

CENTRE FOR COMMUNICATION GOVERNANCE AT NATIONAL LAW UNIVERSITY, DELHI

Inputs to consultation on Public Policy issues pertaining to the Working Group on Enhanced Cooperation (WGEC)

S. No	Topic	Sub-topic (Sl. No.)	Regulatory Mechanism	Nature of Regulation	Effectiveness	Sources
2	Critical Internet Resource Management		Different Organisations involved:- 1) ICANN/IANA- Allocates domain names and IP addresses and operates the DNS root name servers. 2) IETF- Large international community of network designers and operators engaged in developing technical standards for internet governance. As per the MoU between IETF and ICANN, IANA would assign and register Internet protocol parameters only as directed by the criteria and procedures specified in Request for Comments approved by IETF. 3) ITU - UN specialised agency for information and communication technologies. Maintains control over the implementation of International Telecommunication Regulations, 1988. The draft proposals for amendment to International Telecommunication Regulations, submitted by ITU Member States for consideration in WCIT-12, inter alia sought to provide equal rights to all member states "manage the Internet, including allotment, assignment and reclamation of Internet numbering, naming, addressing and identification resources."	Regulated by Private bodies. Policy making is influenced by Intergovernmental bodies.	Partially effective- Although private institutions would be more effective in ensuring innovation and addressing the technical concerns of internet users, however, dominance over such institutions by one or a group of powerful governments may influence decision making. The MoU between ICANN and US Department of Commerce allows the US government to maintain oversight over ICANN's functioning. On the other hand, by allowing a more democratic participation in maintenance of CIRs may retard growth of the Internet due to the increased bureaucracy and would allow for fragmentation of the internet by nation-states.	International Forums 1) WSIS- http://www.itu.int/en/ITU-T/ipv6/Pages/wsisdocs.aspx 2) IGF 2012 Managing Critical Internet Resources Session http://www.intgovforum.org/cms/component/content/article/114-preparatory-process/1250-igf-2012-management-of-critical-internet-resources-main-session 3) IGF 2011- http://www.intgovforum.org/cms/component/content/article/71-transcripts-/863-main-session-critical-internet-resources
						European Position 1) https://wcd.coe.int/ViewDoc.jsp?Ref=Decl(26.05.2010_1)&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorSec=1A3A3A&BackColorAdmin=5B9E5B&BackColorForm=5B9E5B&BackColorForm=5B9E5B&BackColorForm=5B9E5B 2) https://wcd.coe.int/ViewDoc.jsp?Ref=Decl(26.05.2010_1)&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorSec=1A3A3A&BackColorAdmin=5B9E5B&BackColorForm=5B9E5B&BackColorForm=5B9E5B&BackColorForm=5B9E5B 3) https://wcd.coe.int/ViewDoc.jsp?id=1678299&Site=CM&BackColorInternet=C3C3C3&BackColorSec=1A3A3A&BackColorAdmin=5B9E5B&BackColorForm=5B9E5B&BackColorForm=5B9E5B&BackColorForm=5B9E5B 4) Report by Council of Europe Secretariat on Internet governance and critical internet resources - http://www.unic.pt/images/stories/publicacoes5/Internet%20governance_en.pdf 5) http://www.euractiv.com/infosociety/eu-challenges-us-hegemony-global-news-532137
						Indian Position 1) http://articles.economicstimes.indiatimes.com/2013-10-17/news/43144273_1_internet-resource-domain-name-system-sandhu 2) http://cis-india.org/internet-governance/blog/india-statement-un-cirp

