End user involvement in Internet Governance: why and how

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Abstract

This paper is not about ITU or ICANN, or any other international and intergovernmental institution.

Moreover, this paper is not one of the many egregious efforts to classify the different issues that go under the name of "Internet governance", and to propose specific processes for the solution of each of them.

Instead, this paper is about the fundamental problems and principles behind any attempt to govern a global economical, social and political phenomenon such as the active electronic interconnection of most (eventually, all) human beings, as well as their associations, organizations, companies and institutions.

In the first section, we will see some of the steps that should be taken to reduce the difficulty of the problem: ensuring that all necessary competences and interests participate to the governance processes; focusing the discussion on how to practically increase the effectiveness and accountability of existing governance bodies; and defining a shared set of values and models to be applied to all Internet governance activities, including those we cannot conceive yet.

In the second section, I will mention some of the reasons that make direct and effective involvement of individual users compulsory, as recommended also by the WSIS Declaration of Principles. The users' freedom to innovate is at the root of the success of the Internet, and participation to governance ensures that it is not stifled by specific interests; such participation should happen with equal rights and powers to the private sector, to counterbalance possible attempts to reduce freedom of choice and market competition against the general public interest. Direct user involvement would contribute important skills and expertise to the policies, and would establish a quick reaction loop to verify their effects; it would also significantly increase the geopolitical diversity of the governance bodies. Finally, any policy that does not take into account the needs and values of the user community will be unenforceable and ineffective, as proven by some current situations.

In the third section, we will see that user participation mechanisms should be focused on advocacy, not on representation; they should not aim to involve millions of users – which are already represented by their governments – but rather to allow the most active part of the user community to submit proposals and ideas and to take positions on the matters under discussion. For this to be possible, a networked and distributed structure needs to be devised, so to include the wide range of user associations that already exist all over the world; this would allow effective participation in all countries and languages. An implementation of this model is currently being attempted by ICANN's At Large Advisory Committee.

1. Why is it so difficult?

When you talk about Internet governance, there is only one thing everybody agrees: it has been proved to be a very difficult and controversial task. Some aspects of this complexity need to be understood so to provide advice on how to make the task easier.

1.1. Code is law

According to professor Lessig's motto, *"code is law"*[1]. These three words embody one of the main difficulties in regulating the Internet: to produce effective and applicable policy, one has to take into account the technical design of the network and its services. Software can be regulated, but law that cannot be converted into software is useless; law that requires deep changes to software in millions of computers is likely to be useless too, or at least to bring with itself economical and social costs so high to kill the growth of the Internet in a country.

A similar consideration applies not just to software, but also to organizational practices; regulations that break the automation of the network and require high human oversight of the Internet's day-to-day functionality are doomed either to fail, or to destroy the network.

So, to produce adequate policy for the Internet, it is necessary that the policy-making body is able to gather a broad set of competences, ranging from technical to legal, from business to politics, so that the approved policies are not just fair and balanced, but also applicable with the lowest possible cost to society; and that such cost is correctly foreseen in advance. Moreover, when speaking about global policies, all these competences have to be internally diverse, so to take into account the wide difference of situations and points of view that exists in different parts of the planet.

Thus, <u>one of the fundamental characteristics of any governance structure must be the ability to bring to the table all the necessary skills and all the necessary diversity in culture, language, geography and professional background</u>; which also implies the active involvement of all those stakeholders who will be affected by the policies.

1.2. Balancing history

The Internet was born in an homogeneous cultural environment, mostly populated by engineers; and has grown thanks to the leadership of a narrow business environment, mostly comprised of big corporations based in a few developed countries. The "consensus policies" of the past were the result of this uniformity, rather than, as some pretend, of a "new age" of global cooperation; it was the consensus of the first comers, thanks to the fact that the others still had to get connected. But there is a long list of stakeholders that have been marginalized or excluded from this consensus; as the Civil Society Declaration to WSIS points out, *"institutional reforms are needed to facilitate the full and effective participation of marginalized stakeholders like developing or transitional countries, global civil society organizations, small and medium sized enterprises, and individual users"* [2].

