

# Public Interest Representation in the Information Society

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# 8 Public Interest Representation in the Information Society

*Norbert Bollow*

**ABSTRACT** As societies are transformed by the increasing use of digital information and communication technologies, this report gives an overview on the representation of consumer interests and other perspectives on the public interest in the decision-making processes that govern these developments. In particular, relevant governance fora and institutions are identified and the existing mechanisms for consumer representation and broader public interest representation in each are outlined. In some cases, institutional deficits are evident, so that reforms are needed to allow for more effective public interest representation. A *system engineering* perspective can provide insights on what will be helpful reforms. On the other hand, some of the already-available mechanisms for consumer representation are underutilised. Very often the lobbyists of large corporations hardly encounter any significant opposition at all when they influence the *framing* of various debates in such a way that it becomes practically impossible to reach a result that does not greatly favor their interests over the public interest. This report aims at providing a reasonably complete overview of these matters on the basis of the responses to a survey conducted among many civil society organizations in the fall of 2011, together with other relevant sources. An online *Map of Internet Governance* will allow to collaboratively expand on this information and keep it up-to-date in order to facilitate effective strategic planning.

## 1 Introduction and Overview

The term “information society” points out tremendous social and economic transformations of human society that are happening through information and communication technologies, with the Internet being a key driver. The main processes of public policy development in relation to these transformations are therefore all in some relation to the Internet, and they are therefore referred to (together with the more technical aspects of taking care of the Internet) as “Internet governance”.

A key starting point of this focus on Internet governance was the UN’s “World Summit on the Information Society” (WSIS) in Geneva (2003) and Tunis (2005).

The present report aims at summarizing the opportunities for consumer interest representation and broader public interest representation that exist in this context. As

becomes clear when the concept of public interest representation is reflected about (see section 3.4 below), there is an important role that needs to be played by consumer representatives and other organized civil society groups, and it is important for the category of groups whose view should be considered in the context of public interest representation to be rather broad, but not so broad as to include representatives of commercial special interests. The Council of Europe's *Code of Good Practice for Civil Participation in the Decision-Making Process* [CoE 2009] has a good characterization of the appropriate category of organizations, calling them "NGOs":

In relation to this Code of Good Practice for Civil Participation the term is taken to refer to organised civil society including voluntary groups, non-profit organisations, associations, foundations, charities, as well as geographic or interest-based community and advocacy groups. The core activities of NGOs are focused on values of social justice, human rights, democracy and the rule of law. In these areas the purpose of NGOs is to promote causes and improve the lives of people.

NGOs form a crucial component of participation in an open, democratic society through engaging large numbers of individuals. The fact that many of these individuals also are voters underlines the complementary relationship with representative democracy.

NGOs can bring benefits of knowledge and independent expertise to the process of decision making. This has led governments at all levels, from local and regional to national, as well as international institutions, to draw on the relevant experience and competence of NGOs to assist in policy development and implementation. NGOs enjoy a unique trust from their members and society to voice concerns, to represent their interests and to gain involvement in causes, thereby providing crucial input into policy development.

Unfortunately, in some governance institutions, the term "NGO" is used in a much broader sense which includes all non-governmental entities including industry lobby organizations. Since it is important to have a clear distinction between lobbyists for commercial interests and what e.g. the CoE means when it refers to NGOs, this report uses the term "**Civil Society Organization**" (CSO) for what the CoE calls an NGO.

### ***How to strengthen civil society participation in Internet governance***

Overall, there are two main paths that need to be pursued to strengthen civil society participation in Internet governance: Civil society participation needs to be increased, and it needs to become more effective. Often formal hurdles such as unreasonable difficulty of getting accredited are irritating, but not the main problem. Fundamental strategies for effective participation such as good preparation and coordination (in particular, exchange of strategic information) between the various civil society organizations need to be pursued more vigorously<sup>1</sup>, see [Esterhuysen 2011a], [Schombe 2011] and [Esterhuysen 2011b]. It is also extremely important to work on increasing the confidence of national governments that effective multi-stakeholder policy development with strong CSO participation is possible, see [Malcolm 2012] (in this volume).

#### ***The survey***

In order to gather information on what opportunities for public interest representation exist and how they are used, civil society organizations and other self-identified public interest representatives were requested to participate in a survey organized by the "Dynamic Working Coalition on Internet Governance Mapping", a loose group

<sup>1</sup> Source: In addition to the above-referenced mailing list postings, survey [DWC-IGM 2011], cells UO17, UO21, UO72, UO95, UO131, VU72.

that has come together in the context of the 2011 meeting of the Internet Governance Forum (IGF) in Nairobi. The survey questions were designed by Jeremy Malcolm of Consumers International.

In total, 134 survey responses were received, and the data of the responses is available to anyone wishing to analyze it, see [DWC-IGM 2011]. There is significantly more information available there than what is used in this report.

One of the questions that was asked in the survey was: "What are the three biggest problems for civil society at large in coordinating its participation in institutions of governance in the information society?" The breakdown of responses is as follows<sup>2</sup>:

<i>Problem</i>	<i>Respondents</i>
No coordinating framework or process	26
Poor communication between CSOs	30
Too many institutions to cover	20
Forum shifting to bypass CSOs	19
Disagreements within civil society	14
Decline of multi-stakeholderism	11
Lack of funding for participation	47
Other	5

One survey respondent made the following suggestion:

Where we are participating and submitting reports etc, a repository of submissions on similar issues from similar organizations would be very valuable, saving a lot of time.<sup>3</sup>

Challenges in the area of funding are clearly a very significant obstacle that stands in the way of increasing civil society engagement in the various governance fora and institutions which are relevant to the development of information society. As was explained eloquently by a representative of a national civil society umbrella body in regard to question 26 in the survey about the reasons for not participating in further governance fora and institutions:

CFC is an umbrella body within UK civil society. As such, despite our local deficiencies (that members feel keenly), we have a lot of expertise and experience that could with advantage be shared much more widely. I could have answered "too little time" throughout question 26, and that is the immediate barrier, but lack of funding is behind the lack of time.<sup>4</sup>

Many other respondents have expressed similar sentiments.<sup>5</sup>

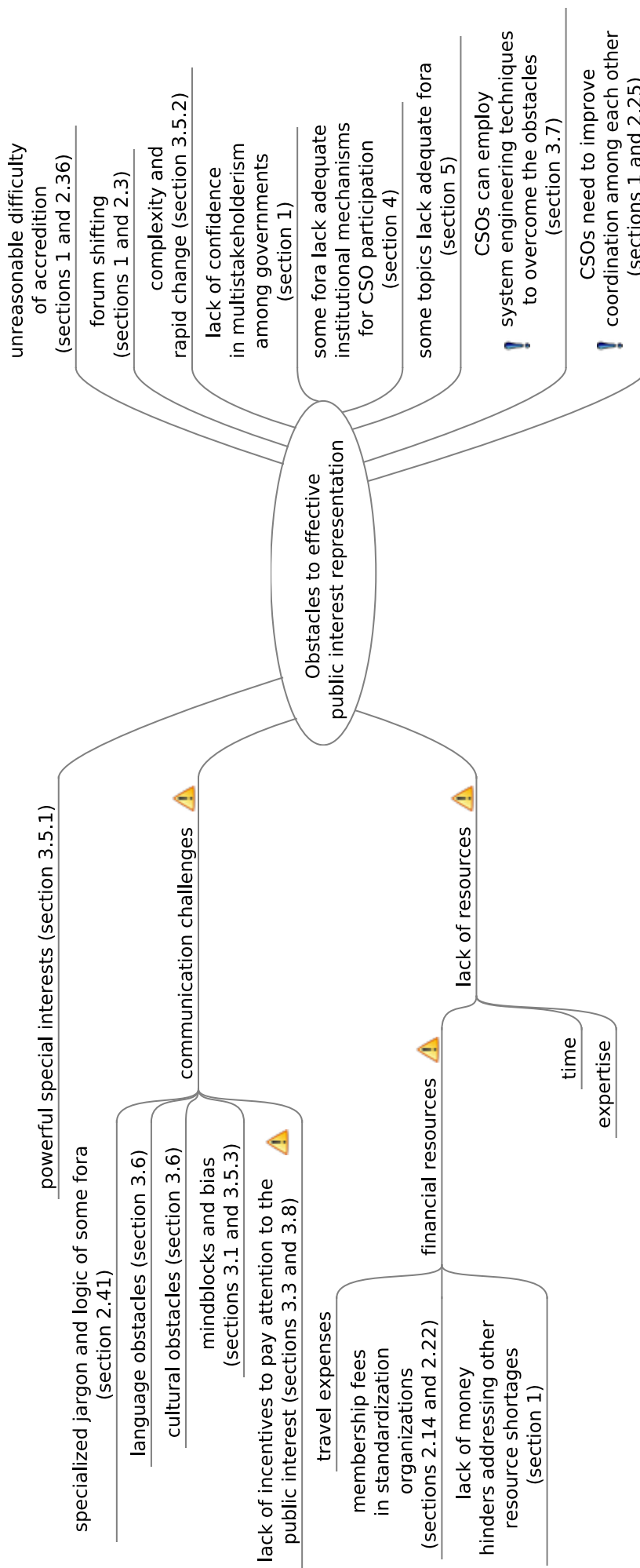
Several survey respondents pointed out particular challenges that hinder the effective representation of non-Western perspectives, see section 3.6.

<sup>2</sup> Source: Survey [DWC-IGM 2011], columns VI to VP. As this was one of the last questions, the various incomplete survey responses contained no response to this question.

<sup>3</sup> Source: Survey [DWC-IGM 2011], cell VU7.

<sup>4</sup> Source: Survey [DWC-IGM 2011], cell UN17.

<sup>5</sup> Source: Survey [DWC-IGM 2011], cells UO2, UO4, UO5, UO7, UO39, UO40, UO41, UO49, UO59, UO66, UO71, UO83, UO97, UO113, UO115, UO122, UO123, UO128, UO131.



The mindmap on the preceding page gives an overview of the main points regarding obstacles to effective public interest representation.

## 2 *Relevant governance fora and institutions*

This section has subsections for all the institutions which have in the following sense been identified in the survey as particularly relevant to information society. Among the completed survey responses<sup>6</sup>, it was counted for each institution or category of institutions how many of the responding persons and organizations indicated that they were either engaging there or would have liked to engage there if they were able to do so. All those which were mentioned at least four times<sup>7</sup> in one of these ways are considered particularly relevant to information society for the purposes of the present report.<sup>8</sup> Furthermore, the survey also gave respondents the opportunity to mention others. This column was examined to check for any institutions that were mentioned multiple times. Universities were in fact mentioned many times, and are therefore included below.<sup>9</sup>

### 2.1 *African Commission on Human and Peoples' Rights (ACHPR)*

ACHPR is charged with ensuring the promotion and protection of human and peoples' rights throughout the African Continent. Its responsibilities include interpreting the African Charter on Human and Peoples' Rights and considering complaints of violations of the Charter.

In the survey, three respondents indicated that they have engaged with ACHPR and four further respondents expressed interest. Two of the latter provided a reason for not already engaging there, which was "too little money" in both cases.<sup>10</sup>

#### **Mechanisms for consumer and broader public interest representation:**

The survey responses from respondents who indicate that they're engaging with ACHPR do not mention any specific mechanisms for civil society engagement, nor any complaints about difficulties in engaging with ACHPR. This appears to lead to the conclusion that CSOs can engage directly with the Commission and that this works reasonably well.

