ICC BASIS interventions at NETmundial

23-24 April 2014 in Sao Paulo, Brazil

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23 April 2014

1. Panel: Setting NETmundial Goals

No ICC BASIS intervention

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Other BASIS members’ interventions:

Intervention 1 by Zahid Jamil, Jamil & Jamil, private sector representative of the Executive Multistakeholder Committee (EMC):

Thank you, Chair. It's a pleasure to be here. Obviously there's no translation for those who aren't speaking English and that is a problem for me, but I'm supposed to speak about the conference and the process for organizing.

I represent the business. I'm their liaison on the executive committee, the EMC. And I want to sort of make it clear, obviously, that business is here and wants to be helpful, and, with cautious optimism, to be a positive and reinforcing voice to the multistakeholderism process here that is seen.

Initially, when the process of this or the announcement of this meeting was publicized, there were some challenges that business and many others may have felt with respect to some of the skepticism or the confusing or conflicting facts, and so when at the IGF in Bali, there were some questions, et cetera, but by the time of the ICANN meeting, I think there was more clarity and there were more businesses coming on board.

We saw that the 1net list and that the CGI organizing role emerged. We saw that the stakeholders represented the liaisons were actually chosen from the stakeholder groups, and they were placed onto the various official positions that were created in the board as well as the HLMC as well as EMC. And
that was helpful because it gave us the ability to provide input into the agenda and for the preparations of this meeting.

The first face-to-face meeting was actually very important. It set expectations and had a very inclusive, I must say, constructive atmosphere of trust which began to emerge as a result.

In our deliberations, we balanced the need not just to have you know, not - not to have unfinished documents circulated. Well, this was respected for the most part. And to be transparent and open for all decisions or documents that were finalized.

Transparency and clear communication were key to ensuring that there was going to be active participation from around stakeholders, and in order to ensure that we avoid misconceptions within the community.

Transparency was also something that we lived by because we ensured that there was not going to be any influence created by any of the sort of hierarchies. The EMC worked fairly independently, I must say.

Initially, there was some limited time provided for consultations by the liaisons to go back to the stakeholder groups, and that was a challenge, but this became far more difficult when less and less time was available.

And this was not, we believe, necessarily a problem of intention but an unintentional outcome of and a function of the limited time that was available, because we were trying to run a process which ordinarily may have taken a year, but it had to be done in a few months.

Therefore, this underscores the importance and the need to give time when undertaking multistakeholder processes.

I must thank ICANN, which provided excellent support for remote participation. I have to say that without those, I think the EMC's work would have been impossible, unless we'd be meeting face-to-face on those several hours that we participated on these remote participation tools, like Adobe Connect.

So there were not you know, it was not all smooth sailing, for instance. There were still questions about consensus. You know, how decisions are to be made. This was unclear, but recently, I think there is a better understanding, once we arrived here in Sao Paulo, and a commitment to be to having a much more inclusive approach to decision-making by garnering consensus from all stakeholders was something that was achieved in some preparations within the EMC.
I would like here to also mention the importance given to the contributions, people who provided contributions online. Initially 187 were taken into account by the EMC in preparing the documentation. Now, with the 1,370 contributions and what we will hear at the mics, I think it represents the amount of not just comments that we will be receiving, but the work that we will have to do when we actually try and look at the document again today and tomorrow.

And this represents the inclusiveness and the respect that the EMC and this process has for the voices of the room as well.

In this, it is also vital to mention the great work of the CGI, Daniel. Call him the man on speed. He produces documents overnight with 88 pages. Boggles us. I mean, we have to read them. He actually drafts them up.

Also want to thank Raul, our chair, Ambassador Benedicto, who played a very, very productive role within the process of the EMC but I think the most salient role was from at least my experience, was Demi Getschko, who may be in the Hall of Fame but we feel that he did a fantastic job in trying to basically bring consensus to whatever extent we could, who engendered trust and cooperation in one of our smaller principles group and throughout the process, so that was very important.

The assistance by the CGI and the Brazilian government for me as a developing country person to get visas, et cetera, and other support to come here for logistics on visas and things were very important. I thought that was very well and efficiently done.

But I want to turn quickly to something else which is more important. That is, the issues and the outcomes which may arise from this process.

It is the importance of the philosophy of this process of multistakeholderism, its meaning. The journey is way more important. It's not the destination that is the important thing today.

