

Rapporteur Summary of the Meeting of the Global Commission on Internet Governance

Seoul, South Korea

October 14, 2014

The Global Commission on Internet Governance (GCIG) convened in Seoul, South Korea on Tuesday, October 14, 2014. Carl Bildt, former Swedish Prime Minister and former Minister of Foreign Affairs, chaired the meeting. The meeting was hosted by the Maekyung Media group and coincided with the 15th Annual World Knowledge Forum (WKF), which is one of Asia's premier economic and social fora. Several Commissioners spoke at the WKF at the invitation of GCIG Commissioner and chairman of the Maekyung Media group, Dr. Chang.

The GCIG discussed a range of issues related to Internet governance, with the primary focus being the topic of Internet fragmentation. The following is a rapporteur summary of the day's events. The meeting was held under the Chatham House Rule.

Initial Research Presentations

The Commission meeting opened with a series of presentations on some of the preliminary research findings of studies conducted by the OECD, McKinsey & Company and other scholars. The GCIG is unique in that its deliberations are based upon careful empirical and theoretical research undertaken by experts in the field of Internet governance. These presentations provided the Commission with some common points of empirical knowledge and theoretical foundations. The research helped to inform the GCIG's subsequent deliberations.

Two ideas were of particular note in these presentations. First, national regulation of telecommunication companies tends to lead to inefficiencies in the marketplace, which reduces economic growth, limits government revenue, and hurts the ability of consumers to use the services that they want to enjoy. Secondly, restrictions on international flows of data, information, and other digital flows harm both global and national gross domestic product (GDP) growth. A free Internet, in other words, is a powerful tool of economic growth, social change and development, both nationally and globally.

Session 1: Fragmentation

During the first session of the day, the Commission focused on the issue of Internet fragmentation. The discussion was far ranging and touched upon the definition of concepts, assessing the implications of

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various forms of fragmentation and a consideration of how to best manage the effects of Internet fragmentation.

The Commission was clear that fragmentation needs to be better defined. A working definition of the concept of fragmentation came out of the Commission's deliberations. The Internet is a network-of-networks, involving permissionless innovation, interoperable protocols, end-to-end communication and the free flow of information. Fragmentation, therefore, is essentially anything that impinges upon the universally interoperable structure of the Internet. This definition implies that fragmentation is a matter of degree, since infringements upon the nature of an un-fragmented Internet are rarely either/or propositions.

The GCIG noted that when fragmentation is defined in an expansive way, it is clear that the Internet is already significantly fragmented. Proprietary protocols, for example, restrict the ability of users to employ different platforms and for these platforms to communicate with each other without the use of application programming interfaces (APIs). Content fragmentation abounds. There are widespread restrictions on child pornography, for example. Different countries impose different kinds of restrictions on content deemed to be socially, culturally or political offensive. Private companies can fragment the Internet through traffic prioritization, walled gardens and discriminating traffic termination policies. Fragmentation also occurs at the national governance or political layer as different legal jurisdictions create their own barriers to interstate commerce and cross-border law enforcement.

Additionally, there are very real dangers that the Internet will become even more fragmented in the future. Many nations, for instance, are contemplating the idea of further fragmenting the Internet through data localization requirements and traffic routing requirements, which would hurt GDP growth, limit the access of consumers to content that they wish to view and not necessarily provide much in the way of enhanced protection from state surveillance. Extensive fragmentation is likely to result from a failed transition from the currently used and exhausted Internet protocol IPv4 to the much larger IPv6 address space.

Put simply, fragmentation already exists at the content, logical (protocol), infrastructure and governance layers. Fragmentation is likely to continue in many of its current forms and runs the very real risk of growing even worse if data localization policies come into effect or the IPv4 to IPv6 transition is not effectively managed. Overall, fragmentation can be driven by governments, businesses and individuals, each of which can impinge upon the universally interoperable structure of the Internet in their own way.

Having defined the concept of fragmentation and noted a range of different forms that fragmentation can take, the GCIG discussed the fact that not all forms of fragmentation are necessarily negative. Some restrictions of online content are in fact desirable. Prohibitions on the viewing and dissemination of child pornography over the Internet are a social good. Legal fragmentation can impede commerce, economic growth and innovation, and the prosecution of cybercrime, but may also help to protect the socio-

cultural expression of individual nations. Europe's so-called "Right to be Forgotten" is an example of this process of local cultural preferences finding representation in laws that apply online.