### 2.2 *AfriNIC*

AfriNIC is the Regional Internet registry (RIR) for the African continent, i.e. the core activity is the allocation and registration of Internet number resources including in

<sup>6</sup> For this analysis, only fully completed survey responses were used, because some respondents had clearly started the survey several times, but completed it only once.

<sup>7</sup> This essentially arbitrary cut-off was decided by examining the results and choosing the cut-off so that it would not result in essentially arbitrarily including one but excluding another among similar institutions. For example, setting the cut-off at five would have excluded Mercusor (mentioned four times) but included all the other regional trade organizations.

<sup>8</sup> ITAC and NTIA were however excluded from the list below, for the following reasons: ITAC had been included on the survey by mistake, because it is an advisory committee to OECD and not a separate governance institution. NTIA is a (US) national institution which therefore does not fit into the intended overview of international governance institutions.

<sup>9</sup> (Otherwise APTLD was the only "other" institution that was mentioned more than once: It was mentioned twice, but one of the respondents mentioning APTLD was in fact a representative of APTLD, so that response should not be counted in determining whether APTLD should be included in a list of particularly important Internet governance fora.)

<sup>10</sup> Source: Survey [DWC-IGM 2011], columns AM, QW and SS.

particular the allocation of blocks of IP (Internet Protocol) addresses.

In the survey, six respondents indicated that they have participated in AfriNIC policy discussions and three further respondents expressed interest.<sup>11</sup>

**Mechanisms for consumer and broader public interest representation:**

Participation in the policy formulation and deliberation process is open to all stakeholders from the service region.

## 2.3 *Anti-Counterfeiting Trade Agreement (ACTA)*

ACTA is formally a plurilateral trade agreement. In actual reality it is however concerned with the enforcement of “intellectual property rights”. [Helfer 2004] has analyzed this kind of “regime shifting” strategy in detail. See also [Patriota 2012].

In the survey, six respondents indicated that they have engaged with regard to ACTA, and six further respondents expressed interest, most of them complaining about lack of openness to CSOs.<sup>12</sup>

**Mechanisms for consumer and broader public interest representation:**

CSOs were generally intentionally excluded from any form of participation during the ACTA negotiations. (The US government however consulted with a significant number of major corporations about the planned treaty.<sup>13</sup>)

If ACTA enters into force, it will create a new governance institution, the ACTA Committee. This committee will have the right (but no obligation) to “seek the advice of non-governmental persons or groups”. In view of the fact that this decision would need to be taken by consensus, and in view of the history of ACTA, it appears unlikely that the advice of CSOs will be sought.

## 2.4 *APNIC*

APNIC is the Regional Internet registry (RIR) for the Asia-Pacific region, i.e. the core activity is the allocation and registration of Internet number resources including in particular the allocation of blocks of IP (Internet Protocol) addresses.

In the survey, eleven respondents indicated that they have participated in APNIC policy discussions and three further respondents expressed interest.<sup>14</sup>

**Mechanisms for consumer and broader public interest representation:**

Participation in the policy formulation and deliberation process is open to all stakeholders from the service region.

## 2.5 *ARIN*

ARIN is the Regional Internet registry (RIR) for North America, i.e. the core activity is the allocation and registration of Internet number resources including in particular the allocation of blocks of IP (Internet Protocol) addresses.

In the survey, five respondents indicated that they have participated in ARIN policy discussions; no further respondents expressed interest.<sup>15</sup>

<sup>11</sup> Source: Survey [DWC-IGM 2011], columns AO and QY.

<sup>12</sup> Source: Survey [DWC-IGM 2011], columns AP and QZ.

<sup>13</sup> Source: <http://www.keionline.org/node/660>, accessed 2011-12-17.

<sup>14</sup> Source: Survey [DWC-IGM 2011], columns AQ and RA.

<sup>15</sup> Source: Survey [DWC-IGM 2011], columns AR and RB.

**Mechanisms for consumer and broader public interest representation:**

Participation in the policy formulation and deliberation process is open to all stakeholders from the service region.

**2.6 Asia-Pacific Economic Cooperation (APEC)**

APEC is a forum for 21 countries in the Asia-Pacific Region, with the goal of promoting open trade and practical economic cooperation.

In the survey, three respondents indicated that they have participated in policy discussions in this forum, and seven further respondents expressed interest.<sup>16</sup>

**Mechanisms for consumer and broader public interest representation:**

According to a survey response, participation is possible through various committees or subsidiary organs.<sup>17</sup>

**2.7 Association of South East Asian Nations (ASEAN)**

ASEAN is a geo-politic and economic organization of ten countries in Southeast Asia.

In the survey, five respondents indicated that they have participated in policy discussions in this forum, and one further respondent expressed interest.<sup>18</sup>

**Mechanisms for consumer and broader public interest representation:**

There is a Consumer Council.<sup>19</sup> Furthermore, the ASEAN Civil Society Conference (ACSC) is used by CSOs to exchange ideas and advance their inputs to ASEAN leaders and relevant policy-makers.<sup>20</sup>

**2.8 Council of Europe (CoE)**

The Council of Europe is an international organisation of 47 European countries, promoting co-operation in the areas of legal standards, human rights, democratic development, the rule of law and culture. (The CoE is an entirely separate body from the EU which has only 27 member states.)

The CoE's influence extends beyond Europe. One survey respondent from Singapore noted:

The CoE and EU have come up with many sensible rules re IG. So attending the meetings would be getting a front row seat.<sup>21</sup>

In the survey, eleven respondents indicated that they have participated in policy discussions in this forum, and eight further respondents expressed interest.<sup>22</sup>

**Mechanisms for consumer and broader public interest representation:**

CoE's mechanisms for civil society participation appear to be exemplary in several ways: The "Conference of INGOs" (in which around 400 CSOs have "participatory status") is given an important-sounding designation by calling it the "4th pillar of the

<sup>16</sup> Source: Survey [DWC-IGM 2011], columns AS and RC.

<sup>17</sup> Source: Survey [DWC-IGM 2011], cell GG4.

<sup>18</sup> Source: Survey [DWC-IGM 2011], columns AT and RD.

<sup>19</sup> Source: Survey [DWC-IGM 2011], cell GH11.

<sup>20</sup> Source: <http://www.aseancivilsociety.net/en/asean-and-civil-society-engagement/background-on-acsc>, accessed 2011-12-18.

<sup>21</sup> Source: Survey [DWC-IGM 2011], cell UN58.

<sup>22</sup> Source: Survey [DWC-IGM 2011], columns AU and RE.



Council of Europe”, and it has corresponding rights to be taken seriously by the other CoE institutions:

All other Council of Europe institutions co-operate with the Conference of INGOs. NGOs may address memoranda to the Secretary General or the Commissioner for Human Rights, provide expert advice on policies and programmes in their field of action, make oral and written statements to the Parliamentary Assembly’s Committees, attend public sittings of the Congress, and participate in seminars, conferences, colloquies. They also played an important role in the preparation of numerous conventions and charters, including the Convention on the Legal Status of Migrant Workers, the Convention for the Prevention of Torture, and the European Cultural Convention.<sup>23</sup>

It is also possible for CSOs to directly join CoE working groups as observers, for example EDRI’s representative describes this experience as follows:

Through its experience as an observer to both CoE CAHSI and MC-S-IS groups of specialists since 2005, EDRI, while far from entirely satisfied by the group outcomes, may attest that documents (Recommendations, Declarations or Guidelines) on Human Rights in the Information Society, eventually submitted for adoption to the CoE Committee of Ministers, have successfully been deeply modified from initial draft versions which, in many other fora, would have left little expectations to digital rights defenders.<sup>24</sup>

CoE has adopted a noteworthy Code of Good Practice for Civil Participation in the Decision-Making Process [CoE 2009].

## 2.9 Corporation for National Research Initiatives (CNRI)

CNRI is a not-for-profit organization that develops in particular a “Handle System” for managing and locating digital information.

In the survey, three respondents indicated that they have participated in policy discussions in this forum, and five further respondents expressed interest.<sup>25</sup>

### **Mechanisms for consumer and broader public interest representation:**

The survey responses from respondents who indicate that they’re engaging with CNRI do not mention any specific mechanisms for civil society engagement,<sup>26</sup> nor are there any complaints about difficulties in engaging with CNRI<sup>27</sup>. This appears to lead to the conclusion that CSOs can participate directly in CNRI and that this works reasonably well.

## 2.10 European Patent Office (EPO)

EPO is an organ of the European Patent Organisation (EPOrg), a treaty-based international organization that includes the EU member states and several further European countries. EPO has the power to issue patents on behalf of all member countries of the European Patent Convention.

In practice EPO has grabbed the power to essentially unilaterally decide to extend the scope of patentability for all member countries of the European Patent Convention.

<sup>23</sup> Source: <http://www.coe.int/lportal/web/coe-portal/what-we-do/democracy/civil-society>, accessed 20111218.

<sup>24</sup> Source: <http://www.edri.org/book/export/html/1158>, accessed 20111218.

<sup>25</sup> Source: Survey [DWC-IGM 2011], columns AV and RF.

<sup>26</sup> Source: Survey [DWC-IGM 2011], column GJ (which is empty).

<sup>27</sup> Source: Survey [DWC-IGM 2011], column TB (which does *not* include “not open to CSOs” among the various reasons that were given.)

In the survey, one respondent (an individual in Germany where the EPO is located) indicated that he or she has participated in policy discussions within this institution, and five further respondents expressed interest.<sup>28</sup>

**Mechanisms for consumer and broader public interest representation:**

Among information society governance institutions, the European Patent Office is one of the very few that are sadly completely closed to effective CSO engagement.

## 2.11 European Union (EU)

The EU is an economic and political union of 27 member states.

The EU's influence extends beyond Europe. One survey respondent from Singapore noted:

*The CoE and EU have come up with many sensible rules re IG. So attending the meetings would be getting a front row seat.*<sup>29</sup>

In the survey, 22 respondents indicated that they participated in EU policy discussions, and five further respondents expressed interest.<sup>30</sup>

**Mechanisms for consumer and broader public interest representation:**

See [McNamee et al 2012].

## 2.12 G8

The G8 is a group of 8 powerful industrial nations. Recently, the group has become active in the Internet governance arena. [Malcolm 2012] observes:

In 2009, European Commission Vice-President Vivian Reding had called for the establishment of a "G-12 for Internet Governance," being "a multilateral forum available for governments to discuss general internet governance policy issues." She got her wish in 2011, when the G8 under the Presidency of French President Nicolas Sarkozy, convened an invitation-only e-G8 Forum in Deauville, from which civil society was largely excluded. The meeting notionally provided non-governmental delegates an opportunity to contribute their views to the formal G8 summit (though in fact the Deauville Declaration eventually issued at the summit had been drafted beforehand).

According to one commentator who was present, Sarkozy "sees the role of the e-G8 very much in the same context as the national CNN (Conseil National du Numérique, composed only of business): create a space for business and states to start a conversation, but not a real advisory body and not multi-stakeholder."

