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WORKING DOCUMENT

on Internet governance: the next steps

Committee on Industry, Research and Energy

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United in diversity

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INTERNET GOVERNANCE

The Commission's position as set out in its communication of June 2009 can be summed up as follows:

a) a clear preference for what is clearly described as 'private-sector leadership';

b) worries about ICANN's unrepresentative structure;

c) obvious concern that the international community, including the EU, has very little control over the running of ICANN.

The Commission proposes an internal reform of ICANN ('Internet Corporation for Assigned Names and Numbers') that would lead to 'full accountability and transparency' on the one hand, while stating that 'the current arrangements for unilateral oversight in regard to ICANN and IANA need to be replaced with an alternative mechanism to ensure that ICANN has multilateral accountability' on the other.

It is worth briefly restating that ICANN is a non-profit organisation subject to Californian law, a situation which causes constant legal problems. The Internet is defined by ICANN as an 'international network of networks, owned by no single nation, individual or organisation' which therefore undertakes to serve global public interests, with no regard to the borders between governments.

It is inevitable that such an unusual entity, managing a new and complex world, will create controversy among the parties involved, said parties being, in this particular case, spread across the whole of the global community concerned. Opinions about ICANN and its role can be found covering both sides of the argument: its defenders and its detractors. Among the latter are voices claiming that its duties should be transferred to an international organisation, either one created specifically for this purpose or one under the umbrella of the United Nations. This proposal is solidly founded, especially when starting from the viewpoint that the 'domain name system' is 'public property' – a well known concept in international law meaning a resource that is not subject to national sovereignty and is used by the international community that has an exceptional degree of interest in it.

At the Geneva and Tunis World Summits on The Information Society (WSIS, 2003 and 2005) the need to find an international organisation to manage domains that is more neutral than ICANN was stressed while the idea of privatising ICANN completely was also raised. It was decided to set up a WSIS working group, the Working Group on Internet Governance. In its final report setting out four proposals, the Working Group stressed that granting just one State a position of power in cyberspace would not be a suitable solution. Beyond those declarations, governments have not reached any consensual agreement on replacing the existing system. Deliberations have continued in the 'Internet Governance Forum' set up by WISS and this forum has proved to be a fantastic centre for discussion and debate. During its last meeting, held in Sharm el-Sheikh in Egypt, it was decided that the forum's mandate should be extended and, as in previous meetings, the need to find a solution to the present US dominance in ICANN's management was once more stressed.

In view of the above and current positions within the international community on ICANN, it follows that it would be prudent to keep the American organisation – as the Commission advocates – especially since it has performed its duties effectively and satisfactorily over the years it has been in existence.

However, it is clear that some reforms and corrections to relevance are needed at ICANN. Because, if we hold to it that cyberspace is an area of freedom, innovation, flexibility and adaptability, we cannot at the same time expect its central organisational body, ICANN, to be rigid and inflexible. If the world of the Internet is dynamic, this dynamism must also apply to ICANN.

Therefore, in-depth reform is needed if ICANN is to continue steering Internet governance. Reform along the lines suggested by the EU institutions for many years now would ensure that the international community as a whole is influential in decision-making and its structure. International cooperation and legitimacy would thus be strengthened in one sphere of government in the world that is particularly relevant for humanity as a whole.

There are many challenges in Internet governance, one of which is the risk of the global network fragmenting – producing national networks, a danger already posed by China and Iran – if the current system of management does not develop and change.

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The rapporteur therefore suggests that Parliament should emphasise the following:

1. The Internet is 'global public property'; the unilateral management and control of this public property by one Government gives rise to widespread and well founded criticism.

2. The European Union must develop a strategy that reflects a consensus view on fundamental aspects of Internet governance and can be firmly defended in international forums and in its bilateral relations with the USA.

3. Support for the Commission's position in favour of the current management model based on private-sector leadership. This support must be conditional upon action being taken to remedy criticisms regarding certain aspects of how ICANN is composed and functions.

