

## **The JNC Response to the NetMundial Outcome Document**

The Just Net Coalition recognizes the efforts of the organizers of NetMundial to achieve an outcome document, and welcomes certain important steps forward in the final text, particularly the emphasis on managing the Internet in the public interest. However, even though the document is non-binding, it leaves us deeply concerned about the inclusion and phrasing of certain clauses (such as those on intellectual property and private policing on the Internet), the omission of key issues including cyber-peace, the lack of progress on net neutrality, the weak language on mass surveillance, and above all about how the concept of new types of multistakeholder processes with new kinds of outputs, lacking any clear definition, might be construed by different actors in the future.

For the Just Net Coalition, “democratic multistakeholder processes for Internet governance” means democratic processes with clear guidelines for multistakeholder participation in their respective roles and responsibilities. We are pleased that, thanks to numerous interventions, the NetMundial outcome was modified so that it does not favour the “equal-footing multi-stakeholder model” and thus a clear departure from the fundamental principles of the Tunis Agenda, as was proposed in the original draft of the outcome document.

While Brazil's intent in convening this meeting was laudable, it is worrying that vested interests were able to unduly influence the meeting by controlling key committees, and as well that an attempt was made to gain an international endorsement for a new model of decision making on international issues. This “equal footing multi-stakeholder model” would quite clearly and strongly favour the interests of big business. We were pleased that this attempt did not succeed, and we will continue to vigorously oppose all attempts to effectively impose the rule of big business, or otherwise undermine democracy.

We remain deeply concerned that processes such as the one used at NetMundial can easily lead to outcomes that are determined by the red-lines as well as the core interests of the most resourceful parties, which, at the global level, are often the US and big business. In the face of strong presence, resources and efforts by powerful interests, other voices may get forced on the back foot, even to the point of having to defend inclusion of what are universally agreed norms, such as happened at NetMundial.

The NetMundial outcome document contains certain positive elements, particularly in that it recognizes that the Internet is to be managed “in the public interest”. While falling short of the civil society demand for characterizing the Internet as a “global commons” or “public good”, it is a considerable progress on the WSIS language, which says that the Internet is “a global facility available to the public and its governance should constitute a core issue of the Information Society agenda”.

We hope that well developed and properly executed new democratic multistakeholder processes for Internet governance will explicitly foster a decentralized, free and open, non-hierarchical network of networks. Democratic governance processes will not implicitly favour the current trends of Internet governance which are leading us more and more towards monolithic, centralized

walled gardens. Such new processes must also address the appropriation of private data by governments and private companies and its subsequent monetisation by private companies.

### **The NetMundial Process: A New Beginning, the democratic multi-stakeholder model**

President Rouseff said that the NetMundial was to be a dialogue between Multilateralism and Multistakeholderism. Indeed the final outcome document in the roadmap section accepts “the full involvement of all stakeholders in their respective roles and responsibilities” and is a welcome restatement of the WSIS consensus and the Tunis Agenda. The outcome document has further held, “Governments have primary, legal and political accountability for the protection of human rights”. The NetMundial outcome thus outlines a new phase within the Tunis Agenda, creating openings for specific improvements in the model of decision making that will be followed for future Internet governance. Employing these new openings will involve clear definitions and guidelines for the “democratic multistakeholder process” model.

NetMundial was clearly an attempt at institutionalising multistakeholderism at the global level. This implementation of “multistakeholderism in practice” included the seemingly open format of “selecting” the organising committee members, the overtly open agenda setting, and the universally accessible online invitation for contributions. However, processes for consolidating these submissions and for finding common ground were somewhat contentious, and the initially open and participatory drafting process was in strong contrast to rather less open, endgame processes. On one hand, these could be seen (optimistically) as somewhat halting steps towards the delineation of a multistakeholder policy formulation process in an appropriately inclusive and ultimately democratic manner, or alternatively as providing evidence of fundamental flaws in how multistakeholderism becomes operationalized. In that sense, should the fact that the initial selection processes for NetMundial positions were flawed and lacked broader legitimacy, that the organizing processes themselves were evidently captured by certain interested parties, and that the multistakeholder drafting processes were, in the end, heavily dominated by big business producing certain unfortunate results, be viewed as flaws of an immature system or as features of a model which ultimately only works for the few?

In this regard, we see the reference to “democratic multistakeholder processes” in the document as a clear and compelling corrective. We now need to spell out what would constitute “democratic multistakeholder processes”. This of course includes the NetMundial call for further discussions on “different roles and responsibilities of stakeholders in Internet governance” and its two references to “respective roles and responsibilities”. This call should be taken as seeking an elaboration of what is a “democratic multistakeholder process” where, of course, corporations are not given equal status with citizens in decisions regarding public policy issues.

