



Contract, multistakeholderism and user empowerment

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The notion of empowerment

- No comprehensive understanding of this term
- “to empower”:
 - ‘to invest legally or formally with power or authority; to authorize, license’
 - ‘to impart or bestow power to an end or for a purpose; to enable, permit’
(*Oxford English Dictionary*)
- The notion of ‘power’ as ‘to give power over another’ is predominant, with power often being interpreted in terms of domination and oppression:
 - Danger of overemphasis on power
 - Rather than in terms of a tussle by a vulnerable group from oppression/domination by another stronger group ...
 - ... look at the extent vulnerable groups are able to develop their own power while respecting the other (stronger) groups
(*N Denham Lincoln, C Travers, P Ackers and A Wilkinson (2002)*)



Users

“A working definition of Internet governance is the development and application by **governments, the private sector and civil society** in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.”

WSIS 2005, para 34



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“We recognize the valuable contribution by the **academic and technical communities within those stakeholder groups** mentioned in paragraph 35 to the evolution, functioning and development of the Internet.”

WSIS 2005, para 36



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Benkler (2013) on the history of ICANN: “The US Administration ... used the word ‘privatization’ as a brand for what in effect was an effort to assert some control by the US government over what was quite independent before; and as a way of framing the effort to exclude other governments from asserting control as being an effort to keep all governments out of the business of regulating the Internet.”



Notion "multistakeholder" ...

- In Internet governance discourse:
 - vague notion (2003 WSIS Declaration refers to "stakeholders")
 - WGIG consolidated the use of the term "multi-stakeholder" and identifies the need for a "global multi-stakeholder forum to address Internet-related public policy issues".
 - Tunis Agenda references
 - IGF
 - 2008 OECD Declaration in Seoul
 - 2011 G8 Deauville Declaration
 - (Kummer, 2013)*
 - 2013 Montevideo Statement on the Future of Internet Cooperation
 - ...



... not new to IG

- Notion of multistakeholder participation is not new to Internet governance.
 - Mena and Palazzo (2012) identify at least 37 such initiatives

Table 1: An Overview of Different Multi-Stakeholder Initiatives

Multi-stakeholder initiative	Creation date	Issue	Rule-targets	Stakeholders in governance ^a				
				Corporations	Governments ^b	NGOs	Trade unions ^c	Academia
Responsible Care	1985	Sustainability of the chemical industry	Corporations	√	(√)	(√)	(√)	
African Timber Organization	1993	Sustainable forest management	Corporations	(√)	√			
Forest Stewardship Council	1993	Sustainable forest management	Corporations	√		√		
Sustainable Forestry Initiative	1995	Sustainable forest management	Corporations	√	(√)	(√)		
Canadian Standards Association	1996	Sustainable forest management	Corporations	√	(√)			
Global Reporting Initiative	1997	Sustainable reporting	Corporations	√	(√)	√		√
Social Accountability International (SA8000)	1997	Labor conditions	Corporations	√	√	√	√	
World Commission on Dams	1997	Dam building	Corporations Governments	√	√	√		√
Ethical Trading Initiative	1998	Fair trade	Corporations	√		√	√	
AccountAbility (AA1000)	1999	Sustainability (stakeholder engagement, accountability, information)	Corporations Governments NGOs	√		√		√
Fair Labor Association	1999	Labor conditions	Corporations	√		√		√
Global Compact	1999	Global sustainability principles	Corporations	√	√	√	√	
ISEAL Alliance	1999	Standardization schemes synergies	MSIs			√		
Marine Stewardship Council	1999	Sustainable fishing	Corporations	√		√		
Indonesian Ecolabelling Institute (LEI)	2000	Sustainable forest management	Corporations	√		√		
Voluntary Principles on Security and Human Rights	2000	Human rights	Corporations	√	√	√		

source: Mena & Palazzo (2012, pp. 523-4)

