organisations responsible for developing such instruments must look to the interests of end-users and society as they have been articulated in other IP legislation such as copyright and fair use, and provide an ongoing voice for these interests.</p> <p>17. We further believe that key technologies and standards underpinning the Internet should be made available for use free of charge and not subject to capture or control by any single government or entity.</p> <p>18. We hope that the WSIS negotiations are able to take these issues into account and develop more balanced policies.</p>
--	---

	<p><u>f. Universal Access</u></p> <p>19. Building an inclusive and global framework to address Internet governance issues will be largely meaningless if more than half of the world's population have no access to its potential benefits.</p> <p>20. Affordable and universal access is one of the most obvious issue that needs to be addressed in this context as a matter of public policy, requiring attention in its own right within the relationship between ICTs and development.</p> <p>21. In the absence of coordinated global governance that addresses access to critical ICT and Internet infrastructure as a global, regional and national public good, the important goal of achieving universal access to the Internet will not be achieved.</p>
Paras 16 and 78	<p><u>g. interconnection costs</u></p> <p>22. With regard to international interconnection charges, the Caucus believes that there must be international rules encouraging fair, cost-oriented charging, considering that developing countries pay the full cost of the circuits involved.</p> <p>23. This is a matter of considerable urgency that should be investigated in relevant international fora like the ITU, WTO and the proposed forum.</p>
	<p><u>h. Open content</u></p> <p>24. The WSIS Declaration of Principles states that the "ability for all to access and contribute information, ideas and knowledge is essential in an inclusive Information Society". We believe this implies the free access to knowledge that is developed using public resources for public good purposes. Both governments and intergovernmental agencies should be encouraged to make relevant information freely available via the Internet to the fullest possible extent, and adopt open and alternative content licensing schemes that support the diffusion of that knowledge. The excessively high charges imposed by leading international organizations on many of their publications---which are generated at taxpayer expense---has a strong negative impact on public awareness of and participation in Internet governance processes, and are fundamentally inconsistent with the WSIS principles.</p>
Paras 27 and 85	<p><u>i. Cultural diversity and inclusion</u></p>

	<p>25. Bodies responsible for international Internet governance functions should reflect the priorities of all affected cultures in their operations. They should ensure an effective voice for all cultures in the deliberations and decision-making processes of these bodies. Such representation will facilitate the development of local content in local languages, help implement IDNs, and ensure that other trans-border issues are confronted in an effective and culturally appropriate manner.</p>
	<p><u>j. Free and open source software</u></p> <p>26. We welcome the reference to FOSS in the background paper and advocate the use of FOSS as a priority over other alternatives whenever and wherever possible. We recognize there are circumstances in which governments' decision to acquire proprietary licences may be unavoidable, but this should always be a result of careful evaluation of all options, considering the best use of public funds and the relative advantages of each option regarding licencing, maintenance and upgrading costs, open standards, access to source code, freedom and capacity to adapt and further develop existing software technologies.</p>
<p>IV: Developing a common understanding of the respective roles and responsibilities of all stakeholders from both developed and developing countries (29 to 30)</p>	
<p>Para 29</p>	<p>27. The caucus strongly agrees that the academic and technical communities have been invaluable sources of inspiration, innovation and creativity in the development and secure and stable operation of the Internet. Academia is a key component of or civil society, while the technical community spans all stakeholder groupings and presents a model of successful multistakeholder collaboration that may be instructive in other contexts.</p>
<p>Paras 30, 31, 32</p>	<p>28. We appreciate the attempt to recognize the roles and responsibilities of all stakeholders, government, civil society, private sector in Internet governance processes. However, we are concerned that the specific roles of the civil society and the private sector in relation to that of government are not fully defined, allowing for ambiguous and/or different interpretations. WSIS Declaration of Principles, para. 49 on which WGIG based its work is flawed, as it fails to recognize the multi-faceted nature of ICT policy making processes and makes simplistic assignments of responsibilities. Consequently, paragraphs 30,31,32 read as a hastily compiled 'shopping list' of roles and responsibilities</p> <p>29. The WGIG report could have given greater attention to the contributions of individual users, sometimes referred to as "netizens", to the development of the Internet. It is essential to preserve and promote users'</p>