The Just Net Coalition believes that democracy can be ensured only if public policy decisions are made by or can be overridden through democratic processes and

actions which derive their legitimacy from citizens directly exercising their will, or from representatives or institutions who are also democratically accountable to the citizens they represent.

Article 21 of the Universal Declaration of Human Rights (UDHR) and Article 25 of the International Covenant on Civil and Political Rights (ICCPR) provide that everyone has the right to take part in the conduct of public affairs (and thus in public policy decisions) directly or through freely chosen representatives. Stakeholder based processes should help widen the participatory base for engaging with such decision making processes but such a model cannot give corporations rights in policy-making equal to those of people, which would be in violation of the principles of democracy outlined in the UDHR and ICCPR.

### **Areas where the NetMundial outcome document is not satisfactory**

We share the concerns of many civil society organizations regarding certain aspects of the NetMundial outcome document, see: <http://bestbits.net/NetMundial-response>.

Instead of a simple statement that mass surveillance is incompatible with the right to privacy and endorsing the "necessary and proportionate" principle, the outcome language has been watered down with qualifiers that do not go beyond the UN General Assembly resolution of November 2013, which was itself a compromise. However, we note that the NetMundial statement stresses that governments have primary legal and political accountability for the protection of human rights. Those rights must be protected online as well as offline, and globally as well as nationally, because the Internet is a global system, as noted in the NetMundial outcome document. Thus, governments must protect the privacy of the personal data not just of their own citizens, but also of the data of persons not directly subject to their jurisdiction. Human rights accountability of governments is global.

In the NetMundial outcome, there is no reference to cyber-weapons and cyber-peace. This is in spite of President Rousseff's call for addressing the issue of cyber-weapons.

Another significant omission in the document is that of net neutrality. Marco Civil – the Internet Bill of Rights -- in Brazil and the European parliament have both recently advanced a commitment to net neutrality. Unfortunately, it would appear that business interests were able to bury net neutrality in the “Future Plans” section of the NetMundial outcome document.

Two highly significant and in fact dangerous provisions related to copyright rights and copyright enforcement were introduced into the text at a very late stage on the basis of demands by business representatives. This happened well after it had been announced that new issues would be included only if there was consensus. Since clearly there was no consensus to add these provisions, they should not have been introduced into the NetMundial outcome document, and they are not validly part of it:

First, while references to the “right to access, share, create and distribute

information” exist in numerous UN documents on a standalone basis<sup>1</sup>, the reference to this right in the NetMundial document is limited to what is “consistent with the rights of authors and creators as established in law”. The right to share and communicate has now been circumscribed by the rights of “authors and creators”, which appears to be an attempt to expand copyright by adding something called creators to authors, whereas only authors are recognized in international copyright law. Also, we consider it unacceptable that in a normative document a human right is sought to be limited by whatever be the existing law, whether or not the law is human rights compliant. Our belief moreover is that the length of current copyright protection must be drastically reduced, for example to 15 years; and that non-commercial downloading of material under copyright must be made legal.

Secondly, the topic of Internet intermediary liability limitations, having been introduced to protect the freedom of speech of Internet users, has now been coupled with “private policing” for enforcing Intellectual Property. Specific text has been added encouraging “cooperation among all stakeholders” in order to “address and deter illegal activity” which is in fact, well understood as coded language for private policing by Internet Service Providers (ISPs) and other intermediaries.

It is interesting to note that these two points directly correspond to the two points on which civil society had disassociated itself from the OECD's Principles for Internet Policy Making two years ago.

Further, we see no reference in the document to the issues which President Rousseff referred to alongside issues of Internet access: i.e. the social and economic programmes that Brazil has introduced to respond to the needs of the poor. The Internet and the overall digital economy have become highly significant elements in the distribution and re-distribution of wealth, employment and opportunities both within countries and globally. Unfortunately, no reference was made in the outcome document to the measures which must be taken to ensure economic justice in the context of increased global penetration by the Internet and the digital economy.

Finally, we note that the NetMundial language on the IANA<sup>2</sup> transition is very weak and essentially approves the current approach towards the transition. That approach was unilaterally established by the US government, with no prior open multistakeholder consultations, and it sets preconditions which were not subject to any open discussions. While we welcome a transition away from unilateral US government supervision of the IANA functions, we cannot welcome the unilateral way in which the conditions for the transition have been set, nor the fact that the US government will unilaterally decide whether or not the transition will take place. Also, since a possible outcome of this transition is that the IANA functions

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<sup>1</sup> The WSIS Declaration of Principles affirms that “everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life...”.

<sup>2</sup> IANA, the Internet Assigned Numbers Authority, is responsible in particular for the administrative processing of changes to the root zone for the Internet's Domain Name System (DNS).

could be