Accountability and Transparency in Internet Governance
Issue Paper

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Background

CIRA commissioned the International Institute for Sustainable Development to develop a non-partisan issue piece on transparency and accountability in Internet governance (IG). The piece suggests definitions of transparency and accountability for the Internet context, provides three examples of implementation of these principles in multistakeholder entities, and identifies further research necessary to investigate accountability and transparency standards, processes and best practice for Internet governance.

Executive Summary

The multistakeholder nature of current Internet governance is a result of the partnerships through which the medium developed. While the existing structures have been efficient to date, they face questions of legitimacy. These questions arise because technical decision-making inherently carries public policy implications, and they are growing in importance with the rising role the Internet itself plays in all spheres of human activity. The principles of accountability and transparency are necessary for supporting legitimate decision making, not only in the Internet context, but also in other areas of international governance. Accountability is the obligation to demonstrate and take responsibility for performance in light of agreed expectations. In multistakeholder governance arrangements, it frequently includes the obligation to engage stakeholders in making decisions. Transparency is a key to operationalizing accountability, since access to relevant and timely information is necessary for meaningful participation in any process. In multistakeholder governance, it should allow stakeholders to clearly see and understand the impact of their engagement. There is a growing body of multistakeholder initiatives at various levels, international, industry-specific, or regional. Some of these initiatives have developed and incorporated accountability and transparency mechanisms into their work. Three cases, those of the Extractive Industries Transparency Initiative, the British Columbia Ministry of Education District Accountability Contract Guidelines and the Global Compact Integrity measures are presented here. None of the examples have been tested for efficacy, but each contains features of accountability or transparency mechanisms that may be useful for Internet governance. Further research of multistakeholder governance arrangements and their treatment of accountability and transparency in non-Internet contexts is a necessary next step for identifying appropriate approaches to incorporating these principles in Internet governance structures.

Introduction

As a medium, the Internet has always required collaboration among different stakeholders. The Internet's growth and development continue to rely on a combination of public, non-proprietary standards on one hand, and private capital and industry innovation on the other. Mirroring the partnerships between different groups of actors involved in the Internet's development, Internet governance structures rely on a multistakeholder collaboration model to engage the private sector, the technical community, civil society and other groups. As a result, Internet governance processes include, at least nominally, voices of a range of stakeholders.

Existing Internet governance structures have demonstrated a relatively high level of efficiency, enabling the explosive growth of the network. However, they face specific and complex questions related to assessment of their legitimacy according to longstanding administrative principles of accountability and transparency. These questions are not limited to the Internet context. Many other multistakeholder organizations at international and local levels and in fields ranging from banking, to environmental protection, accounting, extractive industries, and education too face challenges in implementing effective accountability and transparency procedures. While an exhaustive evaluation of options for operationalizing accountability and transparency in Internet governance is beyond its scope, this paper offers definitions of the two terms for the Internet context, and provides examples of approaches in multistakeholder or hybrid institutions outside of the Internet arena.

A Note on Legitimacy

Technical decision making in the Internet arena often has public policy implications. Initially, the technical decisions related to the Internet affected a small number of people. But as its importance as a global infrastructure continues to increase, technical decisions have begun to have effects across national borders, jurisdictions and cultural boundaries. For instance, decisions around establishing multilingual and new domain names or around technical requirements of the whois policy can impact governments, businesses, individuals and civil society organizations around the world.

It is not possible to make a completely clear division of labour when it comes to governance policy making and technical implementation, because realizing policy choices depends on technical solutions. This inevitable link between policy and technical decision making invokes questions of legitimacy.[1]

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[1] This link is not confined to the field of Internet governance. Other entities engaging in decision-making that can be defined as technical have had to come to confront policy implications of their decisions. Because of its power to effect outcomes, embedded in implementation responsibilities, it has been argued that technical work is as, if not more, important than formal law making. As a result, legitimacy questions become applicable to bodies tasked primarily with technical decision making and implementation. See Salzman, James E., "Decentralized Administrative Law in the Organization for Economic Cooperation and Development." Law and Contemporary Problems. 68. 3-4. (2005): 191-227.