		Policy making:- 2) Government Advisory Committee (GAC) which advises the ICANN's Board on public policy issues and the interaction between ICANN's policies and various laws and international agreements. GAC's advice is not binding on ICANN's Board, however the Board is required to state reasons for not following GAC's advice.				US Position- US Congress Resolution in reference to WCIT- 121) http://thomas.loc.gov/cgi-bin/query/z?c112:H.CON.RES.127.EH :
						ICANN governing documents - 1) http://www.icann.org/en/about/governance/bylaws2
						IETF- 1) http://www.ietf.org/tao.html 2) http://www.ietf.org/about/process-docs.html#RFC2026 3) MOU with ICANN- http://tools.ietf.org/html/rfc2860
						ITU- 1) WCIT Final Acts- http://www.itu.int/dms_pub/itu-s/opb/conf/S-CONF-WCIT-2012-PDF-E.pdf 2) http://www.bbc.co.uk/news/technology-20717774 3) Proposals by ITU Members for WCIT-12 http://www.itu.int/md/dologin_md.asp?lang=en&id=S12-WCIT12-121203-TD-0001!!MSW-E
5	Cybercrime	No International Framework				
		Council of Europe Convention on Cybercrime (Budapest Convention) (countries from outside Europe can also adopt the convention)	Enforcement		Despite its various shortcomings, this is the best available option. This can be a starting point of a new UN Cybercrime treaty (though that looks unlikely), or concerns of various countries can be discussed and a solution found, so that more countries ratify it.	Council of Europe Convention on Cybercrime (http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm) http://www.cybercrimelaw.net/International_organizations.html
		Other Regional & Organisational Initiatives				
		National Laws	Enforcement	--		http://www.cybercrimelaw.net/Cybercrimelaws.html
		Organisation of American States- Cyber crime legislations of member states	Enforcement	--		http://www.oas.org/juridico/english/cyber_legis.htm
		Interpol	Coordinating & Assisting International and Cross Border operations		Interpol can be the central agency for coordinating mutual assistance activities between various member states	http://www.interpol.int/Crime-areas/Cybercrime/Cybercrime
6	Child Online Protection	International Convention: Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	Principles adopted in national laws		Despite the presence of the Optional protocol many countries still do not have specific laws dealing with child pornography	http://www.ohchr.org/Documents/ProfessionalInterest/crc-sale.pdf http://conventions.coe.int/Treaty/EN/treaties/html/201.htm

			INHOPE - International Association of Internet Hotlines	Mutual Assistance between various states; most of these hotlines are charitable organisations	Seems to be an effective first line of defence. Currently only hotlines in 40 countries are part of it. Other states should be encouraged to establish hotlines. These can be established as a co-regulatory bodies. INHOPE members operate with the support of their respective governments, law enforcement agencies and industry.	http://www.inhope.org/gns/home.aspx
			Interpol		Interpol's worst off list is useful (http://www.interpol.int/Crime-areas/Crimes-against-children/Access-blocking/The-INTERPOL-%22Worst-of%22-list)	http://www.interpol.int/Crime-areas/Crimes-against-children/Internet-crimes
			Internal policies of companies	Self regulation		Nart Villeneuve, Barriers to Cooperation: An Analysis of the Origins of International Efforts to Protect Children Online in John Palfrey et. al (eds.), Access Controlled (2010 MIT Press) [http://access.opennet.net/wp-content/uploads/2011/12/accesscontrolled-chapter-4.pdf]
						UNGA, Sixty sixth session 'Report by Special Rapporteur Frank La Rue on the Promotion and Protection of the Right to Freedom of Opinion and Expression', para 20 & 21 (10 Aug 2011) UN Doc A/66/290 [http://www.ohchr.org/Documents/Issues/Opinion/A.66.290.pdf]
7	Privacy & Data Protection	Transborder data flows and privacy rights (300) To develop the international standards for collection, storage and processing of personal data (380)	Inter-State Agreements (Safe Harbours, EU Article 29 Adequacy Compliances)	Standard-setting and enforcement	Effective in securing compliance at macro level.	Article 29 Working Party [http://ec.europa.eu/justice/data-protection/article-29/index_en.htm]; EU-US Safe Harbour Agreement [http://ec.europa.eu/justice/policies/privacy/thridcountries/adequacy-faq1_en.htm]
			Regional Standards [EU Data Protection Directives]	Standard-setting	--	
		Data protection (228)	Domestic Legislation (Sector-specific) [US: FTC; Canada: Public/Private]	Standard-setting and enforcement [Can accommodate co-regulatory measures]	Partial Effectiveness. [Consumer access to remedy spread across multiplicity of fora.]	Canada: Personal Information Protection and Electronic Documents Act (PIPEDA) [http://www.canlii.org/en/ca/laws/stat/sc-2000-c-5/latest/sc-2000-c-5.html]; Privacy Act [http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-p-21/latest/rsc-1985-c-p-21.html]
			Domestic Legislation (Umbrella) [UK]	Standard-setting and enforcement [Can accommodate co-regulatory measures]	Effective.	UK: Data Protection Act, 1998 [http://www.legislation.gov.uk/ukpga/1998/29/contents]

