Contribution to the June-September 2017 Open Consultation of the ITU CWG-Internet

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Just Net Coalition[1]

The Just Net Coalition[2] (JNC) comprises several dozen civil society organisations and individuals from different regions globally, concerned with issues of Internet governance, from the perspective of all human rights, including democracy and economic and social justice.

Summary

To date, global regimes around trade, investment and intellectual property have mostly been conceptualised and written by the North. Developing countries were typically late to understand their real implications, by which time these had got too entrenched to admit structural changes towards fairly including developing country interests. A similar situation is arising with regard to the geo-economics of the global digital phenomenon, including OTT, which is an important phenomenon within the constellation of digital phenomena.

A global digital order is gradually and steadily taking shape and is intended to apply to OTTs. Various social sectors are getting transformed by OTTs, like the information sector by Google, commerce by Amazon, and urban transportation by Uber. Companies that own these platforms are largely multinational, US-based monopolies. They soak up free raw data from the world's citizens and convert it into "digital intelligence", which is employed in reorganisation and consequent domination of all sectors. Apart from becoming a sustained model of economic exploitation of people in general and developing countries in particular, this new form of digital dependency also carries dire political, social and cultural consequences.

Viewing the OTT phenomenon through narrow frameworks of a promising industry and/or neutral tool for socio-economic development, both developed and developing countries have ignored larger policy issues like internalising network effects of data and digital intelligence to support national industry, regulation of platforms, and ownership of publicly important digital data. Developing countries in particular remain at the margins of global Internet/digital governance processes, with no vision or common strategies and the North continues to develop the norms and policy principles for the global digital society, on the basis of its interests and its geopolitical vision, which at present is heavily tilted in favor of the economic interests of a few big companies and the

1 http://www.justnetcoalition.org

2 http://justnetcoalition.org

few people who own those companies.

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The current times are of critical importance to shape the key features of the emerging global digital order. If existing trends continue, ordinary people and developing countries will soon be locked into strong digital dependency. The global reach through the Internet of unimaginably intelligent technologies carries the very real prospect of invasive domination by a small group of people in the North and denial of democracy and national sovereignty to developing countries. The world's people, and in particular those in the South, need to get their act together by undertaking urgent measures that range from understanding and framing issues in this domain, to establishing appropriate mechanisms for South-South cooperation, and evolving common geopolitical strategies for engagement with global forums.

Background and Introduction

On 25 May 2017 Council decided that Open Consultations for the CWG-Internet would be convened on the following issue:

> Considering the rapid development of information and communications technology (ICT) which led to the advent of Internet-based services commonly known as "over-the-top" (hereafter: OTT), all stakeholders are invited to submit their inputs on the following key aspects from policy prospective:
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> 1. What are the opportunities and implications associated with OTT?
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> 2. What are the policy and regulatory matters associated with OTT?
>
> 3. How do the OTT players and other stakeholders offering app services contribute in aspects related security, safety and privacy of the consumer?
>
> 4. What approaches which might be considered regarding OTT to help the creation of environment in which all stakeholders are able to prosper and thrive?
>
> 5. How can OTT players and operators best cooperate at local and international level? Are there model partnership agreements that could be developed?

We address these questions below.

1. What are the opportunities and implications associated with OTT?

1.1 The importance of data

Big data is the key resource in the digital space in general and OTT in particular. People are motivated to provide their personal data in exchange for so-called "free" OTT services. Data is collected or mined from citizens around the world, including in developing countries, and converted, or manufactured, into digital intelligence in developed countries, mostly the U.S. This

digital intelligence forms a kind of "social brain" that begins to control different sectors and extract monopoly rents.

Uber's chief asset, for instance, is not a network of cars and drivers. It is digital intelligence about commuting, public transport, roads, traffic, city events, personal behavioural characteristics of commuters and drivers, and so on.

Thus data, its collection, flow, analysis, and exploitation lies at the heart of the opportunities and implications of OTTs.