Whether we all agree or not, the multistakeholderism and multistakeholderism principle today has seen a success and an acceptance across borders.

The values and principles of multistakeholderism work and its work have been successfully embraced by leaders and stakeholders in the south. By Brazil, President Rousseff, and again, as you saw today.

This is truly a moment for celebration and celebrating the multistakeholder model and its infusion internationally. This is not just anymore a North American or European model, but something developing countries find works for them as well, and is the new way forward as an evolution of human progress.

Of course there is still work to be done. For instance, in terms of ensuring that consensus is reached, which is what President Dilma said that must be done, with all stakeholders, and ensure all opinions.
are meaningfully taken on board. But as I said, that's something addressed in very recent discussions as we move forward to what is an outcome truly representative of the entire community with all stakeholders, or at least the significant majority of each and every stakeholder, on board. As a member of the developing world, it is for me very heartening to see that even developing countries and the south can now play a leading, constructive, productive, positive, and a bridge-building role in moving humanity and development forward as fully productive and contributing partners in such important areas of development of human progress.

In this case, transitioning from what is an old system of multilateralism to the new era of multistakeholderism, as was very ably demonstrated by the CGI in their work and how we got here as well, and to some extent the Marco Civil, and especially this meeting today and tomorrow. We definitely have great hopes that this conference will continue to demonstrate the same good faith in its processes of inclusiveness of all voices and the merits of true multistakeholderism as we move forward today and tomorrow. Wishing us all the best in this endeavor and thanking the Brazilian government again, thank you very much.

**Intervention 2 by Zahid Jamil, Jamil & Jamil, private sector representative of the Executive Multistakeholder Committee (EMC):**

I wanted very quickly just a very quick comment. I think it is very important that we understand that one individual comment of one player cannot dictate a document. I think that's an important part of multistakeholder process. That's why we have stakeholder groups. And it is also important as a matter of transparency and non-discrimination that one player can't just do anything.

The second point I just wanted to make, and I think it's important, the Russian comments as part of the 187, they weren't part of the 187 because they came in late. And if we were to take them into account, we would have then had to discriminate and also then there will be the question of other late comments. So we had to basically respect the fact that the deadline had been missed by the Russian contribution.

And so I hope that the Russian government will take this opportunity to work positively within this process. And that's all I have to say. Thank you.
2. Working Session 1: Principles Part I

Intervention 1

Delivered by Paul Mitchell, Microsoft:

Thank you, Mr. Chairman. I'm Paul Mitchell from Microsoft and speaking today on behalf of the ICC/BASIS business community. And first I'd like to thank and congratulate the organizers and the Government of Brazil for pulling off this excellent conference so far today.

My comments refer to the paragraph on open and distributed architecture.

First, I'd like to reaffirm the importance of maintaining the security, stability, and resilience of the Internet and the openness of the Internet. That has to be job one. Especially for those of us that are developing and deploying cloud services around the world, these attributes are paramount. But there isn't a clear consensus among the business community on net neutrality.

On the other hand, there is a clear consensus among the business community that this is not the place for a net neutrality discussion. In part, because it is currently under discussion in various national legislative and adjudicatory processes around the world.

The draft text proposes the equal treatment of all protocols and data. As a technical matter, that doesn't actually make sense. Protocols are developed to perform specific functions and tasks, and they consume network resources differently.

Networks need the flexibility to be able to adapt to them as necessary to ensure their proper functioning so that they can deliver the benefits that they were defined for. Likewise, and especially with the emergence of the Internet of things, we need the capability for differentiation and innovation, so here's an example.

With auto-telematics, if I need to get an oil change, reporting that data is not particularly critical. But if the airbag goes off in my car in an accident, it's life-critical.

Clearly the treatment of the data doesn't need to be the same and shouldn't be. The network systems need that level of flexibility, and without thinking too much, I'm sure everyone here can think of other examples.

That flexibility should not be a ticket for anyone to behave in an anticompetitive manner, but it's a requirement to enable the greatest degree of forward innovation.

And finally, there were 36 comments on the text. 16 of them suggested revision of equal, while only seven suggested making net neutrality explicit. Clearly, unfortunately, not a consensus on the text.
Thank you.

