Proposed changes to the WSIS+10 outcome documents
Association for Proper Internet Governance

**References to human rights**

At the 7-8 October 2013 WSIS+10 Open Consultation meeting, it was suggested that the WSIS+10 output document should include a reaffirmation of human rights, and that this could best be done by reaffirming paragraphs 3, 4, and 5 of the Geneva Declaration and by reaffirming Resolution 20/8 of the UN Human Rights Council to the effect that offline rights apply online also.

Thus the following is proposed:

Preamble

ADD after “we envisage:”

That the same rights that people have offline must also be protected online as stated in Resolution 20/8 of the Human Rights Council on The promotion, protection and enjoyment of human rights on the Internet, and as reaffirmed in paragraphs 3, 4, and 5 of the Geneva Declaration.

**Globalization of the ICANN and IANA functions**

On 7 October 2013, the leaders of organizations that consider themselves responsible for coordination of the Internet technical infrastructure globally “called for accelerating the globalization of ICANN and IANA functions, towards an environment in which all stakeholders, including all governments, participate on an equal footing”.[[1]](#footnote-1)

Indeed the Tunis Agenda calls for all goverments to participate, on an equal footing and within the multi-stakeholder model, in Internet governance matters.

It would thus appear appropriate to reiterate these principles in the WSIS+10 outputs and to call for specific actions consistent with those principles.

Thus the following are proposed.

B Priority areas

ADD at the end of “Internet”

* Accelerating the globalization of ICANN and IANA functions

Action Line C1

ADD in front of existing 1

0A Agree a formal framework that provides for all governments to participate, on an equal footing, in the governance and supervision of the ICANN and IANA functions, and that provides for effective supervision and accountability of these functions in accordance with paragraphs 29, 35, 36, 61 and 69 of the Tunis Agenda.

**Addressing the tax challenges of the digital economy**

The G20 leaders have stated that “international tax rules, which date back to the 1920’s, have not kept pace with the changing business environment, including the growing importance of intangibles and the digital economy”.[[2]](#footnote-2) There is a need to ensure that international and domestic tax rules do not allow or encourage multinational enterprises to reduce overall taxes paid by artificially shifting profits to low-tax jurisdictions. Developing countries must reap the benefits of the G20 tax agenda. Efforts should help developing countries secure the corporate tax revenue they need to foster long-term development.

Thus it seems appropriate to propose the following additions to the WSIS+10 outputs.

B Priority areas

ADD after “*Promoting a* **Digital Economy** “

* Addressing the tax challenges of the digital economy

Action Line C2

ADD

29A Identify the main difficulties that the digital economy poses for the application of existing international tax rules and develop detailed options to address these difficulties, taking a holistic approach and considering both direct and indirect taxation. Issues to be examined include, but are not limited to, the ability of a company to have a significant digital presence in the economy of another country without being liable to taxation due to the lack of nexus under current international rules, the attribution of value created from the generation of marketable location-relevant data through the use of digital products and services, the characterisation of income derived from new business models, the application of related source rules, and how to ensure the effective collection of VAT/GST with respect to the cross-border supply of digital goods and services. Such work will require a thorough analysis of the various business models in this sector.

**International cooperation on security matters**

On 7 October 2013, the leaders of organizations that consider themselves responsible for coordination of the Internet technical infrastructure globally “expressed strong concern over the undermining of the trust and confidence of Internet users globally due to recent revelations of pervasive monitoring and surveillance”.[[3]](#footnote-3)

Indeed concerns regarding such pervasive monitoring and surveillance have been raised by various parties in various forums.[[4]](#footnote-4) It is generally agreed that there should be cooperation to improve the security of telecommunications networks in general and the Internet in particular. Indeed, WTSA Resolution 50 on cybersecurity, which was agreed by consensus, states in its *noting* (b) “that there is a need for national, regional and international strategies and initiatives to be harmonized to the extent possible, in order to avoid duplication and to optimize the use of resources”; and, in its operative part, it invites Member States “to cooperate and participate actively in the implementation of this resolution and the associated actions.”