In the survey, three respondents indicated that they engaged with the G8, and six further respondents expressed interest.<sup>31</sup>

**Mechanisms for consumer and broader public interest representation:**

As noted above, there are intentionally no direct mechanisms for civil society participation. Indirect participation by means of lobbying one of the participating governments is of course always a possibility.<sup>32</sup>

From a public interest representation perspective, the need for reforms is quite obvious. Not only must civil society be welcomed to participate in the discussions, but the perspectives of developing countries need to be taken into consideration also.

<sup>28</sup> Source: Survey [DWC-IGM 2011], columns AV and RF.

<sup>29</sup> Source: Survey [DWC-IGM 2011], cell UN58.

<sup>30</sup> Source: Survey [DWC-IGM 2011], columns BA and RK.

<sup>31</sup> Source: Survey [DWC-IGM 2011], columns BB and RL.

<sup>32</sup> Source: Survey [DWC-IGM 2011], cells TE11, UN11.

Possibly the only way to exert pressure to end the unacceptable situation may be through democratic processes in G8 member countries.

However even though it is quite unpalatable from a public interest representation perspective, the motivation behind the formation of groups like the G8 and G20 (see below) can be quite easily understood because it is clearly desirable to have the ability to reach coordinated policy decisions, and reach them quickly.

Therefore, it is probably not realistic to expect this kind of bothersome fora and their influence to go away before better governance institutions have been established that allow to reach good decisions (i.e. public-interest-acceptable decisions in the sense of section 3.4 below) reasonably quickly.

## 2.13 G20

Not unlike the G8 in its basic idea, the G20 is a group of finance ministers and central bank governors from 20 major economies. In view of the steadily increasing importance of the G20 in world politics, it is likely for the influence of the G20 to eventually extend into some areas of Internet governance, in particular internet-based payment systems.

In the survey, two respondents indicated that they engaged with the G20, and two further respondents expressed interest.<sup>33</sup>

With regard to the lack of openness to civil society participation and lack of openness to the participation of non-member countries, the G20 shares the problems of the G8, see above.

## 2.14 IEEE

IEEE is a professional association for technical engineering and a standards development organization. The latter area of IEEE is more precisely referred to as IEEE-SA (IEEE Standards Association.)

In the survey, four respondents indicated that they participated in IEEE, and two further respondents expressed interest.<sup>34</sup>

### **Mechanisms for consumer and broader public interest representation:**

CSOs can become members of IEEE-SA. For a CSO, a basic membership costs US\$1250/year.<sup>35</sup>

While the membership fees of IEEE-SA are reasonable in the context of business participants, it is not reasonable that CSOs are charged similar fees.

Even so, short of full membership, there are still avenues for CSOs to participate in the standards development processes of the IEEE. For further information, see the paper by Paul Sweazey in this volume.

## 2.15 IETF

IETF develops the fundamental technical standards of the Internet.

In the survey, twelve respondents indicated that they participated in IEEE, and two further respondents expressed interest.<sup>36</sup>

<sup>33</sup> Source: Survey [DWC-IGM 2011], columns AY and RI.

<sup>34</sup> Source: Survey [DWC-IGM 2011], columns BC and RM.

<sup>35</sup> Source: <http://standards.ieee.org/membership/>. Accessed 2011-12-18.

<sup>36</sup> Source: Survey [DWC-IGM 2011], columns BD and RN.

**Mechanisms for consumer and broader public interest representation:**

In IETF, anyone (including CSOs) can fully participate. There are no restrictions, but in-depth technical understanding is needed to participate effectively.<sup>37</sup>

**2.16 International Telecommunications Union (ITU)**

ITU can be described as an international public-private partnership with a highly technical focus, including in particular the development of technical standards: ITU was founded in 1865 as an intergovernmental organization, and it became a UN specialized agency in 1947. Besides the member states, there are also “sector members”. These are businesses and technical organizations with an interest in the development of telecommunications technologies, networks and services.

In the survey, 19 respondents indicated that they participated in ITU, and eight further respondents expressed interest.<sup>38</sup>

**Mechanisms for consumer and broader public interest representation:**

Although a number of survey respondents indicated participation in ITU activities through various channels, such as the “Dynamic Coalition on Internet and Climate Change (DCICC)”<sup>39</sup>, standards development<sup>40</sup>, a “High Level Experts Group”<sup>41</sup> and WSIS Forum<sup>42</sup>, generally speaking, ITU is not very open to CSOs. Many survey respondents characterized ITU as “Not open to CSOs”. While ITU recognizes the importance of the involvement of the private sector and of the technical community, the importance of public interest advocacy is not recognized. [Malcolm 2012] observes:

The intergovernmental forum in which governments disenamoured of the multi-stakeholder model have most loudly voiced their views is the ITU. The ITU formed a government-only working group in 2007 to review whether any reforms to its own structure were required in order to bring it into compliance with the multi-stakeholder standard set at WSIS. Although ITU membership and meetings are almost completely closed to civil society, the review concluded in 2009 that no changes were needed.

At its plenipotentiary conference in 2010, renewed calls were made by some delegates for the ITU “to take on itself a leading role in internet governance” though as with earlier similar efforts to these failed. However at the same meeting the ITU did confirm that its Dedicated Group on international Internet-related public policy issues would be maintained as a body “limited to member states, with open consultation to all stakeholders.”

One survey respondent commented:

*The main issue we encounter is corruption within the ITU and national governments. Incumbent telecommunications carriers typically have very large budgets dedicated to protecting their monopoly status, and these budgets are typically used, as a first resort, to excluding open participation and closing decision-making processes to competitors, the public, and journalistic scrutiny. This is the largest problem we face, generally.*<sup>43</sup>

See section 3.1 for a discussion of the form of corruption that is probably meant here.

ITU would obviously need to fundamentally change its attitude towards CSOs before it could be considered acceptable for ITU to take on a leading role in Internet

<sup>37</sup> Source: The author’s personal knowledge and experience.

<sup>38</sup> Source: Survey [DWC-IGM 2011], columns BF and RP.

<sup>39</sup> Source: Survey [DWC-IGM 2011], cell GT3.

<sup>40</sup> Source: Survey [DWC-IGM 2011], cell GT21.

<sup>41</sup> Source: Survey [DWC-IGM 2011], cell GT70. Presumably the High Level experts Group on Cybersecurity is meant, see <http://www.itu.int/osg/csd/cybersecurity/gca/hleg/>.

<sup>42</sup> Source: Survey [DWC-IGM 2011], cell GT130.

<sup>43</sup> Source: Survey [DWC-IGM 2011], cell UO34.

Governance. There are unfortunately no indications that such a change might be politically feasible. It is probably much more feasible to strengthen instead the role of other fora which are more open to CSO participation, such as for example CSTD, see section 2.36.

## ***2.17 Internet Assigned Numbering Authority (IANA)***

IANA executes some technical administrative functions on behalf of IETF and ICANN.

In the survey, ten respondents indicated that they participated in IANA, and two further respondents expressed interest.<sup>44</sup>

### **Mechanisms for consumer and broader public interest representation:**

Since IANA's task is the execution of policy decisions of IETF and ICANN, it is the policy development processes of IETF and ICANN where public interest representation is needed.

## ***2.18 Internet Corporation for Assigned Names and Numbers (ICANN)***

ICANN is responsible, at the overall level, for the administration of three sets of unique identifier systems for the internet: domain names, numerical internet protocol (IP) addresses, and a third type that serves to identify so-called port and parameter numbers.<sup>45</sup>

In the survey, 33 respondents indicated that they participated in ICANN, and eight further respondents expressed interest.<sup>46</sup>

### **Mechanisms for consumer and broader public interest representation:**

Besides public comment processes on policy proposals, ICANN has two channels through which CSOs can participate in the "bottom-up policy development process": the Noncommercial Users Constituency <http://ncdnhc.org/> (NCUC) and the At Large Community <http://www.atlarge.icann.org/> with the At-Large Advisory Committee (ALAC). See [Hofmann 2007] for further details.

## ***2.19 Internet Governance Forum – global (IGF)***

The Internet Governance Forum has been set up as an annual conference under the auspices of the United Nations, to provide "a transparent, democratic, and multilateral process, with the participation of governments, private sector, civil society and international organisations, in their respective roles" for dialogue on Internet Governance policy.<sup>47</sup>

One survey respondent noted:

Internet Governance Forum IGF constitutes the most important and independent arena for global discussion. Considering its global scope, IGF can promote ICT for development as stated in WSIS and Millennium Declaration of 2000.<sup>48</sup>

In the survey, 49 respondents indicated that they participated in the global IGF, and ten further respondents expressed interest.<sup>49</sup> (These relatively big number reflect a

<sup>44</sup> Source: Survey [DWC-IGM 2011], columns BG and RQ.

<sup>45</sup> Source: [Hofmann 2007], an article which provides a good overview of ICANN related issues.

<sup>46</sup> Source: Survey [DWC-IGM 2011], columns BH and RR.

<sup>47</sup> Source: <http://igfwatch.org/igf>

<sup>48</sup> Source: Survey [DWC-IGM 2011], cell UN107.

<sup>49</sup> Source: Survey [DWC-IGM 2011], columns BI and RS.

high level of interest in the IGF, but they are undoubtedly also caused in part by the fact that an IGF-related mailing list was one of the means through which participation in the survey had been requested.)

**Mechanisms for consumer and broader public interest representation:**

Participation is effectively unrestricted. The IGF is a key example and test-case for the value of multi-stakeholder governance in which CSOs can fully participate, see [Malcolm 2008]. Unfortunately no effective mechanism has yet been established through which the IGF would issue recommendations (as was originally foreseen in the Tunis Agenda, on the basis of which the IGF was established) that would effectively influence the various decision-making governance processes, see [Malcolm 2012].

The Civil Society Internet Governance Caucus (IGC) is an important coordination body for CSO participation in the IGF.

## 2.20 *Internet Governance Forum – regional/national*

There is a number of IGF-like fora with smaller, regional or national scope.

In the survey, 28 respondents indicated that they participated in regional or national IGFs, and eleven further respondents expressed interest.<sup>50</sup>

## 2.21 *Internet Society (ISOC)*

ISOC is a global association that participates actively in Internet policy development processes and which has some governance roles in regard to IETF.

In the survey, 37 respondents indicated that they participated in ISOC, and 15 further respondents expressed interest.<sup>51</sup>

**Mechanisms for consumer and broader public interest representation:**

Just like everyone else, CSO representatives can freely engage within ISOC.

## 2.22 *International Organization for Standardization (ISO)*

ISO is perhaps best described as a worldwide cartel of national standardization organizations.<sup>52</sup> ISO develops standards on a broad range of topics, and it also provides ways in which specifications from other sources, e.g. industry consortia, can be accepted as international standards. ISO standards are recognized by WTO in the sense that it is allowed to reference ISO standards in national regulations and in government procurement.

In the survey, eight respondents indicated that they participated in ISO, and three further respondents expressed interest.<sup>53</sup>

**Mechanisms for consumer and broader public interest representation:**

Fundamentally, public interest representatives need to engage in the various standardization committees and working groups. There is one committee named “Committee on consumer policy” (COPOLCO) which “selects areas in ISO’s work that are of priority interest to consumers and then coordinates participation by consumer representatives in these areas.”<sup>54</sup>

<sup>50</sup> Source: Survey [DWC-IGM 2011], columns BJ and RT.