**Intervention 2**

**Delivered by Eric Loeb, AT&T, ICC Task Force on Internet and Telecommunications Chair:**

Thank you, Mr. Chairman. My name is Eric Loeb. I'm with AT&T and also I chair the task force on Internet and telecommunications at the International Chamber of Commerce and my comments today are on behalf of the ICC.

First of all, again, my congratulations to the organizers and to the committees for the excellent work to forge consensus on so many areas. As reflected in Markus' comments, there are a number of provisions in this document for which there were not many comments seeking alterations and it demonstrates consensus in areas. Among those that the ICC, the business community which is very broad-based, we're very pleased to see the strengthening of the IGF, the strengthening of meaningful participation by all stakeholders in the Internet governance processes.

There are many more.

And of course there are some areas where, at present, we're seeing some disagreements in views, where there is not consensus. And when we talk about principles, I'd just like to come back to the point that a way to find consensus in such areas may be to move to a level of higher abstraction where parties may agree, because it is desirable to have a document and to have a process here where, in as many ways as possible, particularly with principles, we can find that level of agreement and consensus. One such area which has been mentioned already does have to do with Paragraph 12, an open and distributed architecture. As we talk about things, first of all, there is an area of consensus, and that is the notion of the open Internet. It's a topic that across the very diverse business membership, we have support and we heard it many times today. Where there is not consensus are the notions of more prescriptive rules on net neutrality which get into details that vary by country and may freeze innovation different practices. So my recommendation for consensus on this topic in that area is with the open Internet and the ICC has submitted proposed language already which I will not repeat at this time, which has solutions to that.

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Other BASIS members' interventions:

Intervention by Malcolm Hutty, LINX:

Mr. Chairman, I would like to argue that for these [fundamental human] rights to be available in practice to Internet users, it is essential that innocent Internet intermediaries are protected from liability for the actions of their users.

I am Malcolm Hutty from LINX, the London Internet Exchange. This is a membership organization for Internet networks - our members are more than 500 major network operators from 55 countries. We believe that the protection of human rights, on the Internet as elsewhere, is fundamentally important. Human rights are rights for individuals, but they establish the basis of a free and just society, on which we all depend, citizens and business.

In the Internet governance space we should not attempt to duplicate work on human rights that is better done elsewhere, with greater expertise. We should focus on the application of human rights in ways that are unique to the circumstances of the Internet.

The unique circumstance is that on the Internet, in order to make use of their rights citizens depend on the services of Internet intermediaries, businesses such as our members.

We are businesses. We must comply with the law in the countries in which we operate. We are vulnerable to being forced to act in ways we do not support.

Attempts to turn network operators into a kind of “Internet police”, that exercise prior restraint against alleged wrongdoing, circumvents the rule of law by avoiding the procedures established to ensure that fundamental rights are protected.

A strong declaration of support for the protection of intermediaries from undue influence would be an important, practical, concrete step that the conference could take to ensure that human rights are available in practice to Internet users, and a clear message that the rule of law is an indispensable principle for Internet governance.

I raised this point in the consultation process, and received support from some members of civil society. With that support, and mindful of the fact that this issue was recognized in General Comment 34 to the International Convention on Civil and Political Rights, as well as the Joint Declaration on Freedom of Expression and the Internet of four intergovernmental organizations, I propose that the paragraph on human rights is amended to add:

“In order to ensure that these rights are available in practice, it is essential that Internet intermediaries are protected from liability for the actions of their users.”
Thank you.

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**Other BASIS-supported interventions:**

**Intervention by Nick Ashton-Hart, CCIA:**

Thank you Chairman for the opportunity to speak, and to the hosts for organising such a major event with so many stakeholders in such a short time.

I would like to highlight briefly two points.

Firstly, that Internet Governance cannot expand infinitely to cover every subject in which there is an Internet component - especially subject areas that relate to content. If Internet Governance tries to solve all problems, it will end up able to solve none. It will simply become a place where discord is developed, rather than solutions, to the detriment of all.

Secondly, many of the principles we may settle upon here relate to life online and offline equally - and we should not seek to develop the “Internet component” in isolation.

Human rights apply equally online and offline; they are not fundamentally “about” the Internet but about people. The development of social inclusion and multilingualism applies equally online and offline. Surveillance is not an Internet problem, it is a problem with how states treat foreigners in execution of their legitimate responsibilities to protect their citizens - and the Internet cannot solve that problem but it can be damaged by it. And so forth.