Wolfsberg Process	2000	Anti-money laundering	Banks	√		√		√
Worldwide Responsible Apparel Production Initiative	2000	Labor conditions	Corporations	√		√		√
EU Water Initiative	2002	Water supply	Governments	(√)	√	(√)		
Extractive Industry Transparency Initiative	2002	Transparency of money transfers between governments and corporations	Governments	√	√	√		
IUCN-ICMM Mining Dialogue	2002	Biodiversity in mining areas	Corporations	√	√	√		
Kimberley Process	2002	Mining (diamond)	Governments	(√)	√	(√)		
Equator Principles	2003	Project financing	Corporations	√	(√)	(√)		
Sustainable Coffee Partnership	2003	Sustainability in the coffee sector	Corporations	√	√	√		
Partnering Against Corruption Initiative	2004	Corruption	Corporations	√	√	√		√
Roundtable on Sustainable Palm Oil	2004	Sustainability of the palm oil supply chain	Corporations	√		√		
Better Cotton Initiative	2005	Sustainability of the cotton supply chain	Corporations	√	√	√	√	
4C Association	2006	Sustainability of the coffee supply chain	Corporations	√		√	√	
Roundtable on Responsible Soy	2006	Sustainability of the soy supply chain	Corporations	√	(√)	√		(√)
Better Work	2007	Labor conditions	Corporations	√	√		√	√
Bonsucro Better Sugarcane Initiative	2007	Sustainability of sugar cane production	Corporations	√		√		
Water Footprint Network	2008	Sustainable use of water resources	Corporations Governments	√	√	√		
GoodWeave	2009	Child labor	Corporations	√	√	√		
World Banana Forum	2009	Sustainability of the banana supply chain	Corporations	√	√	√	√	
Aquaculture Stewardship Council	2009	Responsible aquaculture	Corporations	√	√	√		√
ISO 26000	2010	Social responsibility	Corporations Governments	√	√	√		
Roundtable on Sustainable Bio-fuels	2010	Sustainability of biofuels production and processing	Corporations	√	√	√	√	

^a'√' signifies that the stakeholder category is fully involved in governance processes of the MSI; '(√)' signifies that the stakeholder category is only consulted or is not given enough power to influence decisions.

^bThe 'Governments' category also includes international institutions.

^cTrade unions are sometimes included in civil society or NGOs. If trade unions are not specifically mentioned, they are not included for the purpose of the table.



Multistakeholder initiatives

- Increased globalization, expansion of business activities, with negative social and environmental externalities
- Self-regulation at individual (corporate) level or multi-stakeholder initiatives for the development and implementation of social and environmental standards into operations.
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Corporations step in where governments are not willing or not able to play their regulatory role



Multistakeholder initiatives (cont.)

- MSIs' engagement in 'soft law' approach:
 - Provide learning platforms where organizations can exchange experiences, signal commitment and learn from each other
 - Develop behavioural standards e.g. codes of conduct, rules, recommendations, guidelines, regarding rule-targets' behaviour and consequent activities
 - Develop mechanisms of auditing and compliance of the rules
 - Labeling and certification of organizations complying with such standards

(Palazzo and Scherer, 2010)



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Legitimacy (1)