However, it would be a big mistake to destroy the amazing advances that, thanks to its present governance forms, the Internet has brought to the whole world. Even if with some exceptions (unsolicited commercial e-mail, just to name one), the Internet actually works well; and in many cases, the dissatisfaction felt by many stakeholders is about the lack of accountability of the present governance structures, rather than about their everyday operations.

This is why we should apply one of the fundamental laws of engineering to which the Internet owes its reliability – *"If it is not broken, don't fix it"* – to focus the discussion on how to increase the accountability and the effectiveness of the existing Internet governance frameworks, rather than on how to redesign such frameworks from zero; this latter option might actually "break the toy" and put the future of the Internet at risk.

1.3. Sharing the values

As noted above, the Internet has lost its cultural uniformity; but it still has not found a new common and formalized set of values and principles, explicitly shared by all members of its new broader set of stakeholders.

Without agreement on the right balances and meeting points between opposite trends and models (devolution or centralization; national sovereignty or international governance; individual freedom or central control; anonymity or traceability; market competition or publicly managed service; etc.) it will be impossible to devise a solution accepted and supported by all stakeholders in the long term.

The World Summit on Information Society in itself is an important attempt to build this agreement; but much still needs to be done for what specifically concerns global ICT governance structures. Also, this agreement should not be limited to a compromise among governments, but should reflect the actual shared values of the network, of its operators and of its users.

This is why I think that the upcoming working group on Internet governance should start by defining a short set of principles and methods to be applied when designing the governance frameworks; after having accomplished this, it will be much easier to apply these principles to the existing governance matters, as well as to any new ones that might arise in the future.

2. Why do you need to involve end users?

The WSIS Declaration of Principles recognizes the need for a direct involvement of civil society in all aspects of Internet governance processes[3]. In practical terms, this implies involving individually the end users of the network, either directly or through their associations. But to understand how this involvement should be accomplished and organized, you should first understand why it is so necessary, and what kind of added value can user participation bring to the policy making process.

2.1. The true innovation of the Internet

Perhaps the greatest conceptual innovation of the Internet in terms of social structure and business model, if compared to older telecommunications systems such as telephony, radio and television, is the radical shift in the role of its users.

In older systems, users can only be passive buyers of services and contents that are decided and controlled by the centre of the network and by its few operators, usually subject to public licenses and to strict regulation.

Oppositely, on the Internet any user can instantly become supplier of new content, of new services and even of new technology, altering the way the network functions; and actually, most, if not all,

of the services and technologies now used every day by millions of people were born thanks to the initiative of a single individual user at the edge of the network.

This "short circuit" in the business model is the reason for the amazing speed of the growth of the Internet, and for its ability to create innovation, enterprise and wealthness; but it is also the reason for its capacity to provide freedom of communication, global dialogue and new forms of social interaction on a scale never seen before.

This is why, to defend the very nature of the network and to preserve its ability to support widespread development in all fields, it is necessary to ensure that end users keep their freedom to innovate; and this is only possible if they have simple and effective ways to avoid that regulatory processes, possibly under the pressure of economical and geopolitical lobbies, are misused to take this freedom away.

2.2. Preserving competition

In competitive markets such as the global ICT one, businesses try to maximize their profits; this is not good or bad, but simply intrinsic to the nature of market competition. However, businesses will often lobby regulatory processes to obtain rules that stifle potential competitors, reduce consumers' freedom of choice and turn the market into monopoly or oligopoly, to the detriment of the general public interest. The experience of the last years shows that succeeding in opening up existing monopolies to competition is perhaps the hardest challenge for any Internet governance entity.

For this reason, it is necessary to ensure that end users will participate to Internet governance bodies with equal rights and powers to the private sector, so to counterbalance possible attempts to damage competition. This is even more fundamental in frameworks where governmental participation is advisory.