Because of all this, we must remember that the realisation of the principles we agree in relation to Internet Governance are more often than not already the focus of other international processes of long standing - the Human Rights Council for Human Rights, UNESCO for social and cultural development - and so on. Those venues concentrate expertise and experience we must collaborate with, not seek to duplicate, if we want to be effective in realising the full flowering of the principles in Internet Governance. We should add our voices in these other fora to give them the benefit of the Internet community’s expertise and understanding of our world, not least amongst which being the value of multi-stakeholder driven decision-making in global policy development.
3. Working Session 2: Roadmap Part I

Intervention 1

Delivered by Joe Alhadeff, Oracle, ICC Digital Economy Commission Chair:

Thank you. My name is Joseph Alhadeff and I'm here on behalf of ICC. I chair the digital economy commission there. We wanted to make a couple of quick interventions on a couple of topics. One of them was related to the conditions for the IANA transition.

We actually find that those conditions are important to maintaining and promoting the stability, functionality, and security of the Internet.

We also think the multistakeholder nature of that transition is tremendously important.

We are very happy to see the request for the strengthening of the IGF, and we think that is a very positive aspect of this document.

We would suggest that when we look at the strengthening of the IGF, we keep in mind the unique characteristics of the IGF and its importance to maintain those characteristics, because that is what has made it a successful forum for dialogue, capacity-building, and exchange.

Finally, we take a look at Paragraph 16 and we think that this is a tremendously important paragraph dealing with the need for mechanisms to consider emerging topics, and we know this was a topic that had great currency in Baku and was felt to be of great importance by a number of developing economies.

And we think perhaps more emphasis could be placed on this issue, and one of the concepts was perhaps there could be a use of technology to help make some of these issues more accessible through more searchable databases of the work that's being done in global fora and to leverage work that's being done to catalog that work across various fora that's already existing.

I believe also in one of the commission comments they had made a reference to the use of technology to that end.

Thank you very much.
Intervention 2

Delivered by Hossam El-Gamal, AfICTA:

Yes. My name is Hossam El-Gamal. I am here on behalf of Africa ICT Alliance, member of WITSA, and of ICC.
So I wish to shed light on two issues that deserve attention of all stakeholders in the Internet governance future evolution.
One is there are still clear awareness challenges related to Internet as a developing engine in many less-developed countries. So many of the challenges users face on the Internet are principally due to low awareness about and inability to implement solutions embracing Internet trust, integrity, security, privacy protection, and governance.
We, therefore, urge for more support from all stakeholders for raising awareness about related best practices to ensure swift and positive use of Internet as a developing engine.
Second one is, we also suggest supporting stronger multistakeholder participation in the Internet governance from developing countries, providing more on-site participation support, as well as interactive remote participation. Many related multistakeholders in developing countries did not have the opportunity to hear about this process at all.
Many registered participants from Africa could not attend NETmundial due to different technical, logistic or financial or visa challenges, I myself nearly could not make it. So I would recommend embracing more participation of multistakeholders from developing countries for future IG meetings and if visa is not free or expeditedly processed, at least it should be obtainable on arrival with minimal bureaucracy.
The concept of Net Neutrality is a topic that has no consensus in business. In most African countries, there are no legacy networks. Private Investors have to build out their networks and they have the right to operate for a return on investment.
Thank you.

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Other BASIS members’ interventions:

**Intervention by Jimson Olufuye, AfICTA:**

Thank you. My name is Jimson Olufuye. I am the chair of the private sector-led Africa ICT Alliance in Abuja, Nigeria. I have very few comments. One on IANA stewardship transition. We generally support the content of the paragraph 26 and also to state that we do not need to look for replacement regime outside the current Internet ecosystem.

While we continue to be engaged in the current consultation, we believe that the outcome could focus on a lean but agile multistakeholder mechanism to handle the oversight function of IANA.

As a member of the ICANN community, we will continue to hold ICANN accountable to perform the IANA function it currently does.

Secondly, the spirit of NETmundial is already a significant outcome of this process where, indeed, it is challenging. But as a business from Africa with a strong belief in the multistakeholder process, if we live up to openness, inclusiveness, and accountability that we are already showcasing, we can solve the access challenges we are facing in developing nations and bring social and economic opportunities to all our people and can, indeed, be inspired by how we worked collaboratively during this NETmundial taking forward into other fora a positive collegial spirit.