Further, the Results of the Seoul Conference on Cyberspace 2013 also stress the need for international cooperation regarding security matters.[[5]](#footnote-5)

Such cooperation, based on recognition of human rights and the need for due process when conducting surveillance, could lead to more effective and efficient surveillance that the current unilateral practices. This should be articulated in the WSIS+10 outputs.

A previous proposal suggested adding a reference to the 2012 International Telecommunications Regulations (ITRs) and to the principles found at <necessaryandproportionate.org>. The reference to the ITRs was criticized on the grounds that not all ITU Member States signed the ITRs. This is correct, but it must be noted that all but two of the non-signatories indicated that they were studying the text of the ITRs and would subsequently decide whether or not to accede to them. And it must be noted that a careful legal analysis of the 2012 ITRs indicates that there are no legal reasons not to accede to them.[[6]](#footnote-6)

The reference to <necessaryandproportionate.org> was criticized on the grounds that a formal declaration should not include a URL. This could be rectified by copying the 13 principles enunciated on that web site into an Annex or Appendix.

Alternatively, the references to the ITRs and to <necessaryandproportionate.org> can be removed and replaced by appropriate text. The proposal below takes this approach.

Action Line C5

ADD

25A Recognize the need for **international agreement to cooperate on security matters** and to avoid unilateral assertions of national laws and to avoid extra-territorial actions. In this context, states shall individually and collectively endeavour to ensure the security and robustness of international telecommunication networks in a manner that respects and upholds their human rights obligations, and they should consider best practices regarding human rights, in particular those put forward by civil society organizations.

1. ISOC et al., “Montevideo statement on the Future of Internet Cooperation”, ICANN (7 October 2013) <<http://www.icann.org/en/news/announcements/announcement-07oct13-en.htm>> [↑](#footnote-ref-1)
2. G20 Leaders, “Tax Annex to the St. Petersburg Declaration”, G20 (6 September 2013), Annex, Action 1 <http://www.g20.org/news/20130906/782776427.html> [↑](#footnote-ref-2)
3. ISOC et al., “Montevideo statement on the Future of Internet Cooperation”, ICANN (7 October 2013) <<http://www.icann.org/en/news/announcements/announcement-07oct13-en.htm>> [↑](#footnote-ref-3)
4. See for example statements by Brazilian Foreign Minister Antonio Patriota as quoted by David Bosco, “Brazil Wants UN to Help Safeguard Internet”, *Foreign Policy* (8 July 2013) <<http://bosco.foreignpolicy.com/posts/2013/07/08/brazil_wants_un_to_help_safeguard_internet>> accessed 28 July 2013; John Naughton, “Edward Snowden’s not the story. The fate of the Internet is”, *The Guardian* (28 July 2013) <<http://www.theguardian.com/technology/2013/jul/28/edward-snowden-death-of-internet>> accessed 31 July 2013; Evgeny Morozov, “The Price of Hypocrisy”, *Frankfuter Allgemeine* (24 July 2013) <<http://www.faz.net/aktuell/feuilleton/debatten/ueberwachung/information-consumerism-the-price-of-hypocrisy-12292374.html>> accessed 31 July 2013; Dilma Rousseff, President of Brazil, “Statement at the Opening of the General Debate of the 68th Session of the United Nations General Assembly”, United Nations (24 September 2013) <<http://gadebate.un.org/sites/default/files/gastatements/68/BR_en.pdf>> accessed 4 October 2013. [↑](#footnote-ref-4)
5. <<http://www.seoulcyber2013.kr/en/media/View.do?media_id=2242>> accessed 30 October 2013. [↑](#footnote-ref-5)
6. Richard Hill, “WCIT: Failure or success, impasse or way forward?”, *International Journal of Law and Information Technology*, Vol. 21 No. 3, p. 313, DOI:10.1093/ijlit/eat008 <http://ijlit.oxfordjournals.org/content/21/3/313>. [↑](#footnote-ref-6)