**ITU AND THE WORLD CONFERENCE ON INTERNATIONAL TELECOMMUNICATIONS (WCIT-12) – A STRATEGY FOR ICANN**

Introduction

This brief Paper sets out a draft high-level strategy that the Committee may wish to opine on and as appropriate endorse in relation to the WCIT. A separate note will be prepared for the ICANN role in relation to World Telecommunications Policy Forum (WTPF).

Background

2. The International Telecommunication Union (ITU) - formed in 1865 – is a Treaty based body governed under a Constitution and Convention and the International Telecommunication Regulations (ITR). As part of the Treaty base members of the ITU (193 member States) are required (or honoured) to adopt measures agreed upon.

3. The International Telecommunication Regulation (ITR) was agreed in 1988 in a special conference in Melbourne (which lasted six weeks). They replaced the Telegraph and Telephone Regulations (1973) and were seen (at the time) as progressive; taking account of the growing need for international communications. They were also, however, adopted in an era where governments, in the main, wither owned or controlled the national telecommunications operator.

4. Although there has, for several years, been a general recognition that the ITR was out of date, and thus needed to be reformed, it was not until 2008 that the Council decided to embark upon such a Review.

Process

5. The Council established a Working Group (ANNEX 2) that has, from 2009, been meeting to discuss how (and in which way) the ITR should be reviewed. Fair to say that progress was relatively slow (*and process pretty pointless*) until the Plenipotentiary Conference in 2010 (Guadalajara) where a Resolution (172) was adopted (see ANNEX 1) which set out a timetable for the forthcoming negotiation and also the criteria any new Regulation should conform to. This in itself was contentious, and reflected differences between member States on both the form and substance of any revision. Suffice to say that a compromise (between “do nothing” and “open up ITRs completely”) was found that at least might legitimise (in Dubai) opposition to controls on Internet content or on the DNS.

6. Since PP-10 the Council Working Group (CWG-WCIT) has become serious. With the active (*and some may say malign*) support of the ITU Secretariat, the Russian Chair has worked on a compendium of proposals from member States, Regions and Sector members with respect to changes to the Articles of the ITR. In parallel the (normal) Regional Groupings within the ITU (member States are grouped into five Regions) have stepped up their own preparatory processes. At the last meeting of the WCIT-12 CWG the compendium document was over 150 pages long containing over 200 separate proposals for Article changes.

7. The CW will finish their work in June (the last meeting taking place the week before Prague). Their Report will then be submitted to the Council and the WCIT itself. It will thus form the main input document for the Conference itself containing both what (may be considered) as compromise views on changes to Articles as well as an array of other proposals on which no agreement has been forthcoming in the CWG. In addition to this (*yes it can get worse)* there will almost certainly be an array of separate proposals from Regional Groupings (who will have meetings to consider positions after the last CWG) as well as from individual member States.

Substance

8. Enough on process; what are these myriad proposals addressing? Well to start with the ITRs (by their very nature) are primarily about networks; how they should be operated and their interoperability. They do not address the content running on the Networks. They are also, at present, primarily addressed at member States, obliging them to ensure that the operators (at the time mostly in government ownership or control) carried out certain duties and functions. They also deal with international communications, and not what happens *within* a member State.

9. So perhaps the first issue (to be addressed) is ***who*** the revised Regulations should be aimed at; should they continue to simply oblige (or encourage) member States to carry out functions or should they also directly apply to the operators themselves. There is then also the problem of whether (as like EU regulations) they apply to ***all*** operators (ie from small ISPs to multinational mobile operators) or just to a subset of “recognized” operators.

10. Secondly, there is a question on whether the ITRs (as they are at present) should be free-sanding or whether they should link to other areas of ITU work. A particularly controversial proposal is to effectively make all ITU Recommendations (falling within sphere of ITRs) to be mandatory. This would potentially have a chilling affect; on the one hand essentially creating retrospective and direct obligations (or legislation) from past voluntary recommendations; and on the other stopping work on any new Recommendations.