4. In respect of ICANN:

a) control and accountability: the adoption of the 'Affirmation of Commitments' between ICANN and the US Government in November 2009 represents a step forward towards two fundamental principles for the EU: internationalisation and recognition of the Internet's 'public interest'. The new agreement introduces 'review panels' to act as a control mechanism over fundamental aspects of managing the network, such as transparency and accountability, network stability and security, competition and consumer protection. Although the agreement is ambitious and promising, it remains nonetheless to be seen how it is implemented. The EU institutions must play an active part in implementing and developing the new contract, monitoring the composition of the review panels to ensure that their members are independent and from different parts of the world and that there are no conflicts of interest of any kind. This is fundamental if the new body is to be seen as

legitimate, independent and objective in the eyes of the international community. The EU's place on the review panel, preferably one seat for the Commission, must also be decided on. Likewise, the Governmental Advisory Committee (GAC) must also have a sufficient number of places on the panels. As for the recommendations made by the review panel, these must be implemented by ICANN's Board of Directors and in the event that it does not do so, the Board must give its reasons. Provision needs to be made for an appeal mechanism, which could well be international arbitration, for these cases.

b) Democratic participation in ICANN's activities: all interested parties in the Internet world (governments, associations, businesses, users, etc.) must be represented in ICANN. The GAC is particularly important here as it is through the GAC that governments can 'control' the adoption of ICANN's internal rules. The membership of this Committee must be decided on, therefore, but this is a controversial issue since the participation of undemocratic countries whose values differ greatly from European ones may entail a risk to protection of the 'EU acquis'. Likewise, thought must be given to the GAC's decision-making process, the purely advisory nature of its recommendations and the mechanisms for resolving conflicts in the event of disagreement between the GAC and the Board of Directors.

Finally, ICANN's top management team represents a range of nationalities and this must continue to be the case.

c) Finance: the major part of ICANN's funds come nowadays from US contributions, plus domain name and gTLD registry fees. Opening up to funding from other sources would be preferable in order to diversify sources and prevent undesirable dominant positions.

5. The Internet Governance Forum (IGF) has proved a success. Its open nature, flexibility, the high level of participation by the different sectors involved, the development of the governance 'family' (Eurodig, national forums, regional forums) all constitute a unique model (issues are debated and discussed without any restrictions) that is relevant and very appropriate for a new sphere like the Internet. Parliament is very much in favour of this continuing.

The following are some areas where improvements are needed:

–participation of developing countries and, specifically, funding for their participation,
–visibility in the media,
–internal running of IGF annual meetings (reduction in the number of meetings held simultaneously, establishment of a stable platform to facilitate global participation and greater multilingualism).
–coordination with national and regional forums, which already constitute a 'family' for discussions on Internet governance.
–parliamentary cooperation between the EP and national parliaments must go deeper.

As regards the meeting in Vilnius at the end of 2010, Parliament must support the work of the Commission and the Spanish and Belgian Presidencies.

6. Bearing in mind that problems involving the Internet worldwide will continue to appear in forthcoming years, it is important that the EU institutions continue to work – as they are

already doing on many fronts – on everything that may affect Europe's values and fundamental rights' heritage to ensure these are accepted in the global management of the Internet. Progress must therefore continue to be made on the following:

–guaranteeing plural and non-discriminatory access to the Internet,
–defending the European view on Internet neutrality,
–aspects connected with security in the face of threats or attacks,
–protection of citizens' right to privacy and resolution of questions as to who has jurisdiction and which law is applicable in deciding where cases are heard (given that the Rome II agreement expressly excludes non-contractual conflicts connected with the right to privacy),
–protection of intellectual property rights and guarantees regarding access to users' culture,
–guaranteeing free competition,
–combating crime and, specifically, protection of minors' rights.

Here, support must be given to the Spanish Presidency's initiative in drawing up a European Charter of Internet Users' Rights as well as its proposal that a fifth EU fundamental freedom, namely to Internet access, be recognised.

7. Turning now to the EU's own organisation and internal functioning, EU institutions need to make progress on coordinating their relations with ICANN, as these are not always rational. An effort must be made to clarify the roles of the Council and the Commission and, naturally, the role to be granted to Parliament. The same can be said of the relationships that must be established between the EU institutions and the Member States both on the GAC and, within the EU's own High Level Group on Internet Governance.

8. Finally, it should be pointed out that Internet governance presents another opportunity for the EU to be seen to be present on the international scene, defending with one voice its vision and its values.

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