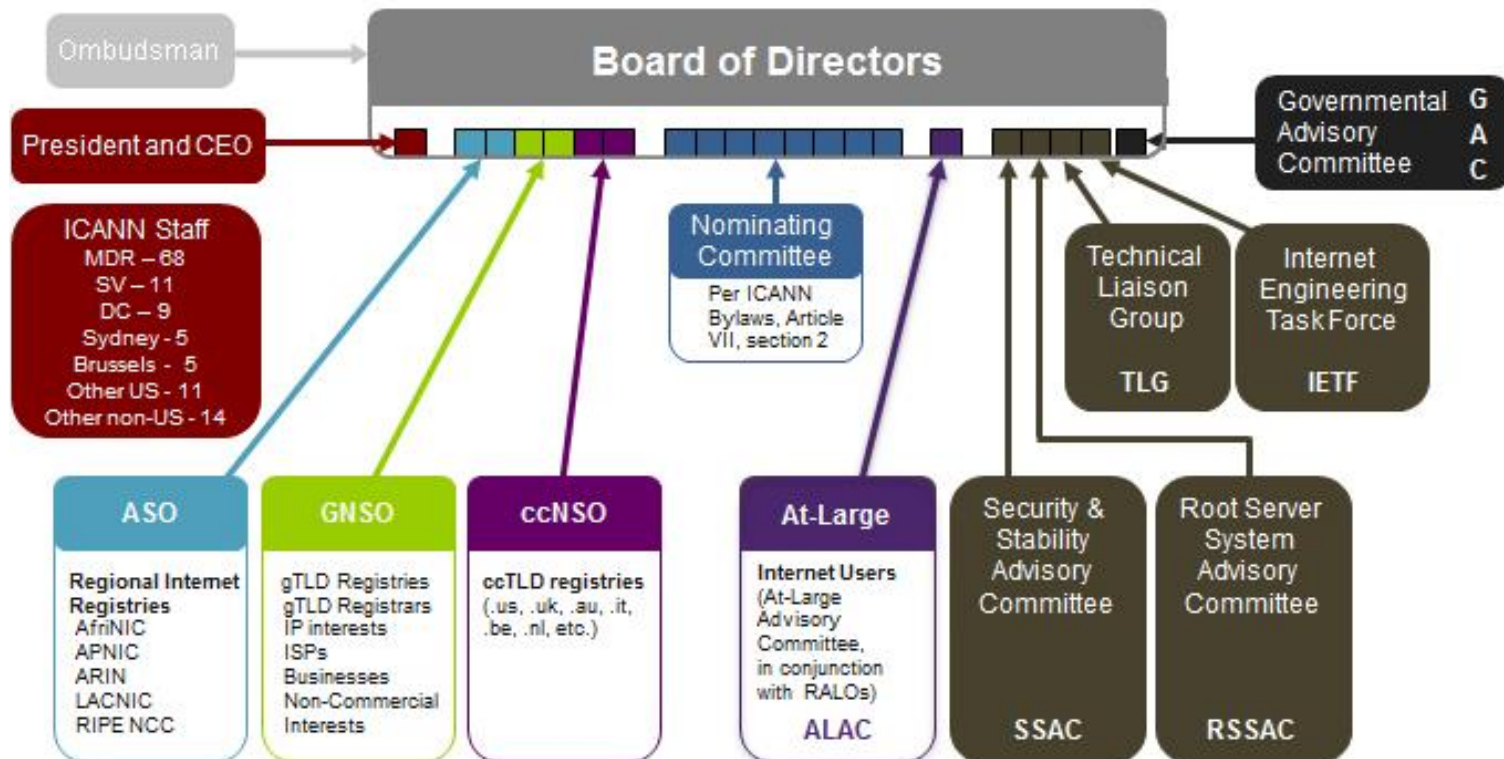
- Legitimacy of national hard law relies on regime of direct or representative democracy
- What about private regulatory schemes?
 - Determination of democratic legitimacy concerned with:
 - To what extent are rules perceived as justified or credible?
 - Effectiveness thereof



Legitimacy (2)