<sup>51</sup> Source: Survey [DWC-IGM 2011], columns BK and RU.

<sup>52</sup> Source: The author’s personal knowledge and experience.

<sup>53</sup> Source: Survey [DWC-IGM 2011], columns BM and RW.

<sup>54</sup> Source: <http://www.iso.org/sites/ConsumersStandards/en/Copolco.htm>, accessed 2011-12-19.

While ISO provides “liason” mechanisms through which industry consortia and CSOs of broader than national scope can participate without being charged membership fees, smaller CSOs can participate only via the national member bodies of ISO, many of which will inappropriately charge them membership fees as if the CSOs were profit-oriented companies.

## 2.23 LACNIC

LACNIC is the Regional Internet registry (RIR) for the Latin America and Caribbean region, i.e. the core activity is the allocation and registration of Internet number resources including in particular the allocation of blocks of IP (Internet Protocol) addresses.

In the survey, seven respondents indicated that they have participated in LACNIC policy discussions and six further respondents expressed interest.<sup>55</sup>

### **Mechanisms for consumer and broader public interest representation:**

Participation in the policy formulation and deliberation process is open to all stakeholders from the service region.

## 2.24 Mercosur

Mercosur is an economic and political agreement among Argentina, Brazil, Paraguay and Uruguay.

One survey respondent notes:

Mercosur... can act as a bridge and a forum to comprehend discussions and decisions about the Internet in Latin America considering normative aspects to guarantee technology diffusion.<sup>56</sup>

In the survey, one respondent indicated engagement with Mercosur, and three further respondents expressed interest.<sup>57</sup>

### **Mechanisms for consumer and broader public interest representation:**

Survey respondents criticize Mercosur for not being open to CSOs.<sup>58</sup>

## 2.25 National governments

While they are clearly the most important kind of governance institution for information society topics, the specifics obviously vary from country to country. Often the answer to question of whether reasonably good mechanisms for consumer and broader public interest representation exist will also vary for different government institutions.<sup>59</sup>

[Patriota 2012] notes:

Many IP-dependent corporations strongly influence policy formulation within their home governments.

This has the obvious consequence for international negotiations that unless this corporate influence on national policy formulation is significantly reduced first, international

<sup>55</sup> Source: Survey [DWC-IGM 2011], columns BN and RX.

<sup>56</sup> Source: Survey [DWC-IGM 2011], cell UN107.

<sup>57</sup> Source: Survey [DWC-IGM 2011], columns BO and RY.

<sup>58</sup> Source: Survey [DWC-IGM 2011], cells TU64, TU107.

<sup>59</sup> Source: Survey [DWC-IGM 2011], various columns.

agreements on information society topics will generally be designed to further the interests of these “IP-dependent corporations”, simply because it is otherwise near-impossible to reach international consensus.

An encouraging exception to this pattern has however been accomplished in the Convention on the Rights of Persons with Disabilities, where in the words of the then UN High Commissioner for Human Rights, Ms. Louise Arbour, “the disabilities movement proved able – in every sense of the word – to fight inertia, indifference and often open resistance.”<sup>60</sup>

Clearly a key enabler to this success was the ability of the disability movement to effectively engage with governments both in the relevant international forum as well as locally at the national level. There is no reason why other kinds of CSOs would not be able to employ a similar strategy. In particular the consumer movement is well positioned to engage both in international fora and at the national level, while building alliances and working together with other CSOs whenever that is possible.

In the survey, 38 respondents indicated engagement with various national governments, and eight further respondents expressed interest.<sup>61</sup>

## 2.26 National or regional IPv6 taskforce

Again the specifics vary.

In the survey, 14 respondents indicated engagement with national or regional IPv6 taskforces, and six further respondents expressed interest.<sup>62</sup>

## 2.27 Organisation for Economic Cooperation and Development (OECD)

OECD is like a permanent conference of its 34 member states, most of them industrialized nations. OECD’s stated goal is “to promote policies that will improve the economic and social well-being of people around the world.”<sup>63</sup>

In the survey, 17 respondents indicated engagement with national or regional OECD taskforces, and seven further respondents expressed interest.<sup>64</sup>

### **Mechanisms for consumer and broader public interest representation:**

OECD has two formally recognized advisory committees, namely the Business and Industry Advisory Committee to the OECD, and the Trade Union Advisory Committee (TUAC).

There is also a broader Civil Society Information Society Advisory Council<sup>65</sup> (CSISAC). Many survey respondents have indicated that they are engaging with OECD through CSISAC. Unfortunately, OECD’s lack of formal recognition of CSISAC corresponds to a lack of giving the views of CSISAC adequate weight on substantive matters. [Malcolm 2012] notes:

Since 2008, the OECD’s Committee for Information, Computer and Communication Policy (CICCP), which is attached to the intergovernmental OECD Council, has taken advice

<sup>60</sup> Source: [OHCHR 2008], page 47.

<sup>61</sup> Source: Survey [DWC-IGM 2011], columns BP, CI and RZ.

<sup>62</sup> Source: Survey [DWC-IGM 2011], columns BQ and SA.

<sup>63</sup> Source: [http://www.oecd.org/pages/0,3417,en\\_36734052\\_36734103\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1,00.html). Accessed 2011-12-17.

<sup>64</sup> Source: Survey [DWC-IGM 2011], columns BS and SC.

<sup>65</sup> <http://csisac.org/>



from a Civil Society Information Society Advisory Council (CSISAC). It stands alongside two similar advisory committees for the business and technical communities.

In June 2011, the CICCIP endeavoured to reach agreement between the Council and its advisory committees on a Communiqué on Principles for Internet Policy-Making. Although the communiqué expressed support for multi-stakeholder co-operation in policy development processes, and contained a number of other provisions to which CSISAC had contributed and with which it agreed, in the end CSISAC chose not to endorse it on the grounds that

several of these principles are not compatible with CSISAC core values including respect for fundamental human rights and freedoms and, the rule of law, promotion of access to knowledge, promotion of open standards, Net Neutrality and balanced intellectual property policies and regimes.

[...] if consensus could not be reached between civil society and the other stakeholders, a full commitment to the multi-stakeholder process would have seen the OECD retracting its communiqué of principles altogether, or at the very least honestly acknowledging that those principles did not represent the views of all of the stakeholders consulted. But in fact, the withdrawal of civil society from endorsement of the communiqué has been treated as an inconvenient fact to be quietly ignored.

From the perspective of public interest representation, it is clear OECD should correct its stance in regard to these matters.

## 2.28 *Organization of American States (OAS)*

OAS is a regional international organization, headquartered in Washington D.C. (USA). All countries of North America, South America, Central America and the Caribbean are members of AOS.

In the survey, three respondents indicated engagement with OAS, and two further respondents expressed interest.<sup>66</sup>

### **Mechanisms for consumer and broader public interest representation:**

See the *Manual for Civil Society Participation in OAS Activities*, available at [http://www.oas.org/en/ser/dia/civil\\_society/manual.shtml](http://www.oas.org/en/ser/dia/civil_society/manual.shtml).

## 2.29 *RIPE NCC*

RIPE NCC is the Regional Internet registry (RIR) for Europe, i.e. the core activity is the allocation and registration of Internet number resources including in particular the allocation of blocks of IP (Internet Protocol) addresses.

In the survey, eight respondents indicated that they have participated in RIPE NCC policy discussions and one further respondent expressed interest.<sup>67</sup>

### **Mechanisms for consumer and broader public interest representation:**

Participation in the policy formulation and deliberation process is open to all stakeholders from the service region.

## 2.30 *South Asian Association for Regional Cooperation (SAARC)*

SAARC is an organization of eight South Asian countries.

<sup>66</sup> Source: Survey [DWC-IGM 2011], columns BT and SD.

<sup>67</sup> Source: Survey [DWC-IGM 2011], columns BU and SE.

In the survey, three respondents indicated engagement with SAARC, and three further respondents expressed interest.<sup>68</sup>

**Mechanisms for consumer and broader public interest representation:**

One survey respondent criticizes SAARC for not being open to CSOs.<sup>69</sup>

Nevertheless, CSOs apparently have had some success in organizing themselves as the “Peoples’ SAARC” and thereby communicating jointly.<sup>70</sup>

### 2.31 *Transatlantic Economic Council (TEC)*

TEC is a body for economic cooperation between US and EU. One survey respondent asserts that in this forum, there is an “opportunity to use American drive for Internet Freedom”.<sup>71</sup>

In the survey, two respondents indicated engagement with TEC, and four further respondents expressed interest.<sup>72</sup>

**Mechanisms for consumer and broader public interest representation:**

Survey respondents criticize TEC for not being open to CSOs.<sup>73</sup>

The TEC however has an Advisory Council, of which the Trans-Atlantic Consumer Dialogue (TACD), a forum of US and EU consumer organisations, is a member. The other members are the Transatlantic Business Dialogue and the Transatlantic Legislators Dialogue. TACD has provided input to the TEC prior to each of its meetings by means of letters and recommendations.

### 2.32 *UN Office of the High Commissioner for Human Rights (OHCHR)*

In the survey, three respondents indicated engagement with OHCHR, and nine further respondents expressed interest.<sup>74</sup>

**Mechanisms for consumer and broader public interest representation:**

The opportunities for CSO participation that are provided by the UN Human Rights Programme (for which the UN Office of the High Commissioner for Human Rights is formally responsible) are very significant<sup>75</sup> but seriously underutilized in the Internet Governance context. In the survey, only three respondents indicated that they were engaging there: An individual from the Netherlands is engaging on the topics of freedom of expression, copyright and privacy with the Special Rapporteur on the right to

<sup>68</sup> Source: Survey [DWC-IGM 2011], columns BV and SF.

<sup>69</sup> Source: Survey [DWC-IGM 2011], cell UB44.

<sup>70</sup> Source: <http://www.peoplesaarc.org/>, accessed 2011-12-19.

<sup>71</sup> Source: Survey [DWC-IGM 2011], cell UN72.

<sup>72</sup> Source: Survey [DWC-IGM 2011], columns BW and SG.

<sup>73</sup> Source: Survey [DWC-IGM 2011], cells UC29, UC72.

<sup>74</sup> Source: Survey [DWC-IGM 2011], columns CA and SK.

<sup>75</sup> As evidence for this consider for example the Convention on the Rights of Persons with Disabilities, about which [OHCHR 2008] says the following on page 47: “In December 2006, the General Assembly adopted the Convention on the Rights of Persons with Disabilities and its Optional Protocol. Civil society, in particular persons with disabilities and their representative organizations, played a vital role at every stage in the lead-up to the adoption of these instruments. Representatives of civil society participated in the negotiations of the texts and are now active in promoting their ratification by States. The Convention on the Rights of Persons with Disabilities was negotiated from 2002 to 2006, making it the fastest negotiated human rights treaty. On the occasion of its adoption, the then High Commissioner, Ms. Louise Arbour, noted the unprecedented collaboration between States, the United Nations, civil society and NHRIs in the drafting of this new treaty, stating: *I want to... pay tribute to the disabilities community that provided the unwavering impetus for this momentous occasion. Their role was a transformative one. More so than by any declaration or statement, the disabilities movement proved able – in every sense of the word – to fight inertia, indifference and often open resistance, in order to achieve, by the force of the law, their legitimate aspiration for equality and justice.*”

freedom of opinion and expression<sup>76</sup>. The other survey respondents who are engaging with the UN Office of the High Commissioner for Human Rights are the Article 19 Global Campaign for Free Expression<sup>77</sup> and the Association for Progressive Communications (APC)<sup>78</sup>. All three have indicated that they were able to influence the agenda, i.e. which are the issues under discussion<sup>79</sup>. By contrast, nine respondents indicated interest in participation<sup>80</sup>, with the breakdown of reasons for not engaging there yet as follows: 3x “too little time”, 2x “too little expertise”, 1x “too little money”, 1x “not open to CSOs”<sup>81</sup>. (In view of the clearly good opportunities for CSO engagement, the last of these responses should probably be interpreted as lack of awareness of the opportunities.)