We recommend the Netmundial output into the CSTD Working Group on Enhanced Cooperation.

AfICTA support the Human Right Principle and further states that it should be balanced on firstly natural law, secondly UDHR and thirdly the rule of law. Where there is no consensus on this topic, we must continue to discuss to find common ground and language.

Lastly, I would like to thank the Brazilian multistakeholder community for the excellent showcase of our bottom-up multistakeholder model really works.

Thank you very much.

**Intervention by Marilyn Cade, mCADE LLC:**

Thank you. My name is Marilyn Cade. I’m a small business person who spends most of my time focusing on Internet governance and on ICANN matters. And many of the people in this room have seen me at a number of meetings. I want to congratulate all of us, the organizers, the host, and the contributors to the work we have achieved and to where we are today.
I like the comment made earlier by Jimson Olufuye from AfICTA about the spirit of NETmundial. I think this is, in fact, what we are all experiencing and should contribute to.

I think it is very important in the roadmap that we have acknowledged that Internet governance is not merely about ICANN. It is much more than that and I really welcome and support that that is reflected. Now to concrete comments. On paragraph, sorry, on Number 1, paragraph 7, I wish to note that there is today a CSTD working group on enhanced cooperation. I am a member of that group from the business community. We're engaged in a gap analysis. And I would say that from my own view, enhanced cooperation is underway. There are others who question that. But the CSTD working group is working hard to identify gaps and to identify possible solutions.

I don't suggest this go into the document, but I do think it's important that that work be recognized and that people bring the output of NETmundial into the continuation of the CSTD working group.

I would also say that there is, I want to talk briefly about the IGF and its importance and upon the, about the sustainability of funding. I am a small business. I make a contribution to the funding. Many, many more of us, not just governments and the technical community, can contribute to the financial continuation of the IGF. And we should, and we should also continue to advance the awareness about the importance of the IGF as a forum that can deal with tough topics but not in a tough way.

Thank you.

**Intervention by Iren Borissova, Verisign:**

Good evening, so Verisign has been an active participant in the Internet Governance Forum pretty much since its very beginning.

We have also contributed to the IGF Trust Fund for several years now.

For us, the IGF with its inclusive, open, and democratic nature is the central and leading venue for Internet governance discussions. However, we recognize, as already pointed out in the outcome document, that there is a need for a strengthened Internet Governance Forum.

Specifically, I'd like to say that improved outputs should include creative ways of providing findings of IGF sessions.

Extending the IGF’s mandate beyond five-year terms would contribute significantly to the strengthening of the Internet Governance Forum. Ensuring guaranteed, stable, and predictable funding for the IGF is absolutely essential and we'll do our best to help in this regard.
And last, but not least, the IGF should continue to support the growth of national and regional IGF initiatives as a key contributor to the Internet governance discussion intersessionally.

Thank you very much.

**Intervention by Tim Conway, WITSA:**

Thank you very much. My name is Tim Conway. I'm from Australia. I'm the member representative of the Australian Information Industry Association to WITSA, it is World Information and Technology Services Alliance.

Like everybody else, congratulations to the organizers. I don't envy your task in drawing this together in less than 24 hours. I wish to address institutional improvements, and in particular meaningful participation.

WITSA is a global alliance of 85 ICT associations. A key feature of its membership is while its membership comprises the major ICT organizations of the developed world, in fact, the majority of our members by number are drawn from developing ICT industries of emerging economies.

If you go to the Web site WITSA.org you'll see a membership map that strikingly illustrates this. It is important to understand the implications of this distribution, and especially the representation and meaningful participation of the ICT sector from these nations as stakeholders in Internet governance arrangements.

As we said in our content submission, the Internet and the ICT sector are mutually dependent. The presence of the Internet enables the development of the ICT sector, especially in emerging economies, and the development of the ICT sector in those economies strengthens and extends access and capability of the Internet in those countries.

However, all too often the ICT sector in those countries is unable to effect, participate effectively in multistakeholder meetings such as this. Why? Because many of the programs that provide support for attendance and participation specifically exclude the private sector. That is quite simply discriminatory and reflects incorrect perceptions. The private sector in those countries is almost universally startups and SMEs. All stakeholders should be treated equally and we request this be given priority consideration for all future multistakeholder meetings.

Thank you.