In other words, while the term fragmentation has negative connotations, the concept of fragmentation itself is far more subtle. Fragmentation can be a negative process, but it can also be a positive one. One way to clearly demarcate this distinction is to label the negative aspects of Internet fragmentation as fragmentation proper and to call the positive elements diversity. The Commission concluded that whether a particular form of fragmentation (or a particular degree of fragmentation) is a positive or a negative thing is often a matter of perception, but that a better understanding of the broader impact of different national and regional approaches to the management and regulation of the Internet is desirable.

The Commission then turned to a consideration of how to best manage the various effects of fragmentation. Several points emerged: first and foremost, it was noted that the Commission should focus its recommendations on areas where policymakers have leverage over potential solutions. Prescribing policies that cannot be implemented or are simply unrealistic is not particularly helpful. Rather, the Commission's recommendations need to be orientated towards remedying potential causes of fragmentation while also minimizing the negative effects of fragmentation.

Some nations, for example, have used Edward Snowden's revelations about National Security Agency (NSA) surveillance as a rationale for moves towards data localization and traffic routing requirements, which would limit users' ability to access content, hinder economic growth, and probably not provide much in the way of genuine protection from foreign, and particularly domestic, surveillance. Likely, both the perception of NSA surveillance (and the surveillance of other intelligence agencies) and the actual conduct of NSA surveillance are causing some fragmentation of the Internet. Different policies initiatives could remove these causes.

To the extent that fears over NSA and other forms of international surveillance are causing data localization and traffic routing requirements to be enacted by governments, dispelling these fears through trust-building measures would remove a cause of fragmentation. Tempering surveillance policies with new privacy restrictions would also help limit the trend toward fragmentation. The GCIG noted that preventive policies of the sort that limit the incentives for fragmentation are valuable as they likely cost less than efforts to manage fragmentation in a given area once it has fully emerged.

Policy can also attempt to manage the symptoms of fragmentation. Legal fragmentation, for example, may cause ambiguity about what set of legal rules apply in any given jurisdiction, potentially negatively impacting on firms that operate globally. Some rules, for example, may also hinder growth or stifle the prosecution of cybercrime, but are deemed essential for nations to express their socio-cultural preferences online. Forward looking policies can minimize the negative side of legal fragmentation. Currently, mutual legal assistance treaties (MLATs) are used to prosecute crimes that occur across national jurisdictions. The current limitations to MLATs are that they are a slow moving set of processes, requiring countries to consider something to be illegal before MLATs can be enacted.

Reforming the MLAT process to be more efficient and undertaking a new effort to expand the reach of potential cyber-related areas that are covered by existing MLATs would help to reduce the costs of legal fragmentation, while also allowing for each state to express its socio-cultural values through its national laws.

The Commission also deliberated upon the question of who should be the targets of the final GCIG recommendations. To this end, the Commission will aim to influence a host of actors, which befits the Internet's current multistakeholder governance structure. Governments, particularly ministers and senior public servants, will be a primary focus. However, the Commission also wants to articulate a message that is useful for other relevant actors, including business groups, civil society and those with a technical knowledge of the Internet's operation. The Commission recognized that this broad list of target audiences suggests that the recommendations to come out of the GCIG need to be accessible and framed in simple language. At the same time, the recommendations themselves need to be powerful in terms of their potential impact and clear in their relationship to the technical realities of the Internet itself.

Session 2: The International Telecommunications Union (ITU) Plenipotentiary Meeting

Next, the GCIG discussed the upcoming ITU plenipotentiary meeting in Busan, South Korea. The Commission worked on drafting a press statement that they could deliver to the Secretary General of the ITU and the media (a subsequent press release was disseminated). To draft its statement for the upcoming ITU meeting, the Commission first discussed the valuable role that the ITU currently plays in the management of the global telecommunications infrastructure. It then spoke to the ways in which the ITU should act moving forward. The end of the session was used to discuss ways in which the Commission could engage with other relevant Internet governance actors.

To begin, the GCIG noted that the ITU plays an invaluable role in the management of global communications technologies, especially in standard setting and spectrum management. The ITU also plays a crucial role in improving access to telecommunication technologies and services the world over. The Commission recognized that the ITU should continue to play these important roles in the future.

In this capacity, the ITU is an essential part of the current multistakeholder model of Internet governance. The GCIG noted that the most important thing that could come out of the ITU Plenipotentiary meeting is an affirmation of the role that the ITU currently plays. Additionally, the Commission gave voice to the idea that it would be useful for the ITU to find ways to increase its transparency and to be more open to the wider Internet community so as to encourage greater dialogue among the relevant stakeholders.

