**ICC**

**International Chamber of Commerce**
*The world business organization*

# Issues Paper on

# Internet Governance

*Prepared by ICC's Commission on E-Business, IT and Telecoms*

January 2004

## Introduction[1]

At the close of the first phase of the World Summit on the Information Society (WSIS), December 2003 governments called upon the UN Secretary General to create a multi-stakeholder Working Group on Internet Governance.

The text from the WSIS states:

### The WSIS declaration of principles and plan of action

*Declaration of Principles*

"50 International Internet governance issues should be addressed in a coordinated manner. We ask the Secretary General of the United Nations to set up a working group on Internet governance, in an open and inclusive process that ensures a mechanism for the full and active participation of governments, the private sector and civil society from both developing and developed countries, involving relevant intergovernmental and international organizations and forums, to investigate and make proposals for action, as appropriate, on the governance of Internet by 2005.

*Action Plan*

13 b) We ask the Secretary General of the United Nations to set up a working group on Internet governance, in an open and inclusive process that ensures a mechanism for the full and active participation of governments, the private sector and civil society from both developing and developed countries, involving relevant intergovernmental and international organizations and forums, to investigate and make proposals for action, as appropriate, on the governance of Internet by 2005.  The group should, inter alia:

i) develop a working definition of Internet governance;

ii) identify the public policy issues that are relevant to Internet governance;

iii) develop a common understanding of the respective roles and responsibilities of governments, existing intergovernmental and international organizations and other forums as well as the private sector and civil society from both developing and developed countries;

iv) prepare a report on the results of this activity to be presented for consideration and appropriate action for the second phase of WSIS in Tunis in 2005."

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[1]  This issues paper has been prepared by the ICC Commission on E-Business, IT & Telecoms (EBITT). Business leaders and experts drawn from the ICC membership establish key business positions, policies and practices on e-business, IT and telecoms. With members who are users and providers of telecommunications and information technology goods and services from both developed and developing countries, ICC provides the ideal platform to develop global voluntary rules and best practices for these areas. Dedicated to the expansion of cross-border trade, ICC champions liberalization of telecoms and development of infrastructures that support global online trade.

For further information on the EBITT Commission, please visit our website at:
http://www.iccwbo.org/home/menu_electronic_business.asp

We acknowledge there are other activities and positions of concern to business worldwide with respect to these issues and these are being and will be addressed separately by ICC.

In addition to the WSIS declaration and plan of action, his Excellency Pascal Couchpin, the President of the Swiss Confederation, hosted a private multi-stakeholder roundtable on 9 December 2004 on the eve of the WSIS to consider the subject of Internet governance. At that roundtable, participants suggested that the UN Secretary General Working Group should not exceed 15 members. However, the structure of the working group has not yet been determined.

The following is a short summary of the discussions during WSIS regarding Internet 'governance' issues.

- Some governments were calling for a role to be played by an inter-governmental organization on "Internet Governance" matters. However, our experience indicated that such governments varied as to what part of "Internet Governance" they felt should be addressed by an inter-governmental organization. Some included ICANN's functions while others did not. It was a confused debate.

- It seems that several of these governments were from countries where government has primary or majority control over many infrastructures, but where teledensity may remain a challenge, and Internet access may be limited.

- Many governments from developing countries are seeking a one-stop-shop for advice on Internet policy matters. Many of these governments believe strongly that such a body should be within the UN framework.

- Some governments raised concerns that ICANN's Governmental Advisory Committee, as an advisory body, is not an adequate forum for their input into matters related to the technical management of the Internet.

- Other governments opposed the creation of a one-stop-shop under the UN framework; opposed an increased or changing role in these areas by the International Telecommunication Union (ITU), supporting continued private sector leadership particularly on technical; and supported the GAC as an appropriate forum for government advice into matters related to the technical management of the Internet.

*This issues paper is meant to provide background information and spur discussion among businesses worldwide regarding its views on these important issues.*

## The Phrase "Internet Governance"

The first subject for discussion is the phrase "Internet Governance" itself. Business has long maintained that this phrase has been part of a confused international debate, which has misled some to believe that a single entity controls the Internet.