The **Universal Periodic Review (UPR) process**: One particularly interesting opportunity for public interest advocacy is the process by means of the human rights situation in all UN member states is reviewed every four years. CSOs can submit information which “can be added” to the “other stakeholders” report that is considered during the review. ECOSOC-accredited CSOs (for details about that see [ECOSOC 2009]) can attend the UPR Working Group sessions as observers and they can make statements at the regular session of the Human Rights Council when the outcome of the State reviews are considered.<sup>82</sup>

There are many further opportunities for participation through written and oral reports and statements in the various commissions, working groups and human rights treaty bodies, see [OHCHR 2008].

### 2.33 UNESCO

UNESCO is the United Nations Educational, Scientific, and Cultural Organisation. In view of this broad remit, many information society topics are necessarily touched upon. For further details see [Siochrú 2007b]. One survey response captures a particular area that among international internet governance institutions, appears to be addressed practically exclusively by UNESCO:

UNESCO can put into practice the global effort to access and use of the Internet. It constitutes the principal arena to guarantee cultural participation, cultural diversity and record of historical heritage including languages in danger of extinction.<sup>83</sup>

In the survey, fourteen respondents indicated engagement with UNESCO, and fourteen further respondents expressed interest.<sup>84</sup>

#### **Mechanisms for consumer and broader public interest representation:**

[Siochrú 2007b] notes:

Over the years, UNESCO has developed (and occasionally reviewed and amended) an elaborate system of NGO participation – some say at times too elaborate – and General Conference Directives of 1995 and 2001 govern the current situation. Relations can be

<sup>76</sup> Source: Survey [DWC-IGM 2011], cells F74, W74, CA74, OU74.

<sup>77</sup> Source: Survey [DWC-IGM 2011], cells H114, CA114.

<sup>78</sup> Source: Survey [DWC-IGM 2011], cells H133, CA133.

<sup>79</sup> Sources: Survey [DWC-IGM 2011], cells QP74, QP114; APC’s press release [APC 2011].

<sup>80</sup> Source: Survey [DWC-IGM 2011], column SK.

<sup>81</sup> Source: Survey [DWC-IGM 2011], column UG.

<sup>82</sup> Source: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx>. Accessed 2011-12-12.

<sup>83</sup> Source: Survey [DWC-IGM 2011], cell UN107.

<sup>84</sup> Source: Survey [DWC-IGM 2011], columns CB and SL.

of two kinds, formal or operational, depending on the role and structure of the NGO concerned and their record on cooperation.

At present UNESCO maintains official relations with 337 international NGOs and 26 foundations. Of these, about 15% are based in developing countries, just a handful in the least developed.

Nevertheless, several survey respondents asserted that UNESCO is “not open to CSOs.”<sup>85</sup> So it appears that there is definitely room for improvement, at least with regard to publicizing the opportunities for CSO engagement.

### 2.34 *United Nations Conference on Trade and Development (UNCTAD)*

UNCTAD is the principal organ of the UN General Assembly dealing with trade, investment, and development issues. In particular it is the UN body that is responsible for consumer protection and competition, two topic areas which are highly important in the Internet governance context.

UNCTAD is further linked to the UN’s Internet governance activities via the Commission on Science and Technology for Development (CSTD), which is a commission of ECOSOC (see section 2.36 below): According to their website, UNCTAD is “responsible for the substantive servicing of the Commission”.<sup>86</sup> This seems to mean that the secretariat for CSTD is provided by UNCTAD, the reason for this presumably being the need to ensure that CSTD is organized to appropriately to address the particular needs of developing countries, similar to how UNCTAD itself grew from the view that the institutions dealing with economic development which existed at the time (UNCTAD was established in 1964), such as GATT, the International Monetary Fund (IMF) and the World Bank were not properly organized to handle the particular problems of developing countries.<sup>87</sup>

In the survey, six respondents indicated engagement with UNCTAD, and five further respondents expressed interest.

#### **Mechanisms for consumer and broader public interest representation:**

Every four years, there is a major UNCTAD conference. The next of these, UNCTAD XIII, will be held 21–26 April 2012 in Qatar on the theme “Development-centred globalization: Towards inclusive and sustainable growth and development”. CSOs have opportunities to contribute to the preparatory process and to provide inputs to the pre-conference negotiating text. In addition, a Civil Society Forum will be organized as part of the official programme of the Conference.<sup>88</sup>

### 2.35 *United Nations Development Programme (UNDP)*

[Siochrú 2007a] (which is also a good source for further details about UNDP) gives the following overview:

With a staff of almost 5,000, it has national offices in 166 countries.

The UNDP has dual role at the national level. On the one hand, within the context of its mandate, it provides expert advice, training, and grant support to developing countries to help achieve a range of national and international goals, such as most notably the Millennium Development Goals (MDGs). In this context, it is often regarded as the largest

<sup>85</sup> Source: Survey [DWC-IGM 2011], cell UH11, UH64, UH107.

<sup>86</sup> Source: <http://www.unctad.org/Templates/Startpage.asp?intItemID=4839>. Accessed 2011-12-12.

<sup>87</sup> Source: [http://en.wikipedia.org/wiki/United\\_Nations\\_Conference\\_on\\_Trade\\_and\\_Development](http://en.wikipedia.org/wiki/United_Nations_Conference_on_Trade_and_Development). Accessed 2011-12-12.

<sup>88</sup> Source: <http://www.unctad.org/Templates/Page.asp?intItemID=6186>. Accessed 2011-12-20.

single source of development funding and government technical assistance within the UN system. On the other hand, it supports the coordination of UN activities at the national level through the Resident Coordinator system, which it manages, working closely with the government, agencies and other development partners.

One survey response notes about UNDP:

It can provide macroscopic analyses of political-economic factors that constrain the Internet diffusion. It focuses on the Internet's implications in strategic domains to achieve MDGs.<sup>89</sup>

In the survey, thirteen respondents indicated engagement with UNDP, and eleven further respondents expressed interest.<sup>90</sup>

**Mechanisms for consumer and broader public interest representation:**

Opportunities for civil society engagement are available through the CSO (Civil Society Organisation) Division and the CSO Advisory Committee.

In the survey, respondents answered the question about whether there a formal mechanism for you to speak and/or to submit documents directly to members of the institution with "no", in striking contrast to the responses for the other development-oriented UN institution UNCTAD where the corresponding answers were "yes".<sup>91</sup>

## 2.36 *United Nations Economic and Social Council (ECOSOC) and Commission on Science and Technology for Development (CSTD)*

The Economic and Social Council (ECOSOC) of the United Nations is one of the principal organs of the United Nations.

In regard to Internet Governance, its primarily relevant sub-body is the Commission on Science and Technology for Development (CSTD), which is *inter alia* responsible for many follow-up activities to WSIS, the World Summit on Information Society (see section 1). CSTD is also connected to UNCTAD, see section 2.34.

Seven respondents indicated engagement with ECOSOC, and eleven further respondents expressed interest.<sup>92</sup>

**Mechanisms for consumer and broader public interest representation:**

The rules for CSO participation in CSTD have been criticized as being unreasonably burdensome for CSOs who did not already participate in WSIS (even if it is not very difficult to apply for "ECOSOC consultative status" and be approved, filling in the 4-yearly reports is a lot of work – and if you don't, then you lose this status<sup>93</sup>).

These institutional shortcomings are however not what primarily prevents a more effective role of civil society in CSTD. In particular, they don't block civil society participation in any significant way. Civil society needs to increase participation, and the civil society representatives needs to prepare themselves better and coordinate better with each other.<sup>94</sup> This will have several important benefits: One one hand it is an important opportunity to build momentum for the movement of CSOs as a whole. On the other hand, this strategy can contribute to strengthening the role of CSTD relative

<sup>89</sup> Source: Survey [DWC-IGM 2011], cell UN107.

<sup>90</sup> Source: Survey [DWC-IGM 2011], columns BY and SI.

<sup>91</sup> Source: Survey [DWC-IGM 2011], columns MM to MP.

<sup>92</sup> Source: Survey [DWC-IGM 2011], columns BX, BZ, SH and SJ.

<sup>93</sup> Source: [Esterhuysen 2011a].

<sup>94</sup> Source: [Esterhuysen 2011a], [Schombe 2011], [Esterhuysen 2011b].

to governance institutions which are much less accepting of civil society including in particular the ITU, see section 2.16 and [Malcolm 2012].

In addition, as one survey respondent noted, within CSTD there is at least potentially an opportunity to shape future of IGF, so that it become even more relevant and useful.<sup>95</sup>

### 2.37 *Universities*

At least when governance systems are considered from a long-term perspective, the role of universities is absolutely central. Governance debates are to a large extent based on what the participants in the debates have learned while studying at university.

Moreover, within debates, statements by university professors usually have great weight on the basis of the assumption that the professor has very profound understanding and that the statement will be as objective as possible and independent of particular interests.

The latter part of this assumption is however not necessarily true. For example, when the Swiss vote on approval or rejection of Microsoft's OOXML document format as an international ISO/IEC standard was to be decided, there was a sudden massive influx of new members in the responsible mirror committee. Most of them were resellers of Microsoft products and they were joining because Microsoft had encouraged them to do so. At least one university professor acted similarly, as the assistant who has represented his institute at a meeting of the standardization committee admitted openly during the train ride home after the end of the meeting: His professor had sent him there to vote in favor of OOXML because the professor believed that course of action to be beneficial for receiving future research funding from Microsoft.<sup>96</sup>

In addition to this kind of dependencies on private sector funding, the views that are promoted by universities are often also biased by technological enthusiasm, see below.

In view of the great influence of universities, organizations aiming at representing the public interest will be wise to make it a priority to carefully observe the actions of universities. In particular, advocates for the public interest can and must insist that concerns about potential impacts on civil rights like privacy are given an appropriately great weight in courses that are taught to students and in conferences that are organized by universities.<sup>97</sup>

**Mechanisms for consumer and broader public interest representation:** There are typically no specific, formal mechanisms for public interest advocacy. However this does not imply that such specific formal mechanisms must be necessary, since the academic world quite generally has a culture of open debate in which public interest advocates (who have the prerequisite academic research and writing skills) can participate. So in regard to universities, pursuit of the generally-available paths of advocacy by demanding transparency, criticizing and influencing through dialogue should be complemented by making appropriate, well-researched contributions to the academic literature.

<sup>95</sup> Source: Survey [DWC-IGM 2011], cell UN72.

<sup>96</sup> Source: The author's personal knowledge and experience of having personally participated as a public interest representative in the Swiss mirror committee.