		Protection of communication privacy (189); Data protection (228)	Contract/Private Ordering [Service providers + users] [ToS, Privacy Policy, etc.] Technological Standard Setting ? [Privacy By Design]	Enforcement	Ineffective. Users' interests are usually unaccommodated since standard form contracts/contracts of adhesion mean service providers are able to dictate terms. [See criticisms w.r.t. bargaining power in shrinkwrap contracts]	
		Issues concerning surveillance of the internet users (354); Unchecked surveillance (203)	Constitutional Law (Rights to privacy/autonomy/dignity)	Enforcement	Limited Effectiveness. The medium neutral language of rights in these instruments (assuming that they are explicitly articulated in the first place) means that they are only generic, very broad protections.	** See esp., Germany: Privacy/Dignity interface in the context of communications (judicial recognition of right to informational self determination [F**ederal Constitutional Court (Bundesverfassungsgericht) decision of 15 December 1983, reference number: 1 BvR 209, 269, 362, 420, 440, 484/83, available in German at <http://zensus2011.de/uploads/media/volkszaehlungsurteil_1983.pdf>; Gerrit Hornung & Christoph Schnabel, Data protection in Germany I: The population census decision and the right to informational self-determination available at http://cms.uni-kassel.de/unicms/fileadmin/groups/w_030405/Ehemalige_Mitarbe
			Domestic Legislation: Criminal Procedure Domestic Legislation [Communications Privacy, Intelligence Gathering (including regulation of intel agencies) + Counter Terror, Press]	Standard-setting	Limited Effectiveness. These measures are necessary to regulate the scope of government searches/seizures, but will do so in a medium agnostic fashion and may need supplementing in some cases (e.g., location data and applicable standards).	
				Standard-setting and enforcement		
	Human Rights [Other than 8 Privacy]		International Treaty (ICCPR) Regional Treaty (ECHR, AfCHR, IACHR)	Enforcement Enforcement	[Post facto redressal on assertion of generic/medium-neutral rights. Uneven coverage + uncertainties in application.] "	
			Constitutional Law [Speech, Due Process]	Enforcement	"	
			Medium-Specific Legislative Grant of Rights [Brazil: Marco Civil]	Standard-setting and enforcement [Command & Control]	[Uncertainties of applicability to Internet removed]	Marco Civil - Bare Text: http://infojustice.org/wp-content/uploads/2013/11/Marco-Civil-English-Translation-November-2013.pdf [English, Draft as of Nov 2013]
			Technological/Architectural	Standard-setting and enforcement [Self-regulatory]		
			ICT Industry-Focused, Multistakeholder Compliance Efforts [GNI]	Standard-setting and enforcement (compliance inducement through public reporting)	Effective. Voluntary adherence to standards - Public accountability ensured	GNI - Principles: http://globalnetworkinitiative.org/principles/index.php#20

