

Association for Progressive Communications (APC) statement on NETmundial

NETmundial was a remarkable and historic event. To give it its due and build on it going forward, it is necessary to acknowledge its achievements as well as its flaws.

Affirming the "publicness" of the internet: Gains and gaps

The NETmundial Multistakeholder Statement¹ represents substantial progress towards public interest-driven internet governance. It recognises the internet as a common resource that should be managed in the public interest. "Public good", or Neelie Kroes' term, "global, common, public resource",² would have been preferable, but this is nevertheless a powerful step towards protecting the "publicness" of the internet.

Linked to this is affirmation of the value of openness and interoperability, of "permissionless innovation", and the need to support public access to the internet (one of APC's priorities). It is disappointing, however, that protection for intermediaries from liability was mentioned not as a precondition of protecting rights such as free expression and association, but as linked to "economic growth, innovation, creativity and free flow of information". There can be little doubt that this text expresses the interest of the entertainment industry. APC believes this framing opens the door to requiring internet intermediaries to enforce intellectual property rights in ways that interfere with rights to free expression and access to knowledge.

Consensus was not reached on network neutrality, or the principle of free flow of information, and non-discriminatory flow of data packets across the network. This was ironic, as this principle was enshrined in the Brazilian Marco Civil da Internet³ (Civil Rights Framework for the Internet), enacted by President Dilma Rousseff during the opening of NETMundial. While not discounting the commercial interests at stake in avoiding inclusion of network neutrality as a principle, its discussion is also complicated by different definitions of what the concept means, and of how it applies in various contexts. We applaud that the NETmundial Statement roadmap identifies net neutrality as an area for further discussion and look forward to the Internet Governance Forum (IGF) taking this up in the near future.

We would have liked to see more reference to development, social justice, the integration of the concerns of people from the developing world, and the role the internet can play to support a more just and sustainable world. Quoting from Nnenna Nwakanma's inspiring opening speech: "The Internet is fast becoming the dominant means for wealth creation. The 'Right to Development' needs to include social justice. It is not enough to do a superficial 'capacity building' for a few persons. We are looking at a mechanism that allows for the highest number of persons to be included, the largest number of voices to be heard, the widest extent of talents to access innovation, and the deepest creativity of the human minds to flourish. For these, we need to start considering the Internet as public commons."⁴

Human rights apply offline and online!

NETmundial identified fundamental human rights as key principles for internet governance and states that governments have specific accountability for upholding and protecting individual human rights on the internet. We applaud this, but believe that the roadmap section of the document needed to consider internet-specific aspects of human rights protection in greater detail – in particular, rights which are

1 <http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf>

2 http://ec.europa.eu/commission_2010-2014/kroes/en/content/global-governance-global-common-public-resource

3 http://www.senado.gov.br/atividade/materia/detalhes.asp?p_cod_mate=116682

4 <https://bestbits.net/nnenna-netmundial/>

needed to ensure free expression and association on the internet such as the right to anonymity and the right to use encryption.

Deepening democracy in multi-stakeholder internet governance

A further breakthrough in the document is recognition that internet governance needs to be democratic as well as multi-stakeholder, and that the former is not necessarily synonymous with the latter. It identified the need for mechanisms that ensure accountability, review and redress in internet governance, as well as for gender balance in discussions and decision making.

The NETmundial Multistakeholder Statement builds positively on the Tunis Agenda⁵ in its recognition that stakeholder groups do not always have fixed roles, but that these “respective roles and responsibilities of stakeholders should be interpreted in a flexible manner with reference to the issue under discussion.” This paves the way for constructive discussion of the specific roles of stakeholders in different parts of the internet governance ecosystem, with reference to the issue and process under discussion. In other words, rather than talk about whether governments should have a role or not, we can focus on what this role is and where and when it is most needed.

Mass surveillance: The elephant that left the room

Most disappointing is that mass surveillance was not condemned more strongly in the final version of the Statement, with some of the governmental participants insisting at the last minute that the phrase “mass surveillance is fundamentally inconsistent with the right to privacy and the principle of proportionality” be removed from the document.

