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IBC's 9th Telecommunications Law & Regulations in the Middle East 2013

Update on issues arising from WCIT 2012

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Contents

Introduction: ITRs and their importance

- Basically called it 'right' at last year's conference regarding outcome of ITRs at WCIT 2012 (detail in Appendix)

- A number of important resolutions were also passed to:

  - improve broadband connectivity to landlocked developing countries and small island states

  - harmonise a global emergency number

  - foster greater internet growth

  - enable periodic review of the ITRs and

  - facilitate international traffic termination and exchange

Outcome of WCIT – who is bound?

- 89 Member states chose to sign the treaty text – will enact ITR treaty text into domestic laws and regulations:

  - Others expressed certain formal reservations;

  - Confused position between countries that will be bound by new treaty which enters into force in Jan 2015 and those bound by 1988 treaty; and

  - Between 2012 signatory and non-signatory, 1988 treaty prevails; and

- All Resolutions entered into force on 15 December 2012.

Outcome of WCIT – going forward

- Can existing exponentially evolving market develop within ITU framework given it is driven by different commercial and societal agendas?

- Can we resolve the various conflicting technological, political and regulatory issues facing a much broader telecoms environment than when ITU created?

- Are we beyond international consensus on issues key to national economies and security?

- Can this be done in a different multilateral framework? If so what?

"What sort of an ITU and approach do we need to arrive at the mindset where we can capture everyone's trust and concerns, and bring them together into a framework which we can all agree on to move forward into the future?"

- Dr Bob Horton of PNG Regulatory body, NICTA at ITU World 2013 Bangkok

ITRs

- A lot has happened since ITU Conference on WCIT in Dubai 2012

- On-going major issues:

  - OTT decreasingly important debate; and

  - Internet governance – 'the' debate - – exacerbated by 'Edward Snowden'

- On-going issues addressed at subsequent ITU meetings – WTPF 2013 and other ITU Meetings plus prep for WTDC 2014 etc…

"The internet has developed well without regulatory intervention, through stakeholders' coordination in the free market. Its ability to evolve over time and self-adapt has been key to its growth and success."

- Body of European Regulators for Electronic Communications (BEREC) Response to ETNO November 2012

ITRs and Internet Governance

"WCIT will not finish anytime, anywhere, in any conference. It is going to continue in three main areas: terminations, and the huge financial formulae involved, including roaming; security, and this has changed fundamentally; and the internet itself (domain names management/content/OTTs), which has changed the way we communicate… The unfinished business which is going to be fundamental is around the internet."

- Mohamed Nasser Al Ghanim, Director General of the Telecommunications Regulatory Authority (TRA) UAE (Chairman of WCIT) at ITU World 2013 Bangkok

- Individual initiatives e.g., in France re Skype, Brazil *Marco Civil da Internet*

- Frustration evident in calls at UN by Fiji on behalf of G77 November 2013 that Internet Governance implications be addressed by the WG on Enhanced Cooperation and UN General Assembly

- ICANN developments etc

- Where is it all leading?

OTT - Commercial arrangements

- OTT issues seem now to have gone through 3 phases:

  - Stage one - *block (or degrade) them or tax them*

    - Net neutrality rules stopped the former, and

    - Policy makers baulked at Google tax concept

  - Stage two – *partnering*

    - Seems that most of the partnership deals left most value with OTTs, and are now regarded as not sustainable long term

  - Stage three - is now *emerging where some telcos are developing their own OTT services*, to get some negotiating power in negotiations with OTTs, as well as enabling them to deliver services over other networks… (e.g., Telefonica Digital)

Internet Governance Initiatives

- Some Member States pressing ahead seeking regulatory intervention within ITU framework

  - 'Enhanced cooperation' (Tunis WSIS) interpreted (e.g., by certain Arab States, Russia, China and Brazil) to mean increased government control of Internet

- WSIS and World Telecommunications Policy Forum in May 2013 broadly continued the WCIT debate outside of the 'treaty straightjacket'

- The *'Snowden effect'* and the likes exacerbated issues about control of internet… e.g.,

  - Brazil

  - ICANN, IETF etc

Internet Governance Initiatives
- President Rousseff of Brazil

- Statement by President Dilma Rousseff of Brazil at opening UN 68TH GA session at the UN 24th September 2013 proposed number of initiatives (post-Snowden) including creation of new multilateral framework for internet governance and protection of data across it…capable of ensuring principles such as:

    1 – Freedom of expression, privacy of the individual and respect for human rights.