11	Intermediary Liability		No International Framework Council Directive (EC) 2000/31 concerning certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ L178/1 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:178:0001:0001:EN:PDF)			HRC, Seventeenth session 'Report by Special Rapporteur Frank La Rue on the Promotion and Protection of the Right to Freedom of Opinion and Expression', para 39-48 (16 May 2011) UN Doc A/HRC/17/27 [http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/132/01/PDF/G1113201.pdf?OpenElement]
			Domestic Laws & Regulations Types of Liability: i. Strict Liability (Intermediaries monitor content), ii. Conditional Immunity (DMCA) [http://www.law.cornell.edu/uscode/text/17/512], (S. 79 IT Act, 2000) [http://cis-india.org/internet-governance/resources/section-79-information-technology-act], iii. Broad Immunity	Enforcement	--	Article 19, Internet intermediaries: Dilemma of liability (2013) [http://www.article19.org/data/files/Intermediaries_ENGLISH.pdf]
					Conditional Immunity should be provided. However, the conditions/ regulations should be in conformity with international & national human rights instruments	
12	Consumer Rights		1) Rights of Domain Name holders- protection from cybersquatting 2) Rights spam and hacking	Regulated by governments		ANTI SPAM LAW/ POLCY 1) ITU- http://www.itu.int/osg/spu/spam/law.html 2) US-- CAN-SPAM Act, 2003 http://www.gpo.gov/fdsys/pkg/BILLS-108s877enr/pdf/BILLS-108s877enr.pdf 3) UK- http://www.legislation.gov.uk/uksi/2003/2426/regulation/22/made 4) Memorandum of Understanding on Mutual Enforcement Assistance in commercial email matters among the following agencies of the United States, the United Kingdom and Australia http://www.ftc.gov/sites/default/files/attachments/international-antitrust-and-consumer-protection-cooperation-agreements/040630spammoutext.pdf 5) India- None. however, Section 67,
		Spam (24)	No treaty against SPAM. After WCIT-12, Article 5B of ITR urged member states to take necessary measures to prevent the propagation of unsolicited bulk electronic communications and minimize its impact on international telecommunication services.		Cybersquatting - Effective Spamming - Partially Effective. As there is no anti-spam international instrument, States have promulgated their own anti spam legislations which restrict with unsolicited bulk email. However, these legislations may prove ineffective as they do not completely restrict spam.	CYBERSQUATTING- ICANN UDRP Policy http://www.icann.org/en/help/dndr/udrp Effectiveness of CAN-SPAM Act. http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2256235_code456879.pdf?abstractid=686603&mirid=4

13	IPR		Domestic law	Regulated (Government regulation)	Domestic laws of most countries have been brought into compliance with the requirements of the TRIPS agreement. Enforcement is by domestic authorities, with oversight by the WTO. The WIPO dispute resolution process is also widely used.	http://www.cigionline.org/sites/default/files/no.3_0.pdf ;
			WIPO Committees [http://www.wipo.int/policy/en/], dispute resolution process [http://www.wipo.int/amc/en/] and multi-stakeholder mechanisms [http://www.wipo.int/cooperation/en/]	Standard-setting and enforcement (international body)		http://www.wipo.int/copyright/en/ecommerce/ip_survey/chap3.html
			Compliance requirements/oversight under the TRIPS agreement	Standard-setting and enforcement (international body)		http://www.wto.org/english/tratop_e/trips_e/intel2b_e.htm
17	Net Neutrality				Applying existing measures to ensure net neutrality as well as newly evolved measures have a very recent history, with the state of play still in flux. Their effectiveness is still untested. Major concerns still include developing standards acceptable to industry and freedom of speech and profession compliant.	ITU Discussion Paper: Net neutrality: A regulatory perspective [http://www.itu.int/ITU-T/reg/Events/Seminars/GSR/GSR12/documents/GSCTMarsden], (2007) 4:4 SCRIPTed 407 http://www.law.ed.ac.uk/ahrc/script-ed/vol4-4/marsden.asp ; BEREC, Summary of Position on Net Neutrality [http://berec.europa.eu/files/document_register_store/2012/12/BoR_(12)_146_Summary_of_BEREC_positions_on_net_neutrality2].
			Voluntary Codes of Conduct: Telecom Industry [UK: Open Internet Code of Practice; France: ARCEP Proposals]	[Somewhat Enforced Self-Regulation]	Measures which are not top-down, such as this and other approaches where standard setting involves effective inclusion of industry have the benefit of greater likelihoods of industry acceptability and compliance.	UK Code: http://www.broadbanduk.org/wp-content/uploads/2012/08/bsg-open-internet-code-of-practice-25-jul-2012.pdf ; ARCEP Proposals: http://www.arcep.fr/uploads/tx_gspublication/net-neutralite-orientations-sept2010-eng.pdf
			Domestic Legislation (Sector-Specific, specifically Telecom + Related Infrastructure Regulations)	Standard Setting		
			Domestic Legislation (Economic, and specifically Antitrust)	Enforcement (Macro, State Led)		
			Domestic Legislation (Consumer Protection)	Enforcement (Micro, Citizen Led)		
			Domestic Legislation (Enforceable right to access internet at minimum speed against ISP and/or state.) [Finland, Chile]	Standard-setting and enforcement		
			Regional Standards (Recognizing End Users' Rights) [EU Telecom Single Market Regulation; EU Universal Service Directive]	Standard-setting and enforcement		EU Telecom Single Market Regulation - Bare Text: [http://ec.europa.eu/transparency/regdoc/rep/1/2013/EN/1-2013-627-EN-F1-1.Pdf]
			Contract/Private Ordering [Universal Service Obligation] [Spain: Telefonica by Royal 726/2011]	Standard-setting and enforcement	Presumes existence of dominant/monopolistic service provider. Effectiveness in developing countries, where USOs to provide ordinary telephony yet to be realized, unclear.	EC Information Society and Media Directorate-General, Spain 2011: Telecommunication Market and Regulatory Developments (June 2012 [http://digitalchampion.bg/uploads/publications/en/filepath_62.pdf] [Heading 7.6])