The Internet consists of tens of thousands of networks that are interconnected and operated by different entities including businesses, universities, governments and others. All of these entities contribute to its proper and efficient functioning through a system of open network standards that ensure that all networks can communicate with each other.

The phrase is often mistakenly used to identify only the management of the Internet's names and numbers system. That system is not one of governance but rather coordination, administration and allocation through a cross-stakeholder, self-regulatory mechanism called the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN will be discussed later in this paper.

The phrase "Internet Governance" also implies that there is a need for the Internet to be governed in some way, a view that ICC does not support. We need to work on a definition of "Internet Governance" and seek broad support for that definition.

The second subject for discussion is that in reality there are three components of Internet Governance, and it is important to clearly distinguish each component from the others. Those components are:

i)    the technical engineering function that allows different components of the Internet to interact;

ii)   the technical coordination of the key protocols and addresses and names that underpin the technical functioning of the Internet, ICANN's functions, which in shorthand is simply, a sophisticated directory system that allows people to accurately contact a website or other people on the Internet.

iii)  the handling of public policy matters that should be discussed openly among governments, business and civil society.

The first two components are handled by numerous non-governmental organizations through open and transparent processes that ensure effective coordination and collaboration among the broad set of stakeholders. These processes are typically open to governmental attendance and participation. The third component is the traditional domain of governments through regulatory and legislative processes after effective consultation with all stakeholders. Each component is discussed in more detail below.

It is essential to ensure that all parties participating in this debate recognize the three components and differentiate among them. This will help to limit the confusion and ensure that all stakeholders, including governments, clearly articulate their views on each component separately. This will hopefully lead to greater clarity of the views of all stakeholders.

## I. Technical Coordination of the Internet

As noted above, the Internet is a collection of networks that are joined together to form a global communications medium. The networks that make up the Internet have many different properties, but are based on technical protocols, numbering and naming systems, based on widely accepted standards that enable the transport of information across the multiple sets of interconnected networks. Internet users demand a unique and predictable result in domain name resolution anytime and from anywhere in the world as well as a high degree of reliability and stability in the operation of the networks themselves. As a result, the Internet's infrastructure and operation is a highly collaborative activity.

The technical coordination of the Internet includes:

– the development of Internet protocol (IP) standards;

– the administration, coordination and allocation of IP addresses;

– the delegation of domain names;

– the coordination of the root server system;

– the coordination of procedures related to the technical coordination of the Internet.

The organizations involved in the technical coordination of the Internet depend on constant input from and interaction with relevant experts to keep the Internet and its related technologies developing in a robust and global manner, providing a platform for business-led innovation and communication for users from around the world.

Several private-sector-led organizations play a critical role in the technical coordination of the Internet, including technical security and stability. These organizations include:

– the Internet Architecture Board (IAB)

– the Internet Engineering Steering Group (IESG)

– the Internet Engineering Task Force (IETF)

– the Regional Addressing Registries (e.g. RIPE, ARIN, APNIC,LANIC and AFRINIC)

– the World Wide Web Consortium (W3C)

– the Internet Corporation for Assigned Names and Numbers (ICANN)

These forums involve experts and interested participants from all around the globe. They play an important role in ensuring that the Internet functions properly. They have demonstrated their ability to respond to an ever-changing environment.

Technical engineering

This is done through network infrastructure development, including hardware and software, based on open network standards developed by several of the organizations noted above. A very brief explanation of each of these technical engineering standards bodies follows.

– IAB is responsible for the strategic technical direction of the Internet, including architectural oversight of Internet protocol and procedures, and standards development oversight and appeal of the IETF (described below). Members of the IAB are solicited through an open process and selected by a nominating committee following open, published procedures. There are no restrictions on who may volunteer. Decisions are reached preferably unanimously, but they may also be reached by seven members assenting with no more than two dissents.

– IESG manages IETF's activities and Internet standards process. It administers the IETF process by initiating working groups and either ratifying or remanding its output for further work. IESG members are selected according to the same nominating process of the IAB, and are either confirmed or rejected by the IAB. There are no restrictions on who may volunteer for IESG membership.