To judge how the digital society is shaping, just extrapolate this situation to every sector; not only the regular commercial ones but also key social areas of education, health, agriculture, and, indeed, governance.

The last couple of years have highlighted that big data (which demands different theoretical treatment than information) and "digital intelligence" (artificial intelligence or AI in technical jargon) may be the real game changers. These phenomena – as developing an autonomous "social brain" and "social nervous system" running within and across sectors – are likely to fundamentally change the way our social institutions are organised. With big data and AI based processes, we are witnessing an opposite trend of a radical *centralisation* of intelligence across our social systems.

This complicates the traditional openness claims of ICTs and OTTs. The impact of OTTs today goes much beyond the sectors of information, knowledge and cultural products, the key focus of most open development thinking, to almost all sectors.

It is important to frame who owns data and digital intelligence, and how their value should be socially distributed. Most key data required for policymaking is increasingly with global data companies. Would the society or government then buy data and intelligence even for crucial public purposes from these digital companies, when the data actually come from our various social and personal interactions over digital platforms? Does the ownership of the platform give corporations economic ownership of all the data so produced? Is ownership of data of sensitive sectors to be treated differently? These are key political economy questions that must be sorted out first.

1.2 Digital re-ordering of society

OTTs are driving the formation of a global digital society around us. From daily lives of people getting organised around the mobile phone; to the small shopkeeper subscribing to an Internet-platform for accounting and inventory management; to governments unthinkingly ceding the public responsibility of geo-mapping and other public statistical activities to global digital corporations; the trends towards deep social changes cannot be clearer. And, all of these have a strong global angle. Meanwhile, we are still only at the threshold of the digital society! The fundamental transformation that our societies will witness in the next few decades could be compared to the advent of the industrial society.

Two systemic elements of these societal changes already stand out. One is that as a sector undergoes digital transformation it gets organised around an OTT "platform". For instance, Google

is the "platform" for information, Facebook for media, Uber for urban transportation, and Airbnb for short-term accommodation. This will happen in all sectors. Companies are vying to build similar monopoly platforms for health, education, agriculture services, and so on. Sectoral digital "platforms", of a monopoly nature[3], can be considered as a generic feature of social re-organisation under digital impact.

A related phenomenon is of big data, the key diver for OTTs and the key resource of the new socio-economic structures. OTT services are routinely provided free in exchange for this most valuable of resources. As "platforms" monopolise sectors they collect vast amounts of data for each sector[4]. This data, fed into digital cognitive systems, whether algorithms or artificial intelligence, produces the required intelligence for the platforms to increasingly dominate the respective sector. Data fed intelligence is an exponentially cumulative phenomenon. The intelligent "platform" soon begins to act as, what could be considered, the "brain" of that sector. Such centralisation of "digital intelligence"[5] in data-run platforms, and its commodification, enables the OTT business model that surpasses any other in profitability and durability. Its unbeatable network effect greatly rewards centralisation and monopolisation, quickly eliminating most competition.

This model may be explained through an analogy with a hypothetical situation where human body parts have to pay a rent to the brain for every function they perform, for partaking of its intelligence. At the same time, every new detail of bodily activity provides additional (free) data to strengthen the brain's leverage over it. ***The defining feature of the emerging digital society dominated by OTTs is the use of disembodied, machine-based intelligence for a very high degree of integrated and autonomous functioning of every sector – almost like that of an organism. To occupy the nodes or centres of such "digital intelligence" will be the most effective way to dominate the society or the world, economically and politically.*** Correspondingly, the most important political economy question for the digital society is whether the disembodied intelligence enabling its organic functioning should be treated in a public goods framework[6] or should it primarily be a private good, made available on rent? Or should an appropriate middle-ground be sought between these two political economy archetypes?

Without venturing any deeper into these complex changes, let us turn to their geo-economic implication. OTT services are provided by figital networks or "platforms" that are mostly global, monopolistic, corporate-owned, and almost all centred in the US. (Just one country, China, has

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3 Monopoly behaviour in the digital sector is unprecedented, due to the network effects that provide positive economies of scale. In some areas there may exist a (very) few oligopolies, mostly no more than two or three, but the trend remains towards monopolization.

