



APC PERSPECTIVES ON THE REVISION OF THE INTERNATIONAL TELECOMMUNICATION REGULATIONS

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The Association for Progressive Communications (APC) is an international network of civil society organisations concerned with ICTs, the internet, development and rights.

APC welcomes the ITU's invitation to the broad community of stakeholders in communications to contribute to discussions on the International Telecommunication Regulations (ITRs) ahead of the World Conference on International Telecommunications (WCIT). We hope that the ITU will continue with and build on this important step to make its decision-making processes more inclusive and transparent. Major changes have taken place in the nature of telecommunications since the present ITRs were agreed in 1988. Telecommunications services which were once provided by government agencies are now almost entirely provided by private sector enterprises. Telecommunications now enable very many new services of importance to social and economic development. The value of multistakeholder dialogue on communications was recognised by the World Summit on the Information Society, and multistakeholder fora have become commonplace in discussion of telecommunications, ICTs and the internet. The ITRs are important instruments in international communications and it is critically important that all stakeholders should be able to contribute to discussions about how they are revised.

The purpose of the ITRs

Many proposals have been put forward to the World Conference on International Telecommunications (WCIT) for changes in the ITRs. Rather than commenting in detail on individual proposals, APC sets out in this document an overall approach to the ITRs which it believes is consistent with the purpose of the Regulations, as described in 1988, with the development of communications since that time, and with the needs of a rapidly changing communications market and the citizens and users of telecommunications services.

The ITRs that were agreed in 1988 were concerned with basic telecommunications services and sought to achieve three objectives:

- to facilitate global interconnection and interoperability of telecommunications facilities;
- to promote the harmonious development and efficient operation of those facilities; and
- to promote the efficiency, usefulness and availability to the public of international telecommunication services.

They were agreed at a time of great change in the telecommunications sector, as control of networks and services shifted from governments to the private sector, and arrangements for international traffic moved from negotiated reciprocity to commercial agreements. They consolidated and simplified prior regulations into concise statements of principle which allowed the development of new business models. These enabling principles have facilitated connectivity and innovation which might well have been stifled by more rigid and prescriptive rules.

APC recognises the important role which the ITRs have played in the development of telecommunications over the two and a half decades since 1988. That period has, as noted above, been one of enormous change in telecommunications, in particular the massive development and uptake of mobile telephony, the advent and spread of the internet, the general adoption of IP networks, and continuing advances in technology, markets, and user behaviour which have proved difficult for governments and even businesses to anticipate. It is not surprising, therefore, that aspects of the ITRs are now out of date. The central question before WCIT concerns how, how far and in what ways they need to be updated.

APC's proposed principles for revision of the ITRs

APC suggests that the best way to respond on this question is to consider proposals for revision on the basis of two key principles.

- The first is that **the ITRs should remain concise statements of principle**, as they were agreed in 1988, and should not become prescriptive or restrictive regulations. The more tightly rules are drawn, the more quickly they will become outdated and constrain innovation, enterprise and consumer and user welfare.
- The second is that **they should always seek to facilitate and never to restrict** the development of telecommunications and the availability of communications services.

All proposals before WCIT should, in APC's view, be judged against these two key principles. If these are followed, then the ITRs should continue to facilitate and not restrict the future development of telecommunications.

Two further points stem from these basic principles.

The first is that the **ITRs should continue to be concerned with basic telecommunications** and should not extend to services that make use of telecommunications networks such as ICTs in general or the internet in particular. The relationship between telecommunications, ICTs and the internet varies from region to region and is highly complex and unpredictable. Rules and regulations that restrict how it evolves will stifle innovation and reduce the value of information and communications to development. The ITRs should make no assumptions about how that relationship will or should evolve. They should be concerned only with underlying telecommunications networks, not with the services and content that run over them. The definition of 'telecommunications' in the ITRs, in particular, should remain as it is in the ITU constitution.

There has been concern in some quarters about proposed changes in the terminology used to describe telecommunications operators in the ITRs, from the historic term 'administrations', which referred to government departments, to 'operating agencies', which includes private sector businesses. While this terminological updating follows from the privatisation of telecommunications which has occurred since 1988, it should be clear in the revised ITRs that the revised Regulations' coverage only extends to those areas of basic telecommunications that were addressed by the 1988 Regulations, and that the ITRs do not extend to other business activities of operating agencies such as their role as ISPs.

Scope of the ITRs

The second point is that the ITRs should not reach beyond telecommunications to include public policy objectives and areas of governance which are beyond their current remit or the telecommunications sector. A number of proposals have been made to WCIT which suggest, for example, that the ITRs should address issues such as spam, fraud, security and cybercrime. These are important issues and we do believe that the ITU has a role to play in addressing them, alongside other international agencies and other stakeholders. But they are not basic telecommunications issues, and cannot properly or appropriately be addressed by establishing rules concerning them within an ITU treaty and any such effort should proceed with great caution. These proposals should therefore be rejected. The ITU should consider those that are within its remit in other, more suitable ITU fora, and work with other stakeholders in other fora to develop responses which can achieve international and multistakeholder consensus.

Human rights and the ITRs

For the same reasons, APC does not believe that it would be appropriate to include text concerning aspects of human rights within the ITRs. The international human rights regime is well-established, through the Universal Declaration of Human Rights (UDHR), the International Conventions on Civil and Political Rights (ICCPR) and

Economic and Social Rights (ICESR) and other internationally agreed instruments. As a body constituted by governments ITU decisions necessarily fall within this framework. Governments are as responsible for upholding human rights agreements in the ITU as they are, for example, in the General Assembly. It would therefore be appropriate to draw attention to these overarching rights instruments in a preamble to the ITRs, noting that they apply to the Regulations and how they are implemented as they do to all other international agreements, but it would not be appropriate to use telecommunications regulations themselves as rights instruments. What is important is that any impact assessment of the ITRs include careful evaluation of their impact on fundamental human rights, including rights to freedom of expression and association online, and on internet access as an enabler of rights.

Looking to the future

The future of communications is not simply a matter of technology. It is of vital importance to human development. Changes in communications technology and markets are immensely complex and challenging. They offer tremendous opportunities for enabling economic growth and advancing human welfare, but bring with them new threats, from loss of privacy to electronic waste, from criminality to cyberwarfare. As the seven years since WSIS have shown, they are also highly unpredictable: as recently as 2005, hardly anyone predicted the growth that has since taken place in mobile internet, social networking or cloud computing. Such great opportunities and such great challenges require cooperation between stakeholders and across public policy domains. They need multistakeholder dialogue that brings together all of those concerned with technological and human development, and enabling policy and regulatory environments that encourage innovation and responsiveness to citizens' and consumers' needs. The ITRs can contribute to this, as they have done since 1988, as principles for basic telecommunications that foster connectivity and use of international networks and services, but they should not reach beyond their existing mandate.

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The Association for Progressive Communications (APC) is an international network and non-profit organisation founded in 1990 that wants everyone to have access to a free and open internet to improve lives and create a more just world.

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