2.3. Contributing skills and ideas

As noted in the first part of this paper, to make good policies you need to ensure that all stakeholders, all skills and all points of view can contribute to the process. Those individuals who actively use the network every day, twenty-four hours a day, bring with themselves a significant part of these skills, and can naturally provide new and innovative ideas to the process; and this is made even more true by the intrinsically active role of the users, explained above.

Also, direct participation by users allows to create a very quick loop of reaction between policy decisions, their implementations, and their practical consequences. Once implementation of a policy starts, users can immediately notice whether it is having the intended consequences and quickly give notice of possible problems, so that the flexibility and reaction speed of the Internet is not compromised. The same happens when, due to the evolution of the network, new policy has to be created or the existing one has to be changed; users are usually the first to notice the occurrence of such situations.

2.4. Ensuring diversity

For historical reasons, and even if this is rapidly changing, the private sector in the ICT field still is mainly composed of entities based in a small set of developed countries.

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The user community, instead, is much more global and diverse; the Internet is now used in all nations of the world, and even in those countries where its adoption started more recently, user groups and user associations are already flourishing.

A wide and well structured participation by Internet users would thus ensure a degree of geographical, cultural and linguistic diversity much higher than the one of the present Internet governance frameworks.

2.5. Preventing spectacular failures

On the Internet, it is very hard to enforce policies without the cooperation of the user community; often, without such cooperation, the only possibility to enforce a policy would be enacting a system of controls and surveillance so pervasive to put the basic civil rights of the individual at high risk – so that not enforcing the policy might actually be the better choice. Policies which do not take into account the "common sense" of the user community are doomed to fail or to cause more problems than those they were supposed to solve.

An evident proof of this, for example, is the ongoing battle between the record and movie industry and millions of individual citizens all over the world about the unauthorized digital redistribution of copyrighted content. Since the copyright regulation is perceived as unfairly biased in favour of intellectual property owners, millions of users feel legitimized to disregard it; and apart from any ethical consideration, the practical consequence is that this regulation is practically impossible to enforce. Further attempts to solve the problem by making harder and harder copyright rules have only caused an escalation of political disagreement and legal conflicts, to the damage of anyone but lawyers; and have created much concern about the compatibility of the instruments used to enforce these rules with the privacy and freedom of the individuals.

In other words, the current digital copyright regulation is an example of a spectacular failure in terms of ICT policy-making processes. If end users had had a real say during the negotiation of international copyright treaties and their national implementations, possibly the regulation would have been better and more balanced, would not have created such a high level of controversy, and would have been much easier to enforce, to the final advantage of all parties.

3. How do you involve users?

Years of experience have now been built on this subject, mostly through the governance history of the Domain Name System. From them, I have tried to extract some lessons that should be considered by the upcoming working group when discussing the role that users should have in the policy making process, and possible solutions to create workable structures for end user involvement.

3.1. Representation versus advocacy

Initial attempts to involve users in governance bodies were focused on representation; individual users would be encouraged to sign up as members of the Internet governance entities, and would then elect their representatives; by gathering a significant number of users into the system, the general public interest would have been upheld. However, this approach has shown some fundamental flaws, both at the theoretical and at the practical level.

Practically speaking, it has been proven to be quite costly and quite hard to maintain this kind of membership, even at an embryonic stage, while at the same time verifying the identity of members all over the world and ensuring other basic needs of a working representational model. Also, it would be difficult to ensure productive discussions among a flat group of many thousands of people; and a centralized structure would be unable to fit the varying needs in terms of language, customs, technical instruments and attitudes that arise in the different parts of the world. Possibly, this centralized membership model would in the end disenfranchise all non-native English speaking individuals, as well as those who are not used to online discussions but would rather prefer physical interaction.

At the theoretical level, such a model poses the question of how to prevent capture and to ensure that user representatives do actually represent the wider user community, which will eventually be composed by billions of people. The first attempt at ICANN collected over 150'000 participants, which is a huge number, but still tiny if compared to the potential user base; and the resulting membership roll was strongly biased in favour of specific countries and groups who had been able to self-organize better.