<sup>97</sup> For an unfortunately very typical example of a conference where discussion of privacy issues was unjustifiably totally missing from the agenda see <http://www.the-internet-of-things.org/iot2008/>.

### 2.38 W3C

W3C is a standardization consortium with a focus on website content formats.

In the survey, four respondents indicated participation in W3C, and seven further respondents expressed interest.<sup>98</sup>

**Mechanisms for consumer and broader public interest representation:**

W3C actively solicits CSO participation in key standardization projects such as the “do not track” working group<sup>99</sup>.

### 2.39 World Economic Forum (WEF)

WEF is an invitation-only annual meeting held every year at the end of January in Davos, a mountain resort in Switzerland.

In the survey, three respondents indicated participating or otherwise engaging with WEF, and ten further respondents expressed interest.<sup>100</sup>

**Mechanisms for consumer and broader public interest representation:**

Some CSO representatives may be invited, but overall CSO participation mechanisms are seriously lacking.

### 2.40 World Intellectual Property Organization (WIPO)

[Gross 2007] notes:

WIPO was established in 1967 by the WIPO Convention, which states that WIPO’s objective was “to promote the protection of intellectual property throughout the world...” (WIPO, 1967, Article 3).

Headquartered in Geneva, Switzerland, WIPO currently administers 24 treaties and facilitates the negotiation of several proposed treaties covering copyrights, patents and trademarks.

Although WIPO was originally established explicitly to promote the protection of intellectual property, when it joined the UN family in 1974 its objective had to be redefined as a public-interest or humanitarian goal. Article 1 of the key agreement establishing WIPO’s relationship to the UN restates WIPO’s purpose as: “for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development...” (WIPO, 1974).

There is significant interest among survey respondents in engaging WIPO, with reasons including the following:

- “WIPO has had a disproportionate influence because of the interest in IPR.”<sup>101</sup>
- “Because they have means and their goals and main area of interest presently differ from what I believe to be most important. Because they are subject to a lot of pressure and lobbying from the corp. world.”<sup>102</sup>
- “I think copyright is the most important battleground at present.”<sup>103</sup>

<sup>98</sup> Source: Survey [DWC-IGM 2011], columns CD and SN.

<sup>99</sup> Source: [http://www.w3.org/QA/2011/09/do\\_not\\_track\\_standards\\_for\\_the.html](http://www.w3.org/QA/2011/09/do_not_track_standards_for_the.html), accessed 2011-12-19.

<sup>100</sup> Source: Survey [DWC-IGM 2011], columns CE and SO.

<sup>101</sup> Source: Survey [DWC-IGM 2011], cell UN58.

<sup>102</sup> Source: Survey [DWC-IGM 2011], cells UL36, UN36.

<sup>103</sup> Source: Survey [DWC-IGM 2011], cell UN72.

One survey respondent gave “WIPO conferences” as response to the question: “How do you coordinate with other public interest representatives who are engaged in discussions on the same information society policy issues as you?”<sup>104</sup>

In the survey, ten respondents indicated that they have engaged with WIPO, and fourteen further respondents expressed interest.<sup>105</sup>

**Mechanisms for consumer and broader public interest representation:**

[Gross 2007] provides the following observations:

In theory, WIPO’s strategic direction and activities are decided by the member states, but in practice, the WIPO Secretariat, based in Geneva, is given enormous power to influence and direct the work and objectives of the organization under the WIPO Convention.

Furthermore, on any particular issue, not only top WIPO staff but also the chair of the relevant WIPO committee wield the power to drive the organization’s agenda through the framing of the debate in that committee. The election of the chair is the first item on the agenda of meetings. Member state delegates, including the chair, participate at WIPO with the costs paid by the member state. Committee chairs decide which proposals become text for a treaty and which proposals are deleted from draft treaty texts; they decide how the proposals are framed, and whether or not civil society may speak at WIPO meetings.

Civil society or non-governmental organization (NGO) participation is allowed at WIPO through an accreditation process that takes place once a year to obtain official “observer” status. Besides governments and civil society, WIPO also allows for intergovernmental organization (IGO) participation in its meetings. While WIPO boasts that over 250 NGOs and IGOs currently have official observer status at WIPO, the vast majority of these NGOs are trade industry organizations from wealthy countries participating for the purpose of maximizing private gain.

Clearly this situation cannot be conducive to reaching results that are in the public interest. WIPO needs to be reformed in order for the change of WIPO’s purpose statement that was agreed in 1974 to be translated into a changed actual reality.

## 2.41 World Trade Organisation (WTO)

WTO has the stated goal to promote free trade and stimulate economic growth. Many critics assert that WTO however pursues these objectives in ways that have unacceptable social side effects.<sup>106</sup>

In the survey, two respondents indicated that they have engaged with WTO, and five further respondents expressed interest.<sup>107</sup>

**Mechanisms for consumer and broader public interest representation:**

WTO’s mechanisms for CSO engagement<sup>108</sup> are woefully inadequate.

In addition, [Patriota 2012] observes (writing from the perspective of a developing country government representative):

The negotiating jargon and logic one has to work with at the WTO has the additional burden for developing country negotiators of not being transparent to those outside immediate WTO circles, including members of the broader public that could have a stake in final outcomes.

This problem affects CSOs in the same way as developing countries. Effective public interest representation at WTO will therefore require, in addition to securing opportu-

<sup>104</sup> Source: Survey [DWC-IGM 2011], cell UU44.

<sup>105</sup> Source: Survey [DWC-IGM 2011], columns CF and SP.

<sup>106</sup> See [http://en.wikipedia.org/wiki/Criticism\\_of\\_the\\_World\\_Trade\\_Organization](http://en.wikipedia.org/wiki/Criticism_of_the_World_Trade_Organization).

<sup>107</sup> Source: Survey [DWC-IGM 2011], columns CG and SQ.

<sup>108</sup> See [http://www.wto.org/english/forums\\_e/ngo\\_e/intro\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/intro_e.htm).



nities to interact with the negotiators, that the CSO representatives must be prepared to overcome the barriers to communication that result from this WTO-specific “*negotiating jargon and logic*”.

### 3 *Towards system engineering of public interest oriented governance*

#### 3.1 *Observed mindblocks*

Several survey respondents have pointed out a fundamental problem of many governance institutions, that makes it difficult for public interest advocates to be truly heard by the people who work at the governance institutions in various roles:

People usually are not willing to listen to what you have to say, or probably the truth doesn't suit them. Instead they try to manipulate you so that you follow what is suitable for them. This may also be related to the economic interests of some private IT companies and to the corruption of the governmental institutions.<sup>109</sup>

It is important to note that if *corruption* is understood (like it is commonly defined) to mean the abuse of public power, office, or resources by government officials for personal gain, then it is not only corruption when received. It is also a form of corruption when government officials act contrary to the public interest out of a desire to create a positive personal reputation among decision-makers of the private sector, where officials who are corrupt in this way want maximize their chances for lucrative future employment.<sup>110</sup>

As pointed out in the above-quoted survey response, there is a lot of manipulation going on. Often debates are framed in ways that make it difficult even for officials who are not themselves corrupt in any way (i.e. who truly act out of a desire to do things right and according to the public interest) to truly listen to what some public interest advocates are saying, because some public interest viewpoints do not fit at all into the discourse that is happening within the governance institution. Here is a survey response that describes this phenomenon:

The issue of financing costs has been so cleverly handled by lawyers from North America that the issue is no longer debatable.<sup>111</sup>

The above-cited survey response does not make clear what context the respondent (an individual in Singapore) had in mind when he wrote about “the issue of financing costs.” It is clear from his response however that he has observed how representatives of particular private interests have purposefully created mindblocks that effectively prevent even merely debating the public interest aspects of the matter.

One example of such a mindblock that has been analyzed in depth is the notion of “intellectual property” in its role of framing debates about copyright and about patents on software innovations into a narrow-minded problem solving rhetoric that ignores how information goods and innovations are fundamentally different from material goods, see [Eckl 2004], in particular pp. 139-140.

<sup>109</sup> Source: Survey [DWC-IGM 2011], cell UO109.

<sup>110</sup> Source: The author of the present report has personally witnessed this form of corruption happening.

<sup>111</sup> Source: Survey [DWC-IGM 2011], cell UQ58.

### 3.2 *The goal: Governance institutions acting in the public interest*

Governance institutions must necessarily aggregate voices and viewpoints of a large number of stakeholders, creating a shared framework of understanding. Legal and other rules need to be defined and enforced.

It is of course of vital importance that these rules and the corresponding framework of shared understanding must be developed according to the public interest (see below for a brief discussion of the meaning of that.)

Unfortunately, as illustrated for example by the frustrations expressed in the survey responses that have been quoted in the previous section and in many others<sup>112</sup>, unless great effort is exerted to make governance systems conducive to the public interest, the results are very often far from fair.

### 3.3 *What are the incentives for the decision-makers?*

It is easy to observe that very often public policy processes have resulted in regulation that clearly illegitimately favors some particular interests over the public interest, and there is a branch of economics, called *public choice theory*, that studies this phenomenon, see e.g. [Schroeder 2009]. While the decision-makers' understanding about what is the public interest and their related beliefs play an important role, decision-makers are also influenced by the incentives that exist for them in the political environment in which they operate. In situations where politics has clearly gone astray, reaching results that clearly illegitimately favor some special interest without any significant actual public interest benefits, the policy processes have often been influenced both by lobbying from those with business interests that can benefit financially, as well as by factually unfounded but widely-held, strongly emotional and sometimes even pseudo-religious views about the public interest, see [Yandle 1983] and [Yandle-Buck 2002].

### 3.4 *What exactly does it mean to represent the public interest?*

In view of this complex reality of how a policy measure's officially stated objective, its actual effects, and its public perception can be misaligned with each other, public interest representation must strive for objectivity in first of all understanding what the public interest is.

Of course it is not practically feasible to define the public interest with absolute precision. There is a variety of legitimate perspectives on what is the public interest, and how the various aspects of the public interest should be balanced relative to each other. For example, the protection of human dignity as a fundamental principle is certainly in the public interest, and this implies taking measures to ensure accessibility to people with disabilities. Some such measures can be taken without significant additional cost (and there is really no excuse for not taking those easy measures, or for not taking the ease of accessibility measures into account in ICT standardization), while other accessibility measures will have significant costs, and it is always possible to further improve accessibility at even greater cost. Even in the absence of any convincing guiding principle on what percentage of the cost of any given project should be invested in accessibility measures, in some cases it is clear that there is an unacceptable lack of accessibility, while on the other hand it is also easy to conduct though experiments where a huge investment in accessibility is also clearly not in the public interest, if it is

<sup>112</sup> Source: Survey [DWC-IGM 2011], e.g. cells UO36, UO98, UO100, UQ2.

e.g. clear that those financial resources would benefit the public interest much more if used in a different way.

Therefore, even if there is no straightforward way of determining what the public interest is, it is often possible to convincingly criticize decisions and proposed decisions for being clearly not in the public interest.

For this reason, *public interest representation* can be defined as exercising this activity of evaluating decisions and proposed decisions for reasonableness from a public interest perspective, criticizing where necessary, and ensuring that appropriate corrective action is taken when needed.

This will be most effective if it is undertaken not from just a single perspective, but from a variety of public interest perspectives.