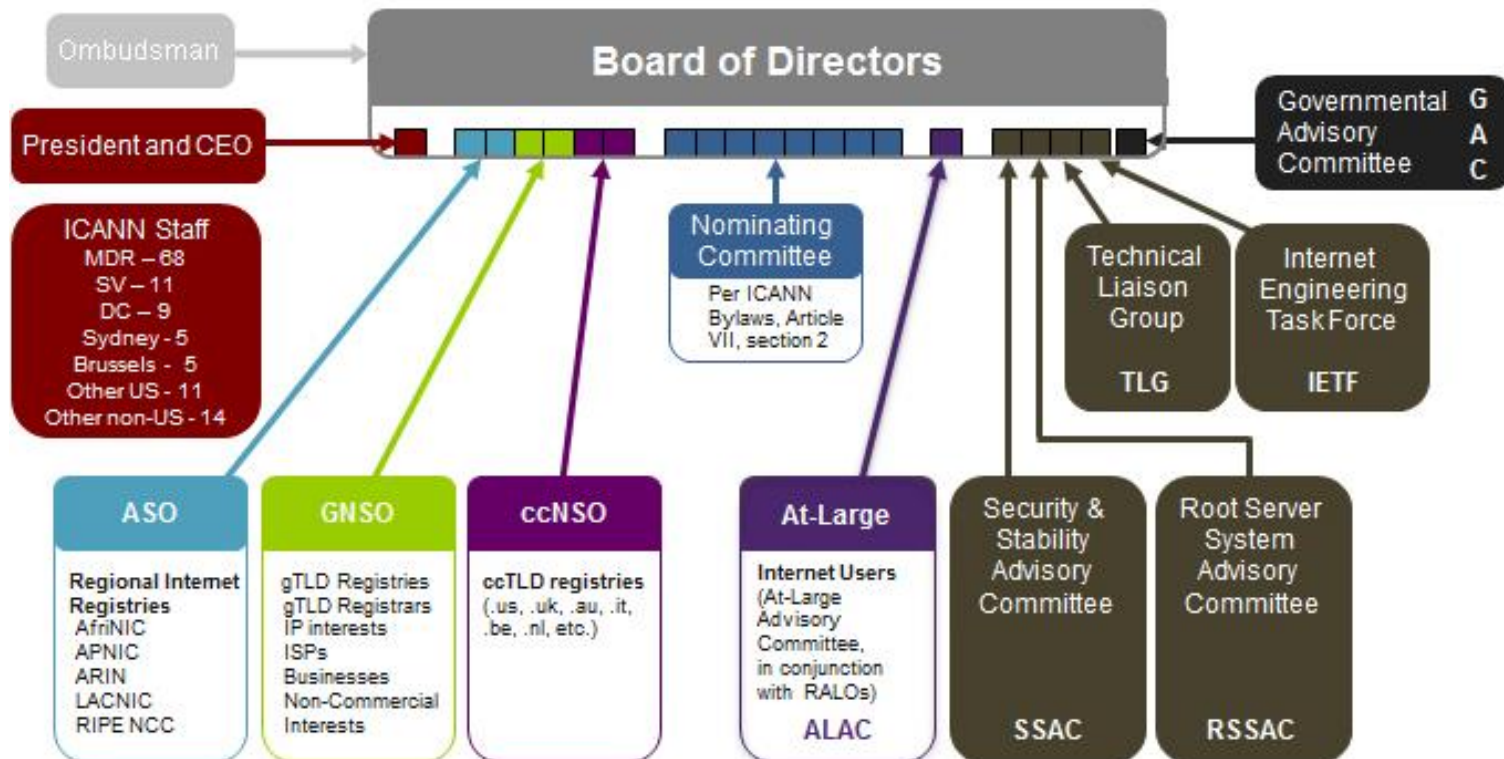
- 1) To what extent are regulations perceived as justified or credible?
 - Stakeholder inclusion
 - Procedural fairness
 - Consensual orientation
 - Transparency of structures and processes
- 2) To what extent do they effectively solve the issues that they target?
 - Coverage
 - Efficacy
 - Enforcement

ICANN Multi-Stakeholder Model



(source: ICANN)

ICANN Multi-Stakeholder Model



“commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users”, AoC §4

(source: ICANN)

GNSO Council



UNIVERSITETET
I OSLO

ccNSO**

Patrick Myles (SOI) –
ccNSO liaison –
AAPAC

GNSO Council

Jonathan Robinson (SOI) –
Chair – EU {22 Members –
20 Votes}
(1 NCA)
Jennifer Wolfe (SOI) – NCA
– NA (AGM 2014)

ALAC*

Alan Greenberg (SOI) –
ALAC Liaison – NA

Contracted Party House {6+1}

Volker Greimann (SOI) - Vice-
Chair – EU (AGM 2014)
Thomas Rickert (SOI) – Voting
NCA – EU (AGM 2015)

Non-Contracted Party House {12+1}

David Cake (SOI) Vice Chair – AAPAC
(AGM 2014)
Daniel Reed (SOI) – Voting NCA – NA
(AGM 2015)

Registries Stakeholder Group {3}

- Registries
- Bret Fausett (SOI) – NA (AGM 2014)
- Jonathan Robinson (SOI) – EU (AGM 2015)
- Ching Chiao (SOI) – AAPAC (AGM 2014)