On the other hand, even if one could practically succeed in registering millions of individuals for an Internet governance body, the resulting process would possibly be a useless double of the existing electoral processes all over the world.

This brings to one fundamental conclusion about user participation: that <u>it is not meant to be based on representation of the general public interest</u> – which, indeed, is the proper role for the governments – <u>but instead on the principle of advocacy</u>. The most active and organized subset of the user community should have a simple and direct way of participation in Internet policy making processes, so to be able to contribute smart ideas, experience from the field, and a quick loop of reaction.

So the real target of any organizational structure for civil society participation in Internet governance entities should not be to actually involve any individual user all over the world – but should rather be to ensure that any individual user that wants to become involved has a practical way to do so, and that the association of these active users is given adequate voice and powers.

3.2. Reusing existing organizations

In the last years, an incredible number of Internet user organizations was born all over the world. Some of them, such as the Internet Society, are big international groups composed by many thousands of individuals covering most of the world's nations; some others are just a small group of friends in a neighborhood. Some are focused on specific issues, such as privacy or electronic rights; some others were born with the purpose of representing users in other Internet governance bodies at the national and regional level.

All of these groups, however, bring with themselves important expertise, and can provide mechanisms for aggregating users, spreading information, and collecting opinions and requests, that are already in place.

Each of this groups could possibly offer to end users a different way of getting involved into Internet governance processes, thus ensuring that the different needs of different users are met, and that local participatory forums in local languages and suiting local attitudes can be opened for users.

While you can't imagine any non trivial number of Internet users traveling all around the world to participate in global governance processes, <u>you might imagine a huge number of users participating in a great number of different local organizations, that in turn form a network that is able to "bubble up" the prevailing opinion of the community towards the high-level global forums</u>, and to elect the necessary representatives.

Also, as not all of the issues are actually global, this network would naturally offer the opportunity to create national and regional coordinating forums among the participating organizations and individuals. So this structure, once formed, would be enough flexible to be able to supply user input into all governance processes at the different levels.

Finally, a structure based on a high number of very sparse and distributed groups would be much harder to capture by any vested interest; it would be very difficult to misrepresent the actual desires of the users.

3.3. An example: the At Large Advisory Committee

The first attempt to build this kind of structure on a global scale for an Internet governance process has been started by ICANN in the last year, thanks to its newly formed At Large Advisory Committee (ALAC).

In the structure of ICANN, the ALAC is the civil society equivalent to the GAC; in its advisory role, it is meant to provide to the Board and the constituencies the voice of individual Internet users. Since December 2003, the ALAC has started to accredit user organizations that apply to become part of the network; this weak form of validation is necessary to prevent non-user associations or manifestly fake groups from polluting the structure.

After a sufficient number of organizations will have been accredited, they will self-start the so called "Regional At Large Organizations", or forums where they will be able to discuss and come to common positions at a regional level. These RALOs will then elect two thirds (and possibly, in the long term, the whole) of the ALAC; and will also be able to deal with any DNS governance problem at the regional level.

Even if this process is still at a very early stage, it might provide an interesting model for user participation in governance processes; this is why <u>we ask for it to be taken into consideration and discussed at the WSIS level</u> in the next months.

References

[1] L. Lessig, *Code and other laws of cyberspace*, Basic Books, December 1999; excerpts available online at http://code-is-law.org/

[2] Paragraph 2.4.7 (page 21), *Shaping Information Societies for Human Needs – Civil Society Declaration to the World Summit on Information Society*, December 2003, available online at http://www.geneva2003.org/wsis/documents/summit/WSIS-CS-Decl-08-12-03-en.pdf

[3] Paragraphs 48, 49 and 50 (pages 6-7), *Building the Information Society: a global challenge in the new Millennium – World Summit on Information Society Declaration of Principles*, December 2003, available online at http://www.itu.int/dms_pub/itu-s/md/03/wsis/doc/S03-WSIS-DOC-0004!!PDF-E.pdf