For the purposes of the present paper, a decision or proposed decision shall be called *public-interest-acceptable* if it has been evaluated from the widest variety of public interest perspectives that was practically possible to solicit, and no clear fault has been found from any of these perspectives.

### 3.5 Major challenges for the public interest in Internet governance

This section outlines some major challenges that need to be overcome in order to shape the development of information society in ways that are public-interest-acceptable as defined above.

#### 3.5.1 Powerful special interests

It is clear from the frustrations quoted in section 3.1 that there are powerful special interests who so far have succeeded to a large extent in shaping policy processes according to their viewpoints.

These are on one hand private sector entities and groups thereof, as mentioned in this response to the question “What challenges have you faced in effectively participating in policy discussions on information society issues?”:

Facing “big money” and people who are convinced that profit is more important than public interest.<sup>113</sup>

Furthermore, there are also government entities that themselves have particular interests. Law enforcement agencies are interested in being granted rights and technical means for surveillance that will, unless carefully limited and balanced, undermine fundamental human rights in the area of privacy. This problem exists even when the reasons that are given by the law enforcement agencies are clearly legitimate intentions such as when the stated goal is the prosecution of violent crime or to take action against videos of sexual child abuse (often called “child pornography”). There is always a slippery slope. Even when the use of privacy-intrusive investigation techniques is limited by law to a list of “serious crimes”, such lists tend to get expanded at later revisions, and in the absence of effective controls, such restrictions on law enforcement agencies may be ineffective anyway. If a “web blocking” infrastructure is established with the intention of taking action against sexual child abuse videos, then thereafter a censorship infrastructure will already be in place that could also be used for copyright enforcement (regardless of whether the claims of copyright are legally valid or not) and for political censorship. Copyright enforcement and political censorship have a long history of going hand in hand, see [Eckl 2004].

<sup>113</sup> Source: Survey [DWC-IGM 2011], cell UO36.

### 3.5.2 *Rapid change and great complexity*

As the realm of the Internet and information and communication technologies in general are rapidly evolving and the various interconnects are becoming ever more complex, it is not surprising that the technological understanding of most traditional governance institutions including the regulatory agencies of national governments is typically uncomfortably shallow.

Governments are therefore often forced to rely on external expertise. Unfortunately, even when experts are consulted who have no strong ties to the powerful special interests, their perspectives are nevertheless generally far from objective, as discussed in the following section.

In addition to that there is a problem of communication, due to differences of language and ways of expression between many members of the technical community and the political community.<sup>114</sup> Lobbyists therefore have a disproportionate influence<sup>115</sup> because they communicate in ways that the decision-makers understand. This is a problem for the public interest when all or almost professional lobbyists represent special interests.

### 3.5.3 *The pervasive bias of self-interested technological enthusiasm*

Even when not employed by one of the powerful corporations, technologists nevertheless have a strong personal incentive to avoid opposing what they see as technical progress in their field of interest. In particular, people who want to be successful in an emerging area of technology have a strong self-interest in being enthusiastic about what may become possible through that technology. It is not conducive to one's personal success in such a field to openly oppose fast adoption of the technologies that one is working on, even when caution would be advisable due to potential negative effects on some aspect of the public interest.

In viewpoints that are based on this attitude of self-interested technological enthusiasm, for example privacy or accessibility challenges may be acknowledged with an admission that a solution will need to be found. However this will not be described by technology enthusiasts as a precondition to their own agreement to deployment of these technologies. Rather, they see these problems only as a kind of marketing challenge. These technical experts are not personally motivated to ensure that a true solution to the actual problem is found, anything would suffice that satisfies or otherwise silences those critical voices that are effectively able to influence the public opinion.

Unsurprisingly this technology enthusiast perspective is generally adopted and promoted by private sector entities such as companies that can potentially benefit from the adoption of new technologies, as well as by technical research institutions, where the researchers have similar economic interests. Consequently the names that are given to new technical possibilities will usually reflect and promote the technology enthusiast viewpoint, see for example [Ashton 2009].

Unfortunately it happens that even governance institutions adopt this viewpoint of technological enthusiasm uncritically instead of conducting a more objective analysis of benefits and risks of technologies. For example, it says in [ITU 2005], the executive summary of ITU's 2005 report on the Internet of Things:

One of the most important challenges in convincing users to adopt emerging technologies is the protection of data and privacy. Concerns over privacy and data protection are

<sup>114</sup> Source: Survey [DWC-IGM 2011], cell UO100.

<sup>115</sup> Source: Survey [DWC-IGM 2011], cell UO98.

widespread, particularly as sensors and smart tags can track users' movements, habits and ongoing preferences. When everyday items come equipped with some or all of the five senses (such as sight and smell) combined with computing and communication capabilities, concepts of data request and data consent risk becoming outdated.

Here the threat to privacy is conceptualized as a threat to ideas and concepts about data protection, rather than as a threat to human dignity and vital consumer interests.

### ***3.6 Concerns about domination of global debates by the West***

Parallel to the problem of undue influence of particular interests on governance debates but distinct from it, there is also the problem of the debates being dominated by voices from developed countries<sup>116</sup>, in particular Western countries. This serious imbalance in the geographical representation of viewpoints results in part from the funding problems described in section 1 being a particularly great challenge in some regions, but there are cultural aspects to this problem as well. One survey respondent from Singapore describes this as follows:

The debate is still largely dominated by the West. The issues faced there are not quite the same as in Asia. Also, in Asia, most people are not used to grabbing a mike and gabbing away. So there is much less of the cut-and-thrust of public debate in Asia compared with the West.<sup>117</sup>

Geographic distance from key decision-making locations and the corresponding difficulty of building effective working relationships with key people adds to this problem, as another survey respondent from Asia explains in response to the question about the challenges that his organization has faced in effectively participating in policy discussions on information society issues:

Not "knowing the right people", the fact that the people we need to talk to do not respond to communications (particularly emails), the expense of traveling to meetings in Europe, the limited impact that can be demonstrated from attending meetings held by the institutions themselves.<sup>118</sup>

The response to the same question from the Pacific Chapter of the Internet Society goes in the same direction:

Getting to events because of lack of funds to do so and because of the contestability with other deserving applicants for public funds. Because we don't have that access sometimes we miss out on participating on important issues that arise within discussions at these events. Our voices aren't heard.<sup>119</sup>

The Secretariat of the Pacific Community commented:

Culturally, Pacific Islanders find it difficult to contribute to international fora.<sup>120</sup>

Language barriers also contribute significantly to these challenges, as pointed out by a survey response from Taiwan<sup>121</sup> and this survey response from Morocco:

En plus de la contrainte financière, les associations de protection des consommateurs n'ont pas de position de force pour imposer la prise en compte de leur préoccupations

<sup>116</sup> Source: Survey [DWC-IGM 2011], cell UO44.

<sup>117</sup> Source: Survey [DWC-IGM 2011], cell UO58.

<sup>118</sup> Source: Survey [DWC-IGM 2011], cell UO11.

<sup>119</sup> Source: Survey [DWC-IGM 2011], cell UO40.

<sup>120</sup> Source: Survey [DWC-IGM 2011], cell VU97.

<sup>121</sup> Source: Survey [DWC-IGM 2011], cell UO67.

et intérêts. Par ailleurs les capacités en matière de langue de travail (anglais) doivent être renforcées.<sup>122</sup>

(English translation: In addition to the financial constraint, the consumer protection associations don't have the power to ensure that their concerns and interests are considered. Furthermore, their skills in the working language (English) need to be strengthened.)

### 3.7 *Lessons from system engineering theory*

Political decision-making processes are obviously complex systems.

In fact they belong to the particular class of systems which are intentionally created and maintained at a significant cost in view of a particular purpose.

There is a theory for system engineering of such systems; it is Eliyahu Goldratt's "Theory of Constraints", see [Goldratt 2004] and [Goldratt 1990]. As shown there, the performance of complex systems is determined by their constraints, of which there are typically relatively few, and local optimization is almost always *not* a viable path to achieve adequate performance. These lessons are equally applicable political decision-making systems as to the industrial production systems (the context in which Goldratt has developed and explained the "Theory of Constraints".)

A simple illustration of such a *constraint* is that the strength of a chain is determined by the strength of its weakest link. The weakest link is the constraint on the chain as a whole. The same phenomenon also occurs in systems that are much more complex than a simple chain.

In view of the above-quoted frustrations that survey respondents have expressed, from the perspective of public interest representation, **right now the key constraint is the severe difficulty of effectively communicating to the key people in decision-making governance institutions about public-interest concerns.**

This constraint needs to be addressed and "elevated" in the parlance of the "Theory of Constraints", i.e. the situation in this regard needs to be improved so much that this is no longer the key constraint. It is quite possible when this problem has been adequately addressed, the goal of public-interest-acceptable governance (see section 3.4) of information society matters may not have been reached yet. Something else may turn out to be another unacceptably hindering constraint, which will also need to be addressed before the goal is reached. But this next constraint will not be very visible, and addressing it will not have any significant effect, unless the current critical constraint is addressed first.

### 3.8 *The need to demand reasoned decision-making about incentives*

As seen above, it is difficult to effectively communicate to decision-making governance institutions about substantive topics of the public interest, and a key reason for this problem is that the people to whom these communications need to be addressed often have few or no incentives to pay attention, while the incentives to conform to the desires of well-funded lobbyists of special interests often include peer pressure and are often also otherwise significant.

One way in which the communication problem can be addressed is therefore to demand that **the people who work for governance institutions must be personally given incentives to act according to the public interest.** This in itself should result

<sup>122</sup> Source: Survey [DWC-IGM 2011], cell UO115.

in very healthy and necessary debates about what exactly the public interest is, and how it can be determined. Governance institutions are supposed to act according to the public interest, so they clearly need to develop an understanding of how the public interest can be determined, and what corresponding appropriate measurements are.

One means that can be used to this end is **the right to reasoned decision-making**: According to Article 41 of the EU's Charter of Fundamental Rights<sup>123</sup>, there is a *right to good administration* which includes in particular "the obligation of the administration to give reasons for its decisions". Many other governance bodies have a similar principle, and where it is missing, it should be demanded that it must be established. For a detailed discussion of the importance of this right see [Marshaw 2007]. (It is important to note that Marshaw's remark about the EU's Charter of Fundamental Rights not having been ratified, and that ratification effort possibly stalling indefinitely, is outdated: In the meantime, the Charter has been ratified as part of the Lisbon Treaty.)

In view of the theory-based considerations of section 3.7 these demands for transparency and justification of the governance institution's internal incentive system must be in addition to (and not instead of) continuing attempts to be heard on substantive matters. The goal is to reach the point where, as a result of changed internal dynamics within the governance institution, the people there are willing and able to listen to the concerns of public interest representatives. At that stage the analysis of determining what is then the critical constraint must be repeated. It is likely that a certain amount of attention on matters of personal incentives will need to be maintained, but further increasing the attention that is given to this aspect is not likely to help with addressing the next constraint. Rather the next constraint will again need to be analyzed, and a strategy will have to be developed to address it.

## 4 Summary of conclusions

This section summarizes the main specific conclusions of the previous sections of this report.

### **Underutilised mechanisms for public interest representation:**

- While the details must naturally vary across issues and governance institutions (and the survey was not set up to solicit specific information about the various combinations), it is clear from the frustrations about mindblocks that were expressed (see section 3.1) that CSOs need to learn to oppose much more vigorously all attempts to frame a discourse in a way that is manipulative and not supportive of an open-ended search for public-interest-acceptable solutions (see section 3.4.)