– IETF is the principal body that develops Internet standards specifications with its work, including ENUM, Instant messaging and internationalized domain names through a widely participatory process, open to all interested parties. IETF's work is guided by IESG and IAB, and it functions through a wide participatory process based on open consultations open to all interested parties.

– W3C develops interoperable specifications, guidelines, software and tools to promote the evolution and interoperability of the World Wide Web, including html, portable network graphics and web accessibility guidelines. W3C is open to vendors of technology products and services, content providers, corporate users, laboratories, standards bodies, and governments. Decisions are by consensus.

For more detailed information regarding several of the organizations involved in the technical coordination of the Internet, please refer to ICC's "Information paper on organizations involved in technical coordination of the Internet" updated version, 2 September 2003 http://www.iccwbo.org/home/menu_electronic_business.asp

*Coordination of the Internet names and numbers system*

ICANN[2] is responsible for coordinating and managing the domain name system, a key technical function that underpins the Internet, ensuring universal resolvability of Internet communications so that all users can find a valid Internet address.

ICANN's responsibilities are limited to:

- the administration, coordination and allocation of IP addresses and domain names[3];

- the administration and coordination of the root server system[4],

- the coordination of relationships with other entities, such as the regional addressing registries and the ccTLD registries

- promoting competition within generic top-level domain name space (.com, .org, .net, etc);

- matters related to these functions such as a system for domain name dispute resolution.

Many people believe that ICANN does much more than these basic technical functions, and there is much work to be done to raise greater awareness of how the Internet functions and to correct this misunderstanding.

ICANN functions in an open and transparent manner through an interactive decision-making process. All ICANN meetings are open to whomever would like to attend in person and via webcast. All decisions are fully vetted by the global Internet community through a public comment process. The decisions by the ICANN Board are endorsements of recommendations developed by experts in an inclusive decision-making process after the above-noted procedure of public comment.

Prior to the creation of ICANN, the US Government had been responsible for these functions. ICANN and the US Government are in the final stages of completing a memorandum of understanding that will separate the US Government from any role in ICANN's functions, other than its participation as a stakeholder government in ICANN's deliberations. Governments provide advice to ICANN through the Governmental Advisory Committee (GAC). All governments and inter-governmental organizations are welcome to join the GAC.

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[2] ICANN is a not-for profit organization headquartered in Marina del Rey, California. Its location is a result of historical circumstances. ICANN's Board and its Policy Councils are required by their By-Laws to be regionally diverse.

[3] Each domain name (www.iccwbo.org) has a corresponding Internet Protocol address, which is a series of numbers separated by periods. The domain name system was devised to create an easily identifiable addressing system of words rather than a long series of numbers for communicating with others over the Internet.

[4] The root server system is an address book for the Internet. It indicates the IP address for TLD servers, which then route Internet traffic.

The administration of the domain name system has been the subject of significant public debate.  There are two types of top-level domains:

− generic (gTLDs - .com, .org., net, .info., .biz., .museum, .aero, etc.);

− country-code (ccTLDs  - .fr for France, .us for the United States, .jp for Japan, .br for Brazil, etc.).

ICANN has sub-bodies, called supporting organizations:

− for gTLDs, the Generic Names Supporting Organization (GNSO), consisting of constituencies that span the stakeholder community;

− for ccTLDs, the Country-code Names Supporting Organization (ccNSO), now completing its self organization, consisting of the ccTLD administrators that choose to participate.

− The Addressing Support Organization, comprised of the regional addressing registries.

The GNSO and ccNSO are responsible for developing recommendations related to their respective sphere for acceptance by the ICANN Board.  ICANN's responsibilities for gTLDs and ccTLDs are different and this is reflected by the supporting organization's functions.  The gNSO is responsible for consensus recommendations related to gTLDs.  The ccNSO is not yet operational, but it will provide a process whereby the actual administrators of ccTLDs will share information and develop any needed global recommendations that ccTLDs will abide by.  ICANN's processes recognize that first and foremost, the ccTLDs are subject to the laws of their respective national governments.  Therefore, ICANN will not be imposing policies and practices on ccTLDs.  Rather, it will endorse policies developed by the ccTLD administrators themselves.