Legitimate institutions and rules persuade actors to voluntarily comply with behavioural prescriptions.[2] The concept is particularly important in governance, where a system of checks and balances has long been recognized to promote a legitimate policy process. There is a long history of recognition of the importance of these principles for centralized governance structures, such as states. But it is remarkable how much work still remains to be done in addressing and operationalizing legitimacy in international multistakeholder governance.[3] What seems clear from the limited research available is that legitimacy in multistakeholder governance relies on effective accountability and transparency mechanisms.

Accountability

Accountability is the obligation to demonstrate and take responsibility for performance in light of agreed expectations. An accountable organization can clearly answer the question: Who is responsible to whom and for what?[4]

Two models of accountability, which can compliment one another, are relevant for Internet governance:

1) The delegation model of accountability places the onus of evaluation of accountability on those endowing power holders with their powers. This notion can also be called "upward accountability."
2) The participation model of accountability specifies that accountability is evaluated by those affected by the actions of power holders. This notion is also known as "downward accountability."

The Internet governance context produces significant overlap between those affected by decisions and those endowing organizations with their powers, because many of the stakeholders hold veto powers.[5] This overlap translates to a need for effective accountability mechanisms in both directions: upward – toward those endowing power holders with their powers, and downward – toward those affected by the power holders' actions.[6]

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[2] Risse, Thomas. "Transnational Governance and Legitimacy Conference" Paper presented at the ECPR Standing Group on International Relations Conference, The Hague, Sept. 9-12, 2004. p. 7.
[3] Netherlands Organization for Scientific Research Shifts in Governance. "Problems of Legitimacy and Accountability." The Hague: Netherlands Organization for Scientific Research, 2004. p. 8.
[4] Fitzpatrick, Tom. "Horizontal Management: Trends in Governance and Accountability." Canadian Centre for Management Development Ottawa: Treasury Board of Canada, 2000. p. 6.
[5] Grewlich, Klaus. "Internet Governance: Definition; Governance tools; Global Multi stakeholder entity." Paper Written for the Eight Meeting of the UN ICT Task Force. New York: UN ICT Task Force, 2005. p. 9-10.
[6] It is important to note that, while downward accountability mechanisms can incorporate components of direct democracy, they are not inherently democratic in the sense that requires membership and direct elections.

What is the purpose of accountability in multistakeholder governance?

When collaboration is a necessary requirement of effectiveness, partners – or actors - must be able to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards, and to impose sanctions if they determine that these responsibilities have not been met.[7] [8] In that way, accountability mechanisms allow stakeholders to participate in policy making if they deem it necessary and ensure that decision-makers must justify their actions vis-a-vis affected parties. Thus, the purpose of accountability mechanisms is to expose and prevent the unauthorized or illegitimate exercise of power and the decisions stakeholders deem unwise or unjust.[9]

In the Internet Governance context, ensuring accountability of institutions may require, among other things:

- Ensuring ways of participation are available, and can be initiated by stakeholders,
- Maintaining open and clearly defined lines of communication between decision-makers, implementation executives and stakeholders, including responding to stakeholder concerns and justifying decisions taken,
- Ensuring that stakeholders have the ability to sanction or change decisions through a clear mechanism,
- Conducting periodic evaluations and making necessary revisions of accountability mechanisms available in current structures.

Transparency

Transparency is a key tool used to operationalize lines of accountability. It can be defined as the steady and reliable availability of relevant information to stakeholders. Transparency mechanisms are procedural and structural aspects of an organization that make this information available and accessible by the stakeholders.

What is the purpose of transparency in multistakeholder governance?

The underlying purpose of transparency is to allow stakeholders to ensure their interests are adequately weighed and incorporated into decision-making.

In the Internet governance context, transparency should allow stakeholders to participate effectively in the management of Internet resources. Effective participation in this context includes the ability to:

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[7] Grant, Ruth W. and Robert O Keohane. "Accountability and Abuses of Power in World Politics." IILJ Working Paper 2004/7. Global Administrative Law Series. Available at http://www.iilj.org/global_adlaw/documents/GrantKeohanePaper.pdf, p. 1.
[8] Koenig-Archibugi, Mathias and David Held. Global Governance And Public Accountability. Oxford: Blackwell, 2004. p. 3.
[9] Grant, p. 4.