4 Data is collected from people's digital interactions as well from inanimate objects connected through what is called as the Internet of Things.

5 We use "digital intelligence" in preference to the more common term "artificial intelligence" or AI because the latter has strong technical connotations whereas we wish to focus on the implicated social phenomenon – less in terms of how such intelligence technically gets formed and operates and more with regard to its social manifestation and impacts. Also, AI is just one form of digital intelligence, although increasingly ascendant and all-dominating. Straight-forward data analytics and algorithms too contribute significant "digital intelligence". Importantly, this "digital intelligence" is a kind of "collective intelligence" as against the normal notion of individual intelligence.

6 Public goods are not necessarily all publicly or state provided. These could be provided by private players but with strong regulation, often under public licence, like communication services, health services, education, and so on.

bucked this trend and thus qualifies as a special case.) These platforms, often providing so-called "free" services, soak up huge amounts of data from across the world, feeding the "brains" at the network centres. The more a country avails itself of these "free" digital services, the deeper it digs itself into a hole in terms of the huge outflows of that most vital resource, data, to the nerve-centres or the "brains" of global networks. This resource is being hoarded at these foreign privately-owned centres for creating the digital intelligence required to exercise control over the country's various sectors and social systems.

A question arises: why does the outflow of value at such a scale fail to generate concern among those who lose it? The reason is two-fold. Firstly, data is worthless without the means to harness intelligence out of it. Such means are resource-intensive and highly centralised, and, at present, not normally available at the peripheries of the networks. Secondly, the current major use of big data based digital intelligence is for improving "free" services like search and translation, and for targeted and personalised advertising. People may find the latter somewhat irritating, but accept it as a small cost for the "free" services that bring them extraordinary benefits and conveniences. However, there is a limit to the profits that can be made from advertising. As discussed earlier, the real digital age business model is different. It is to monopolise and commoditise big data-based digital intelligence for all sectors, for sectoral consolidation and systemic control. ***The real costs involved are (1) social and long-term, as unregulated monopolies begin to leverage their positions for profiteering, and curbing competition and innovation, and (2) geo-economic and geopolitical, as key national resources of personal and social data[7], as well as data from inanimate sources connected to the Internet of Things, are siphoned off and exploited by foreign corporations and governments.***

One can already witness how OTT services based on global digital platforms employ data-fed digital intelligence to dominate the "commanding heights" of every sector, and of society. In areas of early digital advance like automobiles and health, stand-offs[8] and alliances[9] between digital corporations and corporations traditionally dominating these sectors reflect the ongoing power struggles. Interesting new corporate directions are emerging; Google is getting into cars[10], and Monsanto is becoming a data company[11].

Facebook, with its new "Instant Articles" platform, is set to become the arbiter of what is news.[12] Uber seeks to dominate urban transportation, through control over data that its operations

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7 While much gets spoken about "personal data" there is little discussion on data which may not pertain to individual persons but is about the behaviour of larger social units, like a classroom, or daily commuters in a city, which is what we call as "social data". Although no privacy implications may be involved in case of "social data" – often constructed out of anonymised personal data – it is an equally important economic resource as personal data. This also shows very well how the digital society discourse remains entirely perched on civil and political rights and has not extended to cover social, economic and cultural rights, and the right to development.