Registrars Stakeholder Group {3}

- Registrars
- Volker Greimann (SOI) – EU (AGM 2016)
- Yoav Keren (SOI) – AAPAC (AGM 2015)
- James Bladel (SOI) – NA (AGM 2015)

Commercial Stakeholder Group {6}

- Business
- Intellectual Property
- Internet Service Providers
- Commercial and Business Users**
- Gabriela Szlak (SOI) – LAC (AGM 2015)
- John Berard (SOI) – NA (AGM 2014)
- Intellectual Property Interests**
- Brian Winterfeldt (SOI) – NA (AGM 2015)
- Petter Rindforth (SOI) – EU (AGM 2014)
- Internet Service and Connection Providers**
- Tony Holmes (SOI) EU (AGM 2015)
- Osvaldo Nova (SOI) – LAC (AGM 2015)

Non-Commercial Stakeholder Group {6}

- Non-Commercial Users
- Not-for-Profit Operational Concerns Constituency
- David Cake (SOI) – AAPAC (AGM 2014)
- Maria Farrell (SOI) – EU (AGM 2014)
- Avri Doria (SOI) – NA (AGM 2015)
- Magaly Pazello (SOI) – LAC (AGM 2014)
- Amr Elsadr (SOI) – AF (AGM 2015)
- Klaus Stoll (SOI) – EU (AGM 2014)

(source: gns0.icann.org)

Legend:

{ } Voting

[] Non-Voting

* Non-Voting Liaison – Counted as a Member

** Observer – Not Counted as a Member

AGM = Annual General Meeting

Regions

AF = Africa

NA = North America

EU = Europe

LAC = Latin America/Caribbean

AAPAC = Asia/Australia/Pacific



BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

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As amended 7 February 2014

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9. PDP Outcomes and Processes

This Section illustrates the types of outcomes that are permissible from a PDP. PDP Teams may make recommendations to the GNSO Council regarding:

- i. Consensus policies
- ii. Other policies
- iii. Best Practices
- iv. Implementation Guidelines
- v. Agreement terms and conditions
- vi. Technical Specifications
- vii. Research or Surveys to be Conducted
- viii. Advice to ICANN or to the Board
- ix. Advice to other Supporting Organizations or Advisory Committee
- x. Budget issues
- xi. Requests for Proposals
- xii. Recommendations on future policy development activities

At the same time, a PDP Team may also conclude that no recommendation is necessary.

(source: PDP Manual)



ICANN Bylaws Art XIX

“Except as otherwise provided in the Articles of Incorporation or these Bylaws, the Articles of Incorporation or Bylaws of ICANN may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by a two-thirds (2/3) vote of all members of the Board.”



Role of PDP in ICANN contracts with Registry and Registrars

- Old contract (pre new-GTLD agreements):
 - Certain contractual clauses may be changed while the contract is in force by use of consensus process (old section 3.1(b))
 - “(iv) Consensus Policies shall relate to one or more of the following: (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, Security and/or Stability of the Internet or DNS; (2) functional and performance specifications for the provision of Registry Services (as defined in Section 3.1(d)(iii) below); (3) Security and Stability of the registry database for the TLD; (4) registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars; or (5) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names).”



Contracts

- New Registry Agreements:
 - Section 2.2: Compliance with Consensus Policies and Temporary Policies: Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, ...”
 - Section 7.6: very long, elaborate and laborious clause: Two-thirds of ICANN Board unilaterally may amend the agreement, over the objection of registry operators, where there has been a consensus policy process that was not completed with a recommendation or where the subject is beyond the scope of what can be modified by a consensus policy.
 - Section 7.7: ICANN CEO may propose amendments on subjects that are non-consensus policy issues; if no agreement thereto reached with Working Group (representing registry operators that have similar agreement), issue to be determined by Arbitration Panel.



Closing

- ICANN's increasing clout:
 - e.g. new clauses 7.6 & 7.7
 - In effect a kind of a adhesion contract
 - Growing complexity of ICANN contracts
 - New Registry Agreement runs into over 90 pages
 - Regulatory clout of ICANN
 - Gnawing into multistakeholder power?