Given its responsibilities, ICANN plays an important role in ensuring the technical stability of the Internet.  Its work ensures that Internet communications are properly directed.  Therefore, every domain name holder, an individual, business or government, must follow certain procedures for domain name allocation, designation, etc., to ensure that Internet communications are not disrupted.

It is important to note that ICANN is not responsible for general public policy issues, but only technical coordination and matters related to its core functions.

ICANN is led by the private sector including technical, commercial and non-commercial experts with the advice and support of governments through the Government Advisory Committee.

## II. Public Policy Matters

Public policy matters are, in general, the responsibility of governments. However, policy discussions must include the active participation of business and other stakeholders.

A public policy can result in governments regulating a particular activity, allowing business to self-regulate or any combination thereof. Therefore, a public policy might be to refrain from regulating where not essential, which we believe to be a wise strategy in an area of rapid change and technological development.

A small sample of public policy matters related to the information society include:

- intellectual property protection
- taxation
- privacy
- trade
- security
- consumer protection / empowerment
- education
- spam

Some of these issues require international cooperation and action. There are international bodies such as WIPO and the WTO with authority and jurisdiction for some of these issues. Other issues require international coordination of national policy. A number of bodies exist such as the OECD, UN ICT Task Force, APEC and CITEL, where these issues can be discussed and coordinated.

## III. Upcoming events on Internet Governance

Two events related to the WSIS follow-up on Internet Governance have been scheduled. ICC is planning to be present at these meetings.

The first is an ITU Workshop on Internet Governance scheduled for 26 and 27 February 2004 in Geneva. The purpose of this Workshop is to initiate a process to prepare ITU's inputs and position vis-à-vis the Working Group to be established by the UN Secretary General on Internet Governance. It will provide a forum for exchanging views on definitions, viewpoints, visions and analytical studies on Internet Governance. We understand that the output of the Workshop will be submitted to the appropriate ITU decision-making bodies for their further consideration.

The second is a multi-stakeholder Open Global Forum being convened by the UN Information Communication Technology Task Force (UN ICT TF) scheduled for 25 and 26 March 2004 in New York. The purpose of the Global Forum is to discuss the various contributions submitted in advance of the Forum and suggest criteria on the form and operation of the "Internet Governance Working Group" to be organized by the UN Secretary General.

In addition, the UN ICT TF Bureau agreed to create an Internet Governance Advisory Committee. This Committee will be chaired by Mr Talal Abu-Ghazaleh, who also serves as the Vice-Chair of the UN ICT TF and Chair of the ICC Commission on E-Business, IT & Telecoms.

## IV. ICC future work on recommendations and policy positions

ICC has conveyed to the UN Secretary General that it has created a special work programme under its Commission on E-Business, IT and Telecoms to parallel the UN Working Group on Internet Governance. In this regard, we hope to build upon the existing ICC policy positions on these issues, provide information to and raise awareness among governments of the priorities and interests of business worldwide on these issues. This would include identifying and prioritizing ICC work on the three components identified above, namely: technical engineering; coordination of the names and numbers system; and relevant public policy matters.

The ICC policy positions will be evolved through its consensus process by the Secretariat and the commission structure.

We are privileged that Mr Abu-Ghazaleh, given his leadership both within the ICC and the UN ICT TF, will serve as a liaison between the ICC and the UN work going forward.

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# ANNEX

## A summary of ICC's existing views on the role of different stakeholders in the information society

ICC has reviewed its past policy positions, most notably the Global Action Plan for E-Business[5], and summarized its general views related to the roles of different stakeholders in the information society.

The pace of change, the fast evolving state of the Internet and the creation of a global information society heighten the risks associated with premature or unnecessary government regulation. This has increased the responsibility of business to promote a trustworthy environment through self-regulation and technological innovation. Business has a strong market incentive to foster the empowerment of users. But it will only make the necessary investments if it can trust that governments will recognize and reinforce the leadership of business in responding to the highly dynamic nature of the Internet.