Considering that the event emerged from outrage following Edward Snowden's revelations, and that mass surveillance was cited as a major concern in inputs received on the draft documents, this issue can best be described as the elephant which started out inside the room, but which was then lifted and carried out – by suitably powerful forces – before the event's conclusion.

The document does state that “mass and arbitrary surveillance undermines trust in the Internet and trust in the Internet governance ecosystem” and cooperation – forced or voluntary – between states and business is addressed by the requirement that the “collection and processing of personal data by state and non-state actors should be conducted in accordance with international human rights law,” but this does not address the protection of individual rights that are violated on an extraterritorial basis.

Also included is a renewed call upon states from the 2013 UN General Assembly Resolution⁶ for the review of “their procedures, practices and legislation regarding the surveillance of communications, their interception and collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full and effective implementation of all their obligations under international human rights law.” This provides an opening for follow-up action which rights activists should pursue with vigour.

IANA accountability

We are encouraged that the issue of Internet Assigned Numbers Authority (IANA) accountability will be an integral part of the discussions on the National Telecommunications and Information Administration (NTIA) transition. We look forward to the continuation of the process once the terms of the accountability process are published. We rely on the unfolding of a neutral process to review the

5 <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html>

6 http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/68/L.45/Rev.1

accountable transition of IANA stewardship with the full participation of all global stakeholders and with due consideration given to the importance of structural separation between policy and operational levels.

What was avoided?

The most striking absence at NETmundial, in spite of several submissions raising this as a concern, is a call to put a stop to the increasing militarisation of the internet. Clearly this is an issue that should be taken up through the IGF process.

NETmundial as a process: Leaps, lessons and let-downs

We want to express our appreciation for the hard work that the organising team put into the NETmundial process, in particular CGI.br and the event chairperson, Virgilio A. F. Almeida, Secretary for Information Technology Policy of the Ministry of Science, Technology and Innovation of Brazil.

NETmundial represents great leaps forward for multi-stakeholder decision making, building on inclusive, multi-stakeholder habits developed during eight editions of the IGF, and providing useful lessons for the future. More time and better planning was needed to integrate inputs – received through an excellent online platform – into the final outcome documents. It would also have been good to use the face-to-face event for more discussion rather than for open-microphone sessions in which most of what had been said online already was repeated. Drafting of the outcome document could also have been done in a more systematic manner, ensuring that people with the necessary area knowledge were available to the chairs of the two drafting groups (Principles and Roadmap).

The let-down was that at the end, when the pre-final text was being presented to the High Level Multistakeholder Committee, the process suddenly felt quite familiar, as, at the last minute, a few governments insisted on changes to the text, demanding either deletions or modifications to statements that they were not comfortable with. We understand that government representatives are constrained by instructions from their capitals or by existing agreements; but if we are to deepen democracy in global internet governance, we do need to find ways to move beyond these constraints when finalising such a non-binding document, as they serve to limit more balanced stakeholder input and influence.

If powerful governments, whose views often coincide with those of some parts of internet industry, can still exercise a veto – even if informally – at the last minute, we have quite a way to go towards fully inclusive and democratic internet governance. Intergovernmental processes are often criticised for producing lowest common denominator consensus agreements. Democratic, multi-stakeholder decision-making processes must strive to avoid this.

What next?

There is much to celebrate. A group of very diverse stakeholders worked together to produce a document which has the potential to create a more robust and human rights- and public interest-oriented approach to internet policy and management. The Government of Brazil showed grace, leadership and deep commitment to inclusive processes by being willing to concede on a range of issues, most particularly network neutrality.

The question now is: What next? How do we follow through to implement the good in the NETmundial document and how do we strengthen the existing IGF to play a role in this? Surveillance is the obvious place to start, with governments heeding the call to review all collection, processing and surveillance of personal data to ensure that these processes comply with human rights standards, such as the ones

stated in the Necessary and Proportionate principles.⁷ Promoting awareness of the issues behind the network neutrality debate are also a ripe area for focus, as they provide a valuable entry point into a number of basic challenges in dealing with conflict of interest around private enterprise and promoting the publicness of the internet.

And of course we cannot rest until, as the declaration states, we have "universal, equal opportunity, affordable and high quality Internet access", so that we can all participate more equally in the debate.

⁷ <https://en.necessaryandproportionate.org/>