### **The key needs for institutional reforms are:**

- Reasoned decision-making about what the incentives are for who work for governance institutions should, where necessary, be increased until the people there are willing and able to listen to the concerns of public interest representatives, see section 3.8.
- Fundamental reforms are needed in all governance institutions which deal with matters where strong consumer representation and more general public interest representation would be important but is currently impossible or unreasonably difficult. These include EPO, G8, G20, ITU, Mercosur, SAARC, TEC, WEF, WTO and

<sup>123</sup> See <http://www.europarl.europa.eu/charter/>

many institutions of national governments. The ACTA Committee is likely to join this list once it is constituted.

- Given that G8 and G20 make decisions that affect the entire world, they should also take the perspectives of governments of other countries into consideration, similar to how civil society views need to be taken into consideration.
- The IGF should establish a mechanism by which it issues formal recommendations and thereby influences decision-making governance processes, see section 2.19.
- “ECOSOC consultative status” accreditation for CSOs should be simplified, reducing in particular the administrative burden of the 4-yearly reports, see section 2.36.
- CSTD should involve civil society representatives in agenda discussions, see sections 2.36.
- OECD should formally recognize CSISAC, as well as recognizing (by means of the publication of a revised document that corrects the problems) that it was very inappropriate to ignore CSISAC’s objections to the Communiqué on Principles for Internet Policy-Making of 2011, see section 2.27.
- WIPO needs to be reformed in order for the change of WIPO’s purpose statement that was agreed in 1974 to be translated into a changed actual reality, see section 2.40.
- IEEE-SA and ISO national member bodies should waive membership fees for CSOs.

**Key Institutions where CSO participation should be specifically improved are:**

- Universities, see section 2.37.
- CSTD, see section 2.36.
- The UN Human Rights Programme’s Universal Periodic Review (UPR) process, see section 2.32.

## 5 *Missing institutions*

For the following issues, survey respondents have indicated that there are currently no governance institutions where the issues could be addressed:

- Access to knowledge<sup>124</sup>
- Global optimization of resource allocation<sup>125</sup>
- Internet filtering<sup>126</sup>
- Interests of small developing countries<sup>127</sup>
- Obligatory technical standards: What technological standards should every incorporated company be required to follow?<sup>128</sup>
- Process issues around consumer participation in policy development.<sup>129</sup>

<sup>124</sup> Source: Survey [DWC-IGM 2011], cell UQ11.

<sup>125</sup> Source: Survey [DWC-IGM 2011], cell UQ122.

<sup>126</sup> Source: Survey [DWC-IGM 2011], cell UQ20.

<sup>127</sup> Source: Survey [DWC-IGM 2011], cell UQ130.

<sup>128</sup> Source: Survey [DWC-IGM 2011], cell UQ37.

<sup>129</sup> Source: Survey [DWC-IGM 2011], cell UQ11.



- Research aggregation: There is not a representative instance that gathers the research done by universities and public/private institutions.<sup>130</sup>

## 6 Towards an online Map of Internet Governance

Information of internet governance institutions as contained in this report needs to be kept up-to-date and expanded with further practical hints and additional information that allows effective strategy development. This is the goal of the online Map of Internet Governance which is under construction at <http://idgovmap.org>.

### References

- [Ashton 2009] Kevin Ashton: *That 'Internet of Things' Thing*. RFID Journal, June 22, 2009. <http://www.rfidjournal.com/article/view/4986>. Accessed 2011-11-29.
- [APC 2011] Association for Progressive Communications: *Join us in putting the internet on the human rights agenda*. December 8, 2011. <http://www.apc.org/en/press/join-us-putting-internet-human-rights-agenda>. Accessed 2011-12-12.
- [CoE 2009] Council of Europe: *Code of Good Practice for Civil Participation in the Decision-Making Process*. Document CM(2009)148, 2009. <https://wcd.coe.int/ViewDoc.jsp?Ref=CM%282009%29148>. Accessed 2011-12-18.
- [DWC-IGM 2011] Dynamic Working Coalition for Internet Governance Mapping: *Public interest representation in the information society – 2011 survey: Final data*. [http://idgovmap.org/survey\\_data/Public\\_interest\\_representation\\_in\\_the\\_information\\_society\\_-\\_2011\\_survey\\_final\\_data.ods](http://idgovmap.org/survey_data/Public_interest_representation_in_the_information_society_-_2011_survey_final_data.ods). Accessed 2011-11-04.
- [Eckl 2004] Julian Eckl: *Die politische Ökonomie der "Wissensgesellschaft"* (in German). Tektum Verlag: Marburg 2004.
- [ECOSOC 2009] United Nations - Department of Economic and Social Affairs - NGO Branch: *Introduction to ECOSOC Consultative Status*. <http://esango.un.org/paperless/Web?page=static&content=intro>. Accessed 2011-12-12.
- [Esterhuysen 2011a] Anriette Esterhuysen: *Re: [governance] Meeting report ECOSOC presentations*, posting to the Civil Society Internet Governance Caucus mailing list, 2011-08-03 17:10:08 +0200. Archived at <http://lists.cpsr.org/lists/arc/governance/2011-08/msg00031.html>. (The easiest way to access the posting is to follow this link, then click on the button on the gatekeeper page that comes up, then use the browser's "back" button, then reload.) Accessed 2011-11-07.
- [Esterhuysen 2011b] Anriette Esterhuysen: *Re: [governance] Meeting report ECOSOC presentations*, posting to the Civil Society Internet Governance Caucus mailing list, 2011-08-04 07:45:24 +0200. Archived at <http://lists.cpsr.org/lists/arc/governance/2011-08/msg00039.html>. (The easiest way to access the posting is to follow this link, then click on the button on the gatekeeper page that comes up, then use the browser's "back" button, then reload.) Accessed 2011-11-07.

<sup>130</sup> Source: Survey [DWC-IGM 2011], cell UQ107.

- [Goldratt 1990] Eliyahu M. Goldratt: *The Haystack Syndrome*. Great Barrington, MA, USA, 1990 (North River Press).
- [Goldratt 2004] Eliyahu M. Goldratt: *The Goal*. Third revised edition. Great Barrington, MA, USA, 2004 (North River Press).
- [Gross 2007] Robin Gross: *World Intellectual Property Organisation (WIPO)*. In: GISWatch: *Global Information Society Watch 2007 : Participation*, pp. 65-73. <http://www.giswatch.org/en/2007>. Accessed 2011-11-30.
- [Helfer 2004] Laurence R. Helfer: Regime Shifting: The TRIPS Agreement and New Dynamics of International Intellectual Property Lawmaking. *Yale Journal of International Law* 29 (2004), p. 1ff. <http://ssrn.com/abstract=459740>. Accessed 2011-12-17.
- [Hofmann 2007] Jeanette Hofmann: *Internet Corporation for Assigned Names and Numbers (ICANN)*. In: GISWatch: *Global Information Society Watch 2007 : Participation*, pp. 39-47. <http://www.giswatch.org/en/2007>. Accessed 2011-11-30.
- [ITU 2005] International Telecommunication Union: *The Internet of Things*. ITU Internet Reports 2005, executive summary. [http://www.itu.int/osg/spu/publications/internetofthings/InternetofThings\\_summary.pdf](http://www.itu.int/osg/spu/publications/internetofthings/InternetofThings_summary.pdf). Accessed 2011-11-24.
- [Malcolm 2012] Jeremy Malcolm: *Arresting the decline of multistakeholderism in Internet governance*, in this volume.
- [Malcolm 2008] Jeremy Malcolm: *Multi-Stakeholder Governance and the Internet Governance Forum*. Perth 2008 (Terminus Press).
- [Marshaw 2007] Jerry L. Mashaw: *Reasoned Administration: The European Union, the United States, and the Project of Democratic Governance* (2007). Faculty Scholarship Series. Paper 1179. [http://digitalcommons.law.yale.edu/fss\\_papers/1179](http://digitalcommons.law.yale.edu/fss_papers/1179).
- [McNamee et al 2011] Joe McNamee, Kirsten Fiedler and Marie Humeau: *Activist guide to the Brussels maze*. The EDRI papers, Issue 01. [http://www.edri.org/files/2012EDRIPapers/activist\\_guide\\_to\\_the\\_EU.pdf](http://www.edri.org/files/2012EDRIPapers/activist_guide_to_the_EU.pdf). Accessed 2012-01-27.
- [OHCHR 2008] Office of the High Commissioner for Human Rights: *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*. <http://www.ohchr.org/EN/AboutUs/CivilSociety/Pages/Handbook.aspx>. Accessed 20111212.
- [Patriota 2012] Guilherme Patriota : *TRIPs in DDA – Personal Perspective of a Developing Country Negotiator*. In: Pradeep S. Mehta, Atul Kaushik, Rashid S. Kaukab (eds.): *Reflections from the Frontline: Developing Country Negotiators in the WTO*, to appear, New Delhi 2012 (Academic Foundation in association with CUTS International).
- [Schombe 2011] Baudouin Schombe: *Re: [governance] Meeting report ECOSOC presentations*, posting to the Civil Society Internet Governance Caucus mailing list, 2011-08-03 17:09:32 +0100. Archived at <http://lists.cpsr.org/lists/arc/governance/2011-08/msg00033.html>. (The easiest way to access the posting is to follow this link, then click on the button on the gatekeeper page that comes up, then use the browser's "back" button, then reload.) Accessed 2011-11-07.
- [Schroeder 2009] Christopher H. Schroeder: *Public Choice and Environmental Policy: A Review of the Literature*. Duke Law School Public Law & Legal Theory Paper No. 247, 2009. <http://ssrn.com/abstract=1401375>. Accessed 2011-12-20.

[Siochrú 2007a] Seán Ó Siochrú: *United Nations Development Programme (UNDP)*. In: GISWatch: *Global Information Society Watch 2007 : Participation*, pp. 56-64. <http://www.giswatch.org/en/2007>. Accessed 2011-11-30.

[Siochrú 2007b] Seán Ó Siochrú: *United Nations Educational, Scientific, and Cultural Organisation (UNESCO)*. In: GISWatch: *Global Information Society Watch 2007: Participation*, pp. 48-55. <http://www.giswatch.org/en/2007>. Accessed 2011-11-30.

[Sweazey 2012] Paul Sweazey: *Introduction to Digital Personal Property*, in this volume.

[Yandle 1983] Bruce Yandle: *Bootleggers and Baptists: The education of a regulatory economist*. *AEI Journal on Government and Society*, Vol 7 (1983), no. 3 (May/June), pp. 12-16. <http://www.cato.org/pubs/regulation/regv7n3/v7n3-3.pdf>. Accessed 2011-12-20.

[Yandle-Buck 2002] Bruce Yandle, Stuart Buck: *Bootleggers, Baptists, and the global warming battle*. *Harvard Environmental Law Review*, Vol. 26 (2002), pp. 177-229. Reprinted in: Aynsley Kellow, Sonja Boehmer-Christiansen (eds.): *The International Politics of Climate Change*, Glos (UK) and Northampton (USA), 2010. Also available online: <http://ssrn.com/abstract=279914>. Accessed 2011-12-20.