	<p>ability to make such contributions in the future. Users must be free to innovate and introduce new content, services and technology, without undue constraint. In addition, users should be able to participate in global policy discussions without being required to join organizational delegations.</p> <p>30. It is important to preserve the independence of network layers, so that connectivity providers do not determine which content can be transmitted. The end-to-end principles should be preserved and reinforced against all attempt to introduce control over the Internet.</p>
	<p>31. Policy development in relation to Internet governance specifically, and ICT policy more generally, is becoming more and more the realm of international and intergovernmental spaces.</p> <p>32. We strongly advocate a mutually reinforcing process of support for 'bottom-up' national level multi-stakeholder processes and an enabling environment for meaningful participation by civil society in public policy processes also at regional and international levels, given the expanded diversity of stakeholders in this context.</p> <p>33. As demonstrated through WGIG, civil society participation provides an efficient way of gaining important perspectives that fall outside the scope of government and private sector organisations or may not yet have become substantial policy issues in individual countries.</p>
V. "Proposals for action, as appropriate"	<p>34. With regard to the recommendations of the report, we express our full agreement with the overarching goal of enhancing the legitimacy and effectiveness of Internet Governance arrangements. We also agree that capacity building in developing areas and the effective and meaningful participation of all stakeholders around the world are the most essential steps in reaching this goal.</p>
A. Recommendations related to Internet governance mechanisms (35-39)	
1. Forum function (40 to 47)	<p>35. The caucus supports the establishment of a new forum to address the broad agenda of Internet governance issues, provided it is truly global, inclusive, and multi-stakeholder in composition. Stakeholders from all sectors must be able to participate in such a forum as peers.</p> <p>36. The caucus recommends that Sub-Committee A create a multi-stakeholder working group to address the evolution of the forum, including aspects of scope, structure, membership and modalities, funding and timeline.</p>

Initial comments which could feed into such a process are noted below.

37. The forum should not be anchored in any existing specialized international organization, but rather should be organized as a legally free-standing entity. If this is impossible, then the forum should be organized directly under the auspices of the United Nations Secretary General.

38. The forum should not have a mandate to negotiate hard instruments like treaties or contracts. However, in very exceptional circumstances when the parties all agree that such instruments are needed, there could be a mechanism that allows for their establishment. Normally, the forum should focus on the development of soft law instruments such as recommendations, guidelines, declarations, etc.

39. The forum could provide, for example, the following functions:

- a. inclusive dialogue, with a differentiated architecture allowing for peer-level interaction where appropriate, for example in Birds of a Feather, working groups, study groups, plenaries, etc.
- b. comparative, cross-sectoral analysis of governance mechanisms, with an eye toward "lessons learned" and best practices that could inform individual and collective institutional improvements
- c. assessment and monitoring of horizontal issues applicable to all Internet governance arrangements, e.g. the promotion of transparency, accountability, inclusion, and other guidelines for "good governance," such as the WSIS principles;
- d. identification of weaknesses and gaps in the governance architecture, i.e. "orphaned" or multidimensional issues that do not fall neatly within the ambit of any existing body;
- e. identification of potential tensions between separately developed mechanisms, and possibly efforts to promote enhanced coordination among them;
- f. promotion of decentralized convergence among positions and initiatives, where possible;
- g. pre-decision agenda setting that could, inter alia, feed into the work of other bodies;
- h. provide a clearing house for coordination, resource mobilization, identification of new needs and gaps, in relation to supporting meaningful developing country participation and capacity building
- i. promote the usage of ICTs to allow remote participation in Internet governance processes;
- j. release recommendations, best practices, proposals and other documents on the various Internet governance issues.

40. Participation in the discussions and working groups of the forum should be free and open to all interested individuals from all stakeholder groups. Operations should be designed in such a way that physical attendance is not strictly required and disadvantaged stakeholders (developing countries, civil society organizations, individuals) are proactively supported.