8 http://www.patentlyapple.com/patently-apple/2015/09/daimler-ceo-rants-that-they-wont-be-the-foxconn-of-car-makers-for-apple.html

9 http://www.theverge.com/2016/8/1/12340454/gsk-google-bioelectronic-medicine-company

10 https://www.nytimes.com/2016/12/13/technology/google-parent-company-spins-off-waymo-self-driving-car-business.html?_r=0

11 http://www.motherjones.com/environment/2014/11/monsanto-big-data-gmo-climate-change

12 https://www.theguardian.com/media/greenslade/2016/jun/15/facebook-is-an-existential-threat-to-newspapers

provide.[13] Monsanto employs digital intelligence to infringe farmer's autonomy.[14] Google has been accused of directing queries on its search engine towards its own companies.[15] In this race for monopolistic control, not even public policy making and governance are to be spared. Smart city oriented platforms represent moves in this direction.[16] Public statistics critical for public policy are now being displaced by privately generated and owned digital intelligence in all social areas. Soon, public authorities will need to regularly buy the necessary "public" data and statistics from these digital platforms. Apart from the huge public finance implications, the political issues arising from almost all of these "platforms" being US-based should be obvious.

Our societies are reorganising around networked systems with disembodied, machine-based intelligence. As the brains of our societies, such digital intelligence systems or platforms will centrally coordinate and thus control all sectors. They are globally organised, corporate-owned, unregulated, and have a marked monopolistic tendency. Almost all of them are currently based in the US. This is an extremely important geo-economic and geopolitical issue that begs urgent attention.

1.3 Geopolitics of data-based intelligence

What are the options for ordinary citizens and for developing countries under these circumstances? It is certainly not to step back to pre-digital social forms. The problems with Uber's increasing control over urban transportation, and its data, for instance, cannot be addressed by mandating that old-fashioned metered taxis alone will be allowed, or even by favouring them. A city taxi service on a digital platform is hugely efficient; there is no going back from it. The issues for public consideration and decision are different, like: How such platforms can be regulated, so that they do not profiteer by exploiting either taxi-drivers or commuters? Can and should the huge network efficiencies be internalised within the local social system – a community or city? Who owns the publicly beneficial digital intelligence arising from taxi operations, for example that which could be crucial to town planning? Should certain key digital platforms be considered public goods, to be provided by a public agency, through cooperatives[17], or by private companies as licensed by the state?

From a geo-economic and geopolitical perspective, the key considerations are: Can and should the efficiencies that arise from OTTs and platform-based digital management of a social system be internalised within the country, preventing avoidable resource outflows to other countries (as China has quite effectively done)? Is there a need and a possibility for supporting domestic competition, enforcing, for example, some amount of data transparency, platform-interoperability and open standards? Should some areas of digital operations be reserved for domestic players? What kind of regulation, especially of foreign operators, would ensure a fair profit for the value

13 https://www.tnooz.com/article/uber-data-boston/
14 https://policyreview.info/articles/analysis/ethics-big-data-big-agriculture
15 https://www.ft.com/content/643f49ec-e285-11e4-aa1d-00144feab7de
16 http://www.theverge.com/2016/11/30/13793262/alphabet-sidewalk-labs-contest-internet-city-google
17 There is a new movement called "platform cooperativism". It may be logical, for instance, for a cooperative of taxi owners to run the digital platform for city taxis.

added, and a fair private ownership of data versus its public availability as a commons[18]? What kind of political due diligence and regulation is required for politically and socially sensitive data? How can South-based digital corporations operate successfully in global markets, and dominate them?

Looking beyond trade, investment and intellectual property, it is time for people around the world, and in particular in developing countries, to include centrally in their geo-economic calculations this new and extremely significant OTT sector. ***To give an analogy with industrial age geo-economics, digital data is the raw material collected from people, including in developing countries, on extremely unfair terms, which gets "manufactured" into "digital intelligence" in developed countries, largely the US, and then sold back to developing countries.*** The analogy, however, holds only partially because the manufactured product, digital intelligence, is mostly not actually sold back; it is employed to develop new digitally-enabled services in all sectors which are then sold, or more commonly rented[19].

In the emerging global digital order, developing countries, with the exception of China, are pushed to the periphery even more than in the traditional geo-economic arenas. A handful of nodes or centres, almost all of them in the US, control global networks of digital intelligence. ***Going by current trends, the level of structural dependency of developing countries in the digital society context is evidently going to be higher than ever. The phenomenon has also been called digital colonisation.***

People in general, and those in developing countries in particular, must recognise data and digital intelligence as vital economic resources. To the extent their economic value can be internalised within national borders, it must be done. Global flows and trade of these vital resources should be on fair terms, ensuring national economic benefits as well as social and cultural protections. The social significance and value of big data and digital intelligence is immense and primary. This requires close regulation, as well as possible public or cooperative ownership, of many aspects of OTT services.