			Co-Regulatory Frameworks [Norway: NPT 2009]	Standard-setting and enforcement	Effective. Can create realistic, specific standards and reduce breaches.	Norwegian Post & Telecom, Net Neutrality in Norway – a co-regulatory approach [http://eng.npt.no/portal/page/portal/PG_NPT_NO_EN/PAG_NPT_EN_HC]
19	Legal & Regulatory frameworks		Domestic law	Partly regulated (Government regulation)		http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2376807
			Internet Governance Forum		Effective in terms of carrying out discussions and designing frameworks. Not intended to be a regulator in its present form.	http://www.intgovforum.org/cms/2011/press/Backgrounder_What_is_IGF_final.doc
		Standards and domain management	IETF [http://www.ietf.org/about/]	Standard-setting	Effective	http://www.ietf.org/about/process-docs.html
			ICANN/IANA [http://www.icann.org/en/about/welcome]		Effective	http://www.icann.org/en/about/agreements
		Enforcement of court orders in private international law	Hague Convention (international) [http://www.hcch.net/upload/conventions/txt16en.pdf]	Enforcement (international body)	The international mechanism has been ineffective as only five states have ratified or acceded to the Hague Convention. Domestic courts evolve their own standards using the principles of private international law. Regional agreements like the Brussels Conventions have been more effective in this regard.	http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2699&context=faculty_scholarship
			Brussels Regulations (Europe)	Enforcement (regional body)		http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:012:0001:0023:EN:PDF
20	Applicable jurisdiction and cross border coordination	Applicable jurisdiction	Partly covered by domestic law	Partly regulated	The issue of jurisdiction in cyberspace and trans-national issues has not been satisfactorily addressed in international law. Domestic courts have evolved their own standards.	http://cyber.law.harvard.edu/ilaw/Jurisdiction/Menthe_Full.html
		Cross-border coordination	Cloudcert	Standard-setting and enforcement (regional body)	Effective	http://cordis.europa.eu/news/rcn/36249_en.html ; http://cloudcert.european-project.eu/docs/results/EC-CLOUDCERT-REP-Dossier_en.pdf ;
			Interpol	Enforcement (international body)		http://www.interpol.int/Crime-areas/Cybercrime/Cybercrime
			Mutual Legal Assistance (bilateral or multilateral agreements)	Enforcement	Highly effective between contracting states.	http://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf
			OECD	Standard-setting (self-regulation)	Effective in terms of discussions and evolving standards among member states. Not intended to be a regulator in its present form.	http://www.oecd.org/competition/InternEnforcementCooperation2013.pdf

	Media 25 Convergence	International	<p>Many countries have converged regulators, although India does not. However there is no converged international regulation. The following discuss convergence. Processes : (1) World Summit on the Information Society (including Geneva Declaration of principles, Geneva Plan of Action, Tunis Commitment and Tunis Agenda for Information Society) - still underway; (2) World Commission on Culture and Development</p> <p>Institutions: (1) International Telecommunication Union (2) UNESCO, Division of Freedom of Expression and Media Development</p>	Discussed in narrative reports		
		Domestic	<p>Many countries have converged regulators, although India does not.</p>		Increasingly, it appears that the only way to create consistent standards is for the regulator to acknowledge and account for the fact of media convergence.	