    2 – Open, multilateral and democratic governance, carried out with transparency…

Internet Governance Initiatives - ICANN

- In parallel, interesting developments at ICANN itself, e.g., statement at Internet Governance Forum in Seoul 3rd September 2013 concerning possible changes within its governance – including dual HQs by adding one in Geneva

  - Implications for its US incorporation and oversight

  - Governance in flux, however, recognition need for less US-centric focus through creation of Advisory Board with representatives from non-US governments and private sector including

    - Mohamed Nasser Al Ghanim, DG TRA UAE (Chairman of WCIT-12)

Internet Governance Initiatives – Montevideo Statement

- Montevideo Statement on the Future of Internet Cooperation signed 7th October 2013 by ICANN, IANA etc

    - Recognised clear need to strengthen and evolve governance multilaterally

    - Reinforcing importance of globally coherent Internet operations, and warning against Internet fragmentation at a national level

    - Expressed concern at 'Snowden'…

Internet Governance Initiatives

– Montevideo Statement (2)

- Identifying need for ongoing effort to address Internet Governance challenges catalysing community-wide efforts towards evolution of global multistakeholder Internet cooperation

- Calling for accelerating the globalization of ICANN and IANA functions, where all stakeholders, including all governments, participate on an equal footing

- Also covered transition to IPv6 as a top priority globally and interoperability between it and IPv4

Internet Governance Initiatives

- Rousseff Statement 'endorsed' by ICANN (others like EU Commissioner Kroes) led to announcement of Rio de Janeiro 'Summit' in April 2014 ahead of next ITU Plenipotentiary Conference (PP-14 October/November 2014):

  - Not clear what detailed agenda will be and

  - What any such new (non-ITU) multistakeholder model will be (with or without consultation with ICANN's stakeholders)

- No 'official' statement of position as yet by US on this proposal or changes in structure at ICANN

On-going Internet Governance Initiatives

- Plenty of opportunities for internet governance be raised

  - WTDC in Dubai March/April 2014

    - Mohammed Al Ghanim, chaired WCIT, and will chair WTDC 2014…

  - WSIS+10 High-Level Event (TBD) and

  - ITU PP-14 in October/November 2014

- This is not to play down other important issues

  - Cybersecurity

  - International roaming

  - Data flows and

  - Child protection

On-going Internet Governance Initiatives

- Watch the 'Brazil Space' ("*more heat than light*") but 'main events' at ICANN (22nd June 2014), UNGA/CSTD and PP-14 plus next IGF in Istanbul on 2nd September 2014, plus for region Arab IGF, regional ISOC chapters etc…

  - A 'new' form of multistakeholder governance of internet and

  - Government control through 'enhanced cooperation'

    - Plenty of international meetings for that to be raised ad infinitum

- … but there is decline in trust of national governments… although understood some positive news from intelligence community ought give some balance to this

Conclusion

- Internet does not need:

    - 'Balkanisation'

    - Protectionism over interconnection/free flow of information and

    - Government control over private sector leadership

- 2014 will be important as WCIT 'Phase 2' is debated in many fora

    - PP-14 provides platform for ITU to reposition itself

    - Over year would hope that a more inclusive multistakeholder framework to emerge through

        - Compromise between invasion of privacy and need to protect public in all countries and

        - Building of trust between stakeholders

Appendix

Outcome of WCIT

The 2012 revision has meant that there are new articles and appendices as follows:

Preamble
Article 1: Purpose and scope of the Regulations
Article 2: Definitions
Article 3: International network
Article 4: International telecommunication services
Article 5: Safety of life and priority of telecommunications
Article 5A: Safety and robustness of network
Article 5B: Unsolicited bulk electronic communications
Article 6: Charging and accounting
Article 7: Suspension of services
Article 8: Dissemination of information
Article 8A: Energy efficiency/E-waste
Article 8B: Accessibility
Article 9: Special arrangements
Article 10: Final provisions
Appendix 1: General provisions concerning accounting
Appendix 2: Additional provisions relating to maritime telecommunications
Some provisions of the old Appendix 3 on service telecommunications were moved to Article 6

Outcome of WCIT – resolutions

- Article 6 was extensively revised. Article 6.1 provides:

  *"Subject to applicable national law, the terms and conditions for international telecommunication service arrangements may be established through **commercial agreements or through accounting-rate principles** established pursuant to national regulation." (Emphasis added).*

- Article 6.1.1 provides that:

  *"Member States shall endeavour **to encourage investments in international telecommunication networks and promote competitive wholesale pricing** for traffic carried on such telecommunication networks." (Emphasis added).*

- Article 6.2 deals with Accounting rates to commercial arrangements
- **New Resolution (Plen/5) on International telecommunication service traffic termination and exchange** (relegated by compromise at WCIT to a resolution rather than as provisions in Article 6)

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