11. So coming down a level of detail (and in no particular order) proposals have been made in the following areas:

(i) Misuse of Numbers

This area has caused considerable concern. At its most basic existing proposals here are designed to prevent the misuse of telephone numbers (typically from a national dialing plan). The ITU Secretariat has highlighted examples where service providers have acquired geographical numbers that they terminate outside of the destination country for commercial gain, often for provision of “sex” or “gambling” lines.

The concern is that a definition change (now proposed) would legitimize the censoring or disturbance of Internet communications.

(ii) Mobile Roaming

Following lead from EU Regulation (in Europe there are price ceilings in place for price of calls, SMS and data use) Russia has proposed a global regulation; detailing how operators should advise their customers on global roaming rates and how they should limit “bill shock”. All a bit too interventionist.

(iii) Internet connectivity and charging

Although there is currently a lack of clarity; there are some emerging proposals (Russia again) which would seek to intervene in the Internet peering and connection market to seek to counter current perceived market advantages of larger international players concerned with operators in developing world. We may also see emergence of texts on “network externalities” whereby the practice of some developing countries charging a supplement to terminate international traffic (for use in capacity building) could become engrained in ITR.

(iv) Spam

Whether there should be obligations on member States to implement measures restricting the proliferation of unsolicited mail (or other forms of communication). At one level there is nothing too controversial on this; it is already a requirement in the EU; and internationally there have been a number of voluntary initiatives to curtail the predominance of spam. But there is clearly concern, at how at ITR could be interpreted (what is spam to one is not necessarily to another….) .

(v) Cybersecuirty

While the ITRs do not currently address security issues (and that such issues are inconsistent with Resolution 172) both China and Russia are proposing text that would allow member States to dictates standards and block international traffic on grounds of security.

(vi) Fraud

While there are no specific proposals as such there is concern that scope of ITRs will be expanded to cover law enforcement issues; thus again legitimizing member State interference in international traffic;

(vii) Definitional changes

To date of the myriad proposals include one that would introduce “processing” as a function of telecommunication networks; this possibly making it easier for controls on the Internet to be made;

Political Positioning

12. As a recent Article in Vanity Fair espouses there is a political divide (which has been apparent throughout the process) between those countries wishing to keep the Internet (and ICT in general) as open, global and innovative as possible and those wishing to use the ITR process to restrict global freedom in an attempt to maintain national control. The dividing line is not absolute, but generally those in latter camp are considered to include Russia (who have made their feelings clear); China (who has also been up-front on Cybersecuirty); South Africa, and some Arab States. Brazil and India have also (in context of the UN) proposed a different course for governance of the Internet but have not (yet) initiated any specific proposals in relation to Internet Governance in the context of WCIT.

ICANN Role

13. In view of the above ICANN has a legitimate and substantive interest in how the discussions on the ITRs progress. Although the substance of current proposals (depending on interpretations) may not be materially detrimental to ICANN it is likely that proposals will be tabled on issues such as IPV6 and governance of domains ahead of the WCIT.

14. We are already engaging in the Regional process (as touched on in paragraph 6 above) with staff in the GP team covering the majority of meetings in the six different regions. We also are working closely with ISOC, and the RIRs to share intelligence and strategies. In addition we are engaging with various industry coalitions that are being formed to lobby against an outcome of the WCIT that would be economically damaging.

15. Where ICANN lacks a voice is in the ITU process itself. Whereas the likes of ISOC and the majority of the RIRs can attend preparatory Council Working Groups and the WCIT itself as sector members, ITU has no such right. At present our ability to attend is limited to either specific invitation from the ITU (as observers) or through personal attendance in national (member State) or sector delegations.

16. Whether attendance is required at the WCIT is rather dependent on the exact nature of the proposals to be discussed. While an ICANN presence would not be expected for discussions on such issues as Fraud and Internet connectivity (which we do have a locus on but are not essential to our remit) the international community may find it strange (as was noted during similar discussions at PP-10) if ICANN was not present for discussions on the DNS or on Internet Governance more generically. While our own interests may well be protected (depending on the political dynamic) through member States and the likes of ISOC there is a danger in not being seen or able to influence events directly.

