

ARTP
Regulatory Authority for Telecommunications and Posts
Contribution from ARTP Senegal to consultations ahead of the
10th Global Symposium for Regulators (GSR10)

Theme: Open network access

Any monistic approach to the regulation of open network access is simplistic and unsatisfactory. Given that the Internet is not to be treated as a world apart, but as constituting the digital extension of the range of human activities, each authority must play its part within its field of competence. Internet regulation must therefore be a "plural" exercise.

Over and above the bodies involved in one way or another in Internet regulation, it goes without saying that all stakeholders are entitled to have their say in the matter, albeit of course within their legitimate areas of responsibility. It is the soft law, in particular usages and contracts (i.e. usages generated by the stakeholders themselves and contracts concluded by them), that have to be taken into account. What is to be promoted, therefore, is "multi-regulation".

As we see it, then, the question is not whether one particular actor or another is to get involved, but which actors concurrently have the authority to participate in regulation of the Internet in one form or another.

At the stage we have reached in the development of this tool, which is a powerful instrument of economic and social development, States, through their various constituent entities, must commit themselves to according genuine importance to Internet regulation, and hence open access.

Alongside Internet regulation, we are faced with questions concerning cybercrime, economic and financial policies, intellectual property, freedom of information and trade, as well as child protection and protection of the vulnerable.

Consequently, a synergistic relationship has to be established between:

- **the legislator:** the fact that legal regulation is a delicate matter, especially in view of the international dimension of networks, does not mean that it should be disregarded. On the contrary, everything points to the law being present on the Internet. As far as we in Senegal are concerned, this is convincingly demonstrated by reference to the different laws on the information society, which meet the requirements of international bodies such as the World Bank, ITU, etc.
- **the courts:** to our mind, judges are naturally qualified to intervene, being authorized to legislate by virtue of their role as servants of the legal system. And where difficulties associated with Internet activities are concerned, they are able to shed special light on familiar rules. This is so, for example, in the area of networks and the whole body of case law which has incrementally come to clarify the conditions governing the responsibility of technological intermediaries, with due respect for both the common law of civil liability and the particular features of the Internet.
- **traditional regulatory bodies:** the regulatory process also involves bodies with specific areas of competence: telecom/ICT regulators; audiovisual regulators; electronic data regulators; stock market regulators; cross-cutting competition regulators. Indeed, even though the transmission of messages over the Internet is far removed from radio broadcasting by Internet, the idea that such programmes can be broadcast over the Internet should not be dismissed. The diversity of the legal, economic and technical questions that arise makes such an approach irrelevant. With the strong growth of network convergence,

the question to be considered is why personally identifiable data or stock market regulation should not be subject to the traditional regulatory bodies on the grounds that the question raised falls within the framework of the Internet, as is frequently mentioned in discussion forums.

- **Internet governance:** the international dimension and open nature of networks make it impossible to disregard the bodies responsible for governance. These bodies, which in many cases have the air of a club, have over the years acquired genuine decision-making powers and a degree of legitimacy resulting from the authority delegated to them by States (ICANN). While inter-regulation is difficult to establish in a transboundary environment, there is no doubt that, as a coordinating procedure, it should have a particular role to play.
- **stakeholders and self-regulation:** the stakeholders cannot be ignored, inasmuch as they are liable to contribute to Internet regulation, although very few of them favour a form of undiluted self-regulation in which only the stakeholders themselves would have a say.

In conclusion, what is proposed is that wide-ranging consultations be initiated between the stakeholders, under United Nations auspices, so that this vital issue of open network access can be made the subject of discussion with a view to taking the full measure of the issues that it raises. The globalization of trade is a factor which cannot be ignored in the twenty-first century; the developing countries, and the African continent in particular, cannot be left out of the major decisions that are to be taken, given the important position they occupy in the development of telecommunications and ICTs.