We are not advocating digital de-globalisation. What is sought is simply a fair place for developing countries, and for public interest, in the emerging global digital order. Unfortunately, not even a beginning has yet been made in the direction of framing this very important sector from a Southern perspective. There also exists no meaningful global forum where developing countries can get together to do so, away from the domineering gaze of the very same global digital corporations whose power needs to be checked.

It misses the larger picture to continue to view the digital sector as a set of technologies, as a promising national industry, and/or as providing apolitical tools for social development. It may be

18 Commons for data is a more complex matter than for information, which can be developed just by putting it in public domain or under creative commons licences. Data commons require new kinds of institutional arrangements that are beyond the scope of this paper to go into, other than to state that they are possible.

19 The digital society business models are more often about renting than selling. Here, even after paying the consumer never actually owns anything, she is only using "things" under licence conditions. Such licensed right to use can be unilaterally revoked at any time. US laws that form the core of the global techno-legal regime, like the Digital Millennium Copyright Act, underpin such exploitative economic relationships.

useful to briefly deconstruct these currently dominant stances.

The technology-centric view places the digital or ICTs[20] phenomenon in technology related global forums and normative systems, like those calling for "technology transfer". Digital technologies, however, are a unique case of distributed social technologies that do not easily lend themselves to traditional "technology transfer" frameworks. "Open technologies" and "technology commons" models, already strong movements in the civil society space, may be more appropriate for developing countries to promote in this regard. Besides, the digital phenomenon today is more centrally about a set of deep social-structural changes, as discussed, and not just some technologies. This calls for a very different geopolitical approach.

Next, the phenomenon is interpreted mostly in relation to the national IT industry. This industry sector has great potential for developing countries, in terms of job creation, economic growth and foreign trade, as well as society-wide efficiency gains. ***The geopolitical manifestation of such an orientation is that of developing countries cosying up to digital corporations at the top of global digital value chains, and to the US, the main home of these corporations. While mutually beneficial economic relationships are useful to foster, they do not necessitate sacrificing a country's overall policy thinking and space for the digital phenomenon, in pursuance of national interest.*** It may be pertinent to note that one of the largest recipients of IT-related foreign investments from the US is China, a country with a strong and independent political thinking in the digital arena, that has not shied away from supporting its local industry, nor from imposing strong regulatory conditions on foreign firms.

The third major way that countries view the digital phenomenon is in its social development role. Digital technologies are indeed transformative, and can change the trajectories of social development. In global forums concerning development, like those on the SDGs[21], ICTs get treated as basically apolitical tools for development. This may only result in US-based OTTs and their digital platforms getting pushed deeper into national social systems, including through foreign public and private aid or investment. Their immediate benefits look huge, and are difficult to resist. But these must not come at the cost of a country neglecting the larger structural aspects of the digital phenomenon, as discussed. A good understanding of these aspects would help citizens to take the necessary policy and regulatory decisions, balancing immediate requirements with long-term economic and political imperatives. This will also shift the nature of their engagements at global political forums.

There exists a significant mismatch between the most important geo-economic and geopolitical implications of OTTs and the way developing countries have been viewing it at the global level. This has resulted in developing countries getting trapped in new extractive global economic relationships, and also excluded from processes shaping the global digital norms and policies.

1.4 Accessing the network

Fronting for the global big OTT businesses, developed countries make three key demands at digital

20 As it is more commonly known in these forums, which is Information and Communication Technologies.
21 Sustainable Development Goals

trade talks. The first is a free and unhindered access to the "network" running throughout our society to mine social and personal data from every nook and corner. This includes full access to local networks, right to set up networks, no custom duties on digital goods, no requirement of local presence, no local technology use or technology standards commitments, and no source code transparency for digital applications that run through our social and personal spaces. Basically, developing countries must give up their right to regulate digital technologies and networks within their territory.