- Evaluate and debate issues,
- Access opinions of other stakeholders on specific issues,
- Develop and submit opinions over an adequate time period,
- Understand the process through which opinions are taken into account and their impact on the decisions made,
- Understand when and how decisions are being made, including being aware of the process of weighing and incorporating assessments of various stakeholder assessments of an issue into decisions.

Examples of Accountability and Transparency Mechanisms in non-Internet Contexts

The increasing number of multistakeholder approaches to governance is helping build a body of experience in addressing issues of accountability and transparency. The following are examples of mechanisms designed to facilitate accountability and transparency in mulstistakeholder organizations outside of the Internet arena.

Our inclusion of these examples should not be interpreted as a suggestion that these particular approaches are appropriate, or inappropriate. We simply felt the mechanics of the examples to be of interest and potentially helpful in the Internet governance context. The efficacy, or the potential efficacy, however, was not tested or evaluated in any way. Further research and examination of each of the examples would be necessary to determine whether these approaches could be adapted for Internet governance. Besides, there are many other examples, some listed in appendix A, with potentially useful approaches to these issues.

1. Extractive Industries Transparency Initiative (EITI)
http://www.eitransparency.org

According to its website, the EITI supports improved governance in resource-rich countries through the full publication and verification of company payments and government revenues from oil, gas and mining. The initiative is of particular interest because of a wide range of stakeholders involved, including:

- ~ 15 Governments,
- ~ 24 Companies
- Four industry associations,
- Five international organizations (including development banks, the OECD and the International Monetary Fund), and
- Seven nongovernmental organizations and NGO coalitions (including groups like Global Witness, Revenue Watch Institute and Transparency International).
- 70 global investment institutions also support the Initiative.

Two aspects of EITI's functioning are particularly interesting for the Internet context:

1) EITI recognizes that effective disclosure and publication depends on an a process which involves groups of stakeholders integrated at each step of the process, from the early stages (the development of reporting templates and the establishment of the precise scope and nature of disclosure to be included in the reporting templates), to the final reporting and revisions (where stakeholders can add notes or comments to the reports).
2) EITI documents take into account that the capacity of all stakeholders to engage in discussions is a prerequisite for the effectiveness of any transparency mechanisms.

The guidelines for disclosure and publication focus on "benefit streams." These are defined as any potential source of economic benefit which a host government receives from an extractive industry. In an Internet governance context, similar streams might be identified according to the potential of decisions to affect stakeholders or otherwise produce a public policy-like effect. The purpose of distinguishing between the streams is to identify relevant information to be shared with each stream, and to evaluate – and improve if necessary - the capacity of each stream to participate in the decision-making process.

2. British Columbia Ministry of Education District Accountability Contract Guidelines
www.bc.gov.ca/bced

BC's School Boards are required, by legislation, to prepare and submit to the Minister of Education an Annual Accountability Contract with respect to improving student achievement and any other matters ordered by the Minister. These contracts are designed in consultation with the education community and parents in a way that suits each community's unique needs and circumstances. Parents, teachers, and district representatives are involved in the planning of each of the main elements of accountability contracts, including defining the context, identifying district and school connections, setting goals and objectives, articulating the rationale, agreeing on performance indicators and expected results, defining target strategies, adjusting existing or building new operating structures and reporting the results.

The purposes of the contracts are to design customized goals for each school board to an overall aim of improving student achievement, and to communicate these efforts to the public and other stakeholder groups.

The procedure is illustrative of an approach that combines upward and downward accountability models, discussed earlier in this paper. The upward accountability component consists of satisfying each of the contract elements required by the Ministry.

Those elements include setting the context, articulating goals, objectives, performance targets and timelines, identifying supporting structures and processes and reporting on accountability performance.