ICC recognizes that the Internet and the information society raise many important public policy considerations that may require governmental facilitation. Government intervention may be required to develop the legal structures to ensure enforcement and for removing existing legal barriers confronting electronic commerce and the integration of information and communication technologies. Such matters include intellectual property protection, taxation and the removal of barriers to competition.

However, in other matters, business solutions such as self-regulation and technology tools are the preferred and more effective means to create trust in the Internet and electronic commerce transactions, especially given the rapid pace of technological innovation.

Below is a summary of the role of the different stakeholders identifying where the stakeholders have a particular sphere of influence.

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[5]  A Global Action Plan for Electronic Business, 3rd edition – July 2002
    http://www.iccwbo.org/home/e_business/word_documents/3rd%20Edition%20Global%20Action%20Plan.pdf

a) **Areas for government action**

- Promotion of competition.

- Removal of barriers to competition in the underlying infrastructure, in particular the basic telecommunications infrastructure consistent with the WTO Reference Paper.

- Trade liberalization of IT goods and services, and goods and services that can be delivered via e-commerce.

- Allocation of scarce resources such as spectrum and radio frequency.

- Government as model users and early adopters of electronic commerce through e-government, which will result in improved communication with citizens and increase awareness, and will drive demand for information and communication technologies (ICTs).

- Removal of legal obstacles to e-commerce including form requirements for electronic contracting.

- Ensuring a tax regime that is neutral towards and does not discriminate against electronic commerce.

- Ensuring effective protection of intellectual property in a manner that balances the interests of all stakeholders including rightsholders, network operators, service providers and users.

- Recognition of electronic signatures and electronic contracts consistent with the UNCITRAL Model Law on Electronic Commerce and for electronic signatures, in a manner that ensures technological neutrality and non-discrimination of signatures from foreign providers.

- Ensuring transparent processes for policy decisions will increase confidence of business with regards to investment given increased certainty and predictability.

- Offering the education necessary -- both basic education and computer/IT literacy -- to ensure sustainable benefit from ICTs.

- Ensuring a legal structure and laws are in place to provide enforcement of illegal conduct in an electronic environment.

- Ensuring national legal structures and national laws are in place to provide enforcement with respect to illegal conduct in an electronic environment; with appropriate support for law enforcement cooperation across borders.

**b) Areas where market-forces should prevail**

- Goods and services offered in a competitive marketplace should be subject to market forces with government intervention limited to the application of general competition law.

- Innovation and technological developments should be driven by market forces, given their rapidly evolving advancements as well as their goal of promoting rather than restricting such advancement.

**c) Areas where self-regulation, choice, individual empowerment and industry-led solutions should prevail**

- User confidence measures such as information and network security, consumer empowerment, etc., can best be addressed through industry/market solutions consistent with generally accepted international guidelines, where applicable, given the rapidly evolving consumer e-marketplace.

- Domain Names and other aspects of the technical coordination of the Internet should be driven by private-sector leadership as embodied in ICANN and the other entities involved in technical coordination functions.

**d) Areas where joint government and private sector action is required**

- Education and skills development are essential to ensure that workers have the skills necessary to engage in the information society.

- Digital divide/opportunities can best be achieved through private/public partnership, since industry initiatives cannot result in long-term benefits if governments do not adopt the necessary policy framework to promote competition and private sector investment.

- A culture of security, where governments, business and users assume their appropriate role in enhancing security is essential to ensure that the Internet is a viable medium for information exchange, communication and commerce.

- Prevention of and enforcement against cyber-crime also requires private/public partnerships. Governments must ensure that they have the necessary laws to make certain acts criminal, and that law enforcement then works with the private sector to combat cybercrime, taking into consideration business realities and the interests of all stakeholders.

# The International Chamber of Commerce

ICC is the world business organization, the only representative bodythat speaks with authority on behalf of enterprises from all sectors in every part of the world.

ICC promotes an open international trade and investment system and he market economy. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution.

Within a year of the creation of the United Nations, ICC was granted consultative status at the highest level with the UN and its specialized agencies.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC was founded in 1919. Today it groups thousands of member companies and associations from over 130 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.