The Commission sees itself as a group of people that have the ability and indeed duty to comment on Internet governance issues during the remainder of the GCIG's two year tenure. To facilitate this end, the Commissioners discussed upcoming Internet governance meetings where the GCIG can participate and comment. Several upcoming events were discussed. The Commission also noted that it is important

for the GCIG to be engaged at both the International and the national level, since decisions that affect the course of Internet governance are made at both levels.

Finally, the GCIG discussed its role relative to other Internet governance bodies. The Commission recognized that Internet governance is a multifaceted problem and that certain bodies will be better suited to dealing with some problems, just as the GCIG is best suited to providing strategic recommendations based on careful analysis of the general contours of Internet governance. The GCIG noted that it remains open to interaction with all other major fora dealing with Internet governance issues.

Session 3: Update on ICANN and the IANA Transition

During Session 3, the GCIG received an update on the current Internet Assigned Numbers Authority (IANA) transition. More broadly, the Commission also discussed the issues of the Internet Corporation of Assigned Names and Numbers (ICANN) accountability. As this topic is the substantive focus of the next in-person meeting of the Commission (to be held in Ottawa, Canada, on November 24-25, 2014), the GCIG did not deliberate on these issues in an in-depth way, electing instead to canvas the topic areas to be considered in more detail at the next gathering.

In the lead-up to NetMundial, the U.S. Department of Commerce, and in particular the National Telecommunications and Information Administration (NTIA), decided that, if five conditions were met, it would transition the contract for the IANA function away from ICANN to the broader multistakeholder community. Since then, the broader multistakeholder community has been mobilizing to draft proposals for ways to affect this transition. Submissions for the process are due in January 2015 and the NTIA will decide upon whether a transition will go forward in September, 2015.

During the discussion of the IANA transition, the GCIG noted that customer satisfaction surveys indicate a high degree of satisfaction with the services IANA provides, suggesting that the transition is not really a consumer driven process. Part of this satisfaction can be attributed to the fact that there are at least three oversight bodies for any decision to change the root zone file: IANA, the NTIA, and Verisign. The US government, which has the final authority over changes to the root zone file, has never intervened directly in the process. Operationally speaking, the current system is working fairly well, yet many actors believe that transitioning the IANA functions to the broader multistakeholder community would be even more effective and viewed with a higher degree of legitimacy around the world.

The GCIG also discussed the broader question of ICANN accountability. It noted that increasingly ICANN is perceived rightly or wrongly as deciding winners and losers in the global market place, as evidenced by the recent controversy over the assignment of the .wine and .amazon top-level domains (TLD). The next round of selection of top-level domains is apparently oversubscribed and prices for TLDs are rising as a result of higher demand. This process generates a lot of revenue for ICANN. Additionally, since ICANN is incorporated in the state of California, it is ultimately subject to US law.

Other nations cannot hold ICANN accountable except under U.S. law. This restriction on accountability leaves some nations, particularly those in the developing world, ill at ease. It appears, moreover, that government dissatisfaction with ICANN has led to pressures for a larger role for ICANN's Governmental Advisory Committee (GAC).

Commissioners noted that higher levels of ICANN accountability and reformed accountability mechanism are in order. The GCIG also called for further discussions on the best way to influence the IANA transition in their next meeting.

Session 4: Future Work of the GCIG

During its last session, the GCIG discussed the future course of the Commission, outlining upcoming meetings and pending research.

The next meeting of the GCIG will be held in Ottawa, Canada, on November 24 and 25. The meeting will focus on ICANN accountability, the IANA transition and broader issues of Internet governance.

The next confirmed meeting after Ottawa is a meeting in the Netherlands on April 14-15, 2015. This meeting comes immediately prior to the 4th International Cyberspace Conference that will be held in the Netherlands on April 16-17, 2015 and hosted by the Dutch government. To complement the International Cyberspace Conference, the GCIG conference will focus on cybersecurity issues.

Chatham House is currently in discussions to secure funding for a GCIG meeting that will be held in February 2015 in London, United Kingdom. Other potential 2015 in-person meetings may be held in India, Brazil, Africa, the Gulf, and Switzerland. A series of virtual meetings will fall in between these sessions to ensure continuity in the Commission's program of work.

The Commission also reviewed the evolving work plan of the Research Advisory Network. Papers on topics such as the Deepnet, big data and privacy, and copyright regimes and Internet governance were also discussed. Commissioners asked that there be a discussion at the November meeting of issues to be addressed in the final report with a detailed outline to be finalized by April 2016.