The downward accountability component rests on

- the emphasis on the inclusion of stakeholders and their priorities at each step of the accountability contract development, to an overall common goal - improving student achievement through a common vision, shared goals, effective use of resources, and connections between the stakeholder groups, and
- the regular review and opportunity for enhancing the structure and elements of the accountability analysis through stakeholder participation.

3. Global Compact Integrity Measures
http://www.unglobalcompact.org/AboutTheGC/integrity.html

The Global Compact is a United Nations initiative aimed at bringing together business associations, labour organizations, UN agencies, civil society entities, academic participants and public sector groups to support universal environmental and social principles.

The Global Compact Integrity Measures may be of interest for the Internet context for two reasons:

1) The measures contain procedures designed to encourage resolution of complaints or conflicts. As a first recourse, the good offices of the Compact are used. Failing internal mediation, regional networks or other participants may be approached to assist with resolving a complaint or conflict. As a next step, the Compact refers complaints to external parties (in this case, international entities deemed to be guardians of the Global Compact principles, for instance, the International Labour Organization or the OECD) for advice and assistance. Finally, the complaint can be referred to the Board, drawing on the expertise and recommendations of particular members.
2) The measures contain a voluntary enforcement mechanism, employing peer pressure and reputation pressure to promote accountability of the members. Essentially, the measures provide for a means of "naming and shaming:" membership in or association with the Global Compact is temporarily or permanently stripped from members who fail to adhere to the joint transparency and accountability standards. In the absence of legal requirement or regulation, reputation and peer pressure are likely to be the most effective motivating factors for compliance with accountability standards by Internet governance bodies. Although it is not intended to affect, pre-empt or substitute for other regulatory or legal procedures in any jurisdiction, the mechanism may in fact reduce the need for such procedures.

Conclusion

The calls for increased accountability and transparency are not confined to the Internet arena. Accountability and transparency are increasingly recognized as crucial principles for effective and sustainable multistakeholder governance across a

range of contexts. Multistakeholder initiatives such as the Global Compact Integrity Measures, the BC Ministry of Education Accountability Contract Guidelines and the Extractive Industry Transparency Initiative provide examples of accountability and transparency mechanisms that could inspire similar instruments for Internet governance; however, these examples have not been studied in detail and there are few established or "standard" mechanisms for applying these principles to decentralized structures directly comparable to the ones found in Internet governance. Much remains to be done in investigating and adapting existing mechanisms to develop customized approaches that will be effective in the Internet context.

The connection of accountability and transparency with legitimacy is of paramount importance. Resolving legitimacy issues, with the support of effective accountability and transparency mechanisms, is urgent for organizations involved in Internet governance. There is a need to further research and specify the shortcomings of existing accountability and transparency mechanisms in establishing the legitimacy of Internet governance bodies and to investigate why these shortcomings exist, and how they can be remedied.

Appendix A
Additional Examples of Accountability and Transparency Mechanisms Employed in Multistakeholder Governance

- The Codex Alimentarius Commission adopts standards on food safety through a decision-making process that includes non-governmental and governmental actors, and has a quasi-mandatory effect on corporations via the SPS Agreement under WTO law.[10]

- The Ethical Trading Initiative is an alliance of companies, NGOs, and trade union organizations aimed at identifying and promoting ethical trade through good practice in the implementation of a code of conduct for good labour standards, including the monitoring and independent verification of the observance of ethics code provisions, as standards for ethical sourcing.

- The International Standards Organization is an umbrella organization for national standards bodies from some 140 countries. In addition to having significant economic impacts, the ISO influences decisions of treaty-based authorities like the WTO.[11]

- The World Anti-Doping Agency applies due process standards in dealing with Olympic athletes suspected of using illegal performance enhancing drugs.

- The Global Reporting Initiative is an international, multistakeholder effort to form a consensus for voluntary reporting of the economic, environmental and social impacts of industry.

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[10] Kingsbury, Benedict, Nico Krisch and Richard Stewart. "The Emergence of Global Administrative Law." Law and Contemporary Problems. 68 (2005): 15-61, p. 22.
[11] Id.