Such regulation is required to ensure a level playing field, open standards, privacy and security-related protections, promoting local technology content and other positive discriminations, like for open-source software which is Indian policy for public sector use, and for economic and social protections. Citizens are being asked to give up their technology or digital sovereignty even before tjey have been able to identify and institute their digital rights, policies, laws and regulation.

The second demand in trade discussions is of ensuring completely free flow of data across borders, with no requirement of local storing, even for sensitive sectors like governance, banking, health, etc. Free global flow of data is a significant expression of self-declared ownership by global OTT corporations over the social and personal data that they collect from everywhere. The third key demand is the exclusion from future regulation of all services other than those already committed to a negative list, which will of course include e-versions of every sector.

Some developing countries have been resisting global digital trade negotiations. And rightly so. Developing countries must resist any digital trade negotiations at this time. They have little to gain from them, and much to lose. They must first build their digital sovereignty — and digital rights — before they can begin negotiating a part of it in global trade talks.

2. What are the policy and regulatory matters associated with OTT?

As noted above, OTT impacts all sectors of the economy and society, and has cross-cutting impacts. There is a pressing need to discuss cross-cutting issues. The ITU views digital issues from a technology angle, the First Committee of UNGA from a geo-security perspective, the WTO from a global trade vantage, and the UN HRC from a human rights standpoint.[22] Such divided and partial views of the complex society-wide changes that are underway are very sub-optimal, apart from leaving huge gaps of uncovered areas. ***What is required is a holistic treatment of the powerful transversal elements of OTTs and the digital phenomenon in their impact on all aspects of the society.***

Countries must connect their new understanding of digital issues to geopolitics at traditional venues, for instance concerning issues of e-commerce at WTO, Technology Protection Measures[23] for intellectual property at WIPO, global corporate tax avoidance and global micro-payments for digital services at finance-related forums, human rights abuses by global digital corporations at

22 The abbreviations in this sentence relate respectively to International Telecommunication Union, United Nations General Assembly, the World Trade Organisation and the UN Human Rights Council.

23 Technology Protection Measures are means that are coded into digital artefacts to prevent copyright violation. They mostly exert a maximalist copyright enforcement, including making legitimate fair use impossible.

UNHRC, structural digital issues that impact a country's right to development at development-related forums, and so on.

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To reiterate, calling for countries to understand and focus on their national and collective interests does not mean advocating digital de-globalisation. What is sought is a global digital order that is just and fair for everyone, including developing countries. Such an order has to be based on rules that are developed in a public and democratic manner. It cannot be a patchwork of opportunistic arrangements among powerful economic and political actors, done in opaque and underhand ways, which is the dominant mode today. These arrangements get justified through novel political terms spun by Northern think tanks, like equal-footing multistakeholderism, issue-based networks, and flexible and distributed governance. Developing countries have had no response so far to this ideological barrage. They need to urgently shape new discursive tools as well as undertake strategic actions in order to defend their geopolitical interests.

In the long run, a global digital order based on fair rules will be best for everyone – rich and poor, developed and developing countries. The current crucial formative period of a new kind of society, with digitally-mediated social structures, calls for a new global social compact. Short term and narrow self-interests must be set aside at such historic moments for the larger common good. If a level playing-field with fair rules is developed, it can ensure a fruitful game for everyone. In default, we will remain stuck with a fundamentally defective social design that will serve no one in the longer run. By taking the lead towards a fair, rule-based global digital society, developing countries would be doing everyone a favour, not just themselves.

3. How do the OTT players and other stakeholders offering app services contribute in aspects related security, safety and privacy of the consumer?

See above.

4. What approaches which might be considered regarding OTT to help the creation of environment in which all stakeholders are able to prosper and thrive?

See above.

5. How can OTT players and operators best cooperate at local and international level? Are there model partnership agreements that could be developed?

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