	<p>41. It is important that the forum has clear organization and decision-making procedures, and responsibilities for its functioning and effectiveness are clearly defined and attributed. It is also important that the structure that will be given to the forum is able to produce practical results. A forum for discussion will not be particularly useful if it will not be coupled with the ability to bring all stakeholders to agreement and determine actual changes.</p>
<p>2. Global public policy and oversight (48 to 71)</p>	<p>42. The caucus finds model one to be unworkable and not in keeping with the inclusive processes recommended throughout the WGIG report. We also find certain aspects of Model 4 to be not in keeping with the WGIG recommendations. Model two is clearly the most workable as a starting point, and is favored by most civil society participants. However, aspects of model 3, particularly the importance of a host nation agreement and provisions for tackling developmental issues, merit greater attention.</p> <p>43. Civil Society believes that it is clear that oversight is a significant issue that needs further discussion. To this end, we would support the establishment of a multi-stakeholder working group (under auspices of the Chair of Sub-Committee A) to explore approaches mutually acceptable to all stakeholders in the lead up to the WSIS summit. We also indicate our willingness to work with all stakeholders, and as a caucus, towards evolution and acceptance of an effective and transparent global public policy and oversight processes.</p> <p>44. An acceptable oversight framework would</p> <ul style="list-style-type: none"> - Allow multi-stakeholder input into policy development - Ensure meaningful participation of all stakeholders from developing countries - Focus on shared responsibility rather than oversight and control <p>45. We believe that this broad issue and in particular the issue of governance structures as regards the root zone authorisation function should be addressed with some urgency.</p> <p>46. The acceptance of a single root for the DNS is an important enabler of the Internet's international reach. Governance arrangements for the root zone file should be outside the control of any individual government, and broadly acceptable to all stakeholders. If this issue is not addressed, it will lead to an increase in the number of alternative root structures that could impact negatively on the Internet's security, stability and interoperability. Under the current naming scheme, this could lead to the fragmentation of the Internet and the user community.</p>
<p>4. Regional and international coordination (Para 73)</p>	<p>47. The caucus supports the WGIG proposals regarding the importance of policy coherence among the regional, sub-regional and national, and international levels. To promote this coherence, international</p>

	<p>organizations and other actors will need to provide significantly greater technical and financial support for capacity building in the developing world, for example through local university programs to carry out Internet governance capacity building in partnership with universities in developed countries.</p> <p>48. The caucus agrees with the Internet Society that the training of Internet users, technicians and policy makers in Developing Countries, and especially in Least Developed Countries, should receive more attention at the Summit in Tunis.</p>
<p>B. Recommendations to address Internet-related issues (74 to 85)</p>	<p>49. We share the WGIG's observation that there are significant barriers to the participation of all stakeholders in governance mechanisms and that international and intergovernmental organizations, including private sector or self-regulatory bodies that establish governance mechanisms impacting stakeholders outside the business community, should take measures to enable effective participation from developing countries and from civil society in their discussions and decision making processes.</p>
<p>Para 76: Administration of the root zone files and root server system of the domain name system (DNS)</p>	<p>WGIG report para 15 and 76, on the Root Zone file; "Initial comments by the European Union and the acceding countries Romania and Bulgaria, on the report of the Working Group on Internet Governance," of August 1, 2005, and NTIA statement (NTIA statement "U.S. principles on the Internet's Domain Name and Addressing System," of June 30, 2005.)</p> <p>50. We agree with the WGIG and others that,</p> <ul style="list-style-type: none"> - existing flexible, bottom up Internet governance efforts such as those made by ICANN, are invaluable for the continued security and stability of the Internet, and must be protected from political interference and - existing Internet Governance mechanisms should be founded on a more solid democratic, transparent and multistakeholder basis. <p>51. On that note, whilst we applaud the EU's 'initial comments' for:</p> <ul style="list-style-type: none"> - recognizing the critical significance of the Internet's founding design principles, "including interoperability, openness and the end-to-end principle" - and for pledging the EU to support a multistakeholder process in its continued participation in the WSIS process. <p>However, we regret that the EU makes no explicit reference to the role of civil society.</p>

	<p>52. We also agree with the US government that governments have legitimate public policy and sovereignty concerns with respect to the management of their ccTLD,</p> <p>53. We further wish to emphasize our strong agreement with WGIG that no single government should have a pre-eminent role in global governance of the logical infrastructure of the Internet.</p> <p>54. We note however that the US statement recently made by Michael D. Gallagher, Assistant secretary at the National Telecommunications and Information Administration (NTIA), has caused concern and raised a number of questions.</p> <p>55. The statement has been interpreted by some as a manifestation of a US strategy that it will never give up its control over core Internet resources including root zone file, root server operation, Domain Name and IP address management, and related resource management, and by others as a US formal summary of its current policies, without indicating how or when those policies might change in future..</p> <p>56. Specifically, the US NTIA declaration indicates that the current contractual framework regarding US unilateral control over the root zone file will be maintained. This directly contradicts the consensus of Civil Society and the WGIG that "No single Government should have a pre-eminent role in relation to international Internet governance" (in para 48 of the WGIG report").</p> <p>57. Civil Society does not unreservedly endorse the current state of ICANN, with respect to its representational structures and policy development processes, and believes there is room for improvement to enhance the participation of all stakeholders, as is outlined in the WGIG report. However, we also consider that the model the ICANN community has developed to date is still far better than the direction the US statement appears to indicate, which is similar in tone to statements of other governments which do not bound their call for a greater governmental role involvement in Internet governance</p> <p>58. We understand and appreciate that the current ICANN model puts the technical community in charge of technical resource development, management and operation. It provides an effective, if still imperfect, framework for coordination and cooperation among private sector (including the technical community), governments and civil society (including users and non-commercial entities) in its policy development and decision making process.</p> <p>59. We call for the evolutionary yet significant improvement of this framework, one that enhances the stable, secure and innovative functioning of the Internet, and provides increased authority achieved by the consensual agreement and involvement of all stakeholders.</p>
--	---

60. Unilateral oversight without consent of other stakeholders will not contribute to the long-term stability and security of the Internet for the benefit of all users and citizens, and may place stability and security at risk.

61. Since issuing the statement the US government has explained that it regards the DNS as critical to the stable and secure operation of the Internet and, consequently, until such time as a workable alternative to the current arrangement is presented and agreed, it will maintain its historic and current role.

62. The caucus recognizes this position, and notwithstanding our firm position regarding the need to end the pre-eminent role of the US government in global governance of the logical infrastructure of the Internet, recommends that:

a) in keeping with the US government's recognition that governments have legitimate public policy and sovereignty concerns with respect to the management of their ccTLD, and has welcomed the further opportunity for dialogue on these issues and seems committed to ensuring progress, the US government should state that it will take no action to cause any TLD to be removed from the root zone file, or any redelegation to occur, without the explicit approval of the government or economy responsible for the TLD in the case of ccTLD and contracting party with ICANN in the case of any other TLD.

b) Sub-Committee A establish a working group in the lead up to the Tunis WSIS summit. to explore how the process of authorizing changes or modifications to the authoritative root zone file (authorizing additions, deletions and redelegations, not operational adjustments) can be agreed to the mutual satisfaction of all stakeholders

c) the US government should commit to ensuring the independence of ICANN from its control by:

- terminating the MOU with ICANN in 2006;
- supporting a host country agreement regarding ICANN;
- issuing a statement as we suggest in 64a above
- participating in the proposed multi-stakeholder group (under the auspices of the Chair of Subcommittee A) to establish a binding agreement with other governments on the principles and norms of administration and governance that will preserve the freedom, openness and innovation of the Internet.

63. We believe this course of action would offer some satisfaction to some government's concern and offer a way to find a lasting solution.

CONCLUSION

In conclusion we would like to emphasize the following points:

64. A new forum is needed to address the broad agenda of Internet governance issues provided it is truly global, inclusive, and multi-stakeholder in composition. We recommend that Sub-committee A establish a multi-stakeholder working group to make suggestions on scope, structure, membership, modalities and funding models for the forum.

65. While there is not yet consensus on how to organize oversight with regard to the core resources, there is a consensus that oversight is an issue that needs further discussion. We recommend that Sub-committee A establish a multi-stakeholder working group to make suggestions on oversight. A majority of CS respondents tend to favour Option 2, however aspects of other models, particularly the importance of a host nation agreement, should be considered in a final model.

66. The prioritised public policy issues form part of an "agenda for action" but should not exclude other issues considered to require urgent attention. Rather, all outcomes of the WGIG process should feed into a comprehensive research and action programme with an immediate need of more detail and substance to the issues.

67. It has been helpful to acknowledge the roles and responsibilities of stakeholders. What is needed now is greater detail in terms of how, in what ways and at what levels, stakeholders can interact, build and represent constituencies and collaborate in existing and emerging Internet governance mechanisms.

68. We would like to restate that there are significant barriers to the participation of all stakeholders in governance mechanisms. Capacity building in developing areas to enable and ensure the effective and meaningful participation of all stakeholders, including civil society organizations and individual Internet users, around the world are essential elements underlying all our discussion on Internet governance. Capacity building and ensuring the meaningful participation of all stakeholders must be a priority going forward.