Recommendations

1. That ICANN Staff (through offices of GP team) provide the Board (BGRC Committee) with a monthly digest of proposals being made to the WCIT that may materially affect the interests of ICANN;
2. That ICANN staff have informal discussions with ITU Secretariat to determine whether ICANN might be invited as formal Observers to the WCIT;
3. That (depending on the results of such informal contact) we consult the Board on the appropriateness of a more formal dialogue between ICANN and the ITU Secretary General on the engagement of ICANN in the WCIT process; such as an exchange of letters;
4. That we continue to devote resources to attending ITU Regional meetings in preparing for the WCIT; jointly submitting proposals and factual information as appropriate;
5. That we continue to work with our partner I\* organizations (especially ISOC and the RIRs) to monitor proposals and to influence, as appropriate, governmental positions on those proposals affecting our interests;
6. That we work with industry coalitions (in Washington, London, Brussels and elsewhere in raising awareness on the both the importance of WCIT proposals and potential damage of specific proposals being made;
7. That we continue (and intensify) - whether with Board members or Executive Staff - high level contacts with governments prior to the WCIT;
8. That (depending on the nature of proposals tabled) we engage in media dialogue and talking in for a to make sure our views are known and understood;

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ANNEX 1

**Plenipotentiary Conference (PP-10) Resolution on Preparations for the 2012 World Conference on International Telecommunications**

Having considered the report of the CWG-WCIT to the Plenipotentiary Conference, and contributions from Member States, the Plenipotentiary Conference adopted [Resolution 171](http://www.itu.int/council/groups/cwg-wcit12/docs/ppres.docx) on Preparations for the 2012 WCIT.  That Resolution resolves, *inter alia*, that CWG-WCIT-12, pursuant to Council Resolution 1312, shall constitute the preparatory process for WCIT-12, taking into consideration the results of the regional preparatory meetings, as appropriate; and further resolves, in addition to the work specified in, and without prejudice to, Council Resolution 1312:

1) to consider and study all relevant work and outputs that have been developed in the ITU regarding ITRs;

2) to discuss and examine all proposals for revision to the ITRs, including proposals for addition of new and emerging issues, for updating and suppression of provisions and/or for abrogation as appropriate;

3) to discuss and examine all proposals for revision to the ITRs, provided that those proposals:

a) are consistent with the purposes of the Union set forth in Article 1 of the ITU Constitution;

b) are in line with the scope and purpose of the ITRs as set out in its Article 1, with the understanding that CWG-WCIT-12 could consider proposals for the revision of Article 1of the ITRs;

c) reflect, *inter alia*, strategic and policy principles, with a view to ensuring flexibility in order to accommodate technological advances;

d) are of relevance to be included in an international treaty;

4) to prepare a final report, based on, and consolidating, inputs and reports from all preparatory activities, including regional preparatory meetings, that presents all options and views for WCIT-12, four months prior to WCIT in order for Member States, and in particular developing countries, to prepare for WCIT-12.

ANNEX 2

**Terms of Reference of the Council working Group (CWG-WCIT12)**

The Group, open to all Member States and Sector Members, and working in the ITU’s six official languages, will:

1. Consider as appropriate relevant work regarding the ITRs that took place prior to the work of the Expert Group to review the ITRs.
2. Take into account the work and the outputs of the Expert Group to Review the ITRs and of the [World Telecommunication Policy Forum](http://www.itu.int/osg/csd/wtpf/wtpf2009/) (Lisbon, 2009), with emphasis on [Opinion 6](http://www.itu.int/md/S09-WTPF-C-0004/en).
3. Study contributions and note information documents submitted to it, including the contributions presented to Council 2009 and the comments made during discussions at Council 2009.
4. Discuss proposals for revisions to the existing ITRs, including proposals for suppressions of provisions and/or abrogation as appropriate.
5. Discuss proposals relating to new and emerging issues.
6. Reflect the results of all discussions, with possible reflection of parties' positions in the minutes of the meetings, without taking any decisions on those positions.
7. Reconcile differences in approaches as contained in the inputs to the extent possible, or, in the case where the approaches cannot be reconciled, include the differing views and their justification.
8. Prepare proposals to revise and/or abrogate as appropriate, the WATTC-88 Resolutions, Recommendations and Opinions.
9. Prepare proposals as appropriate for draft new Resolutions, Recommendations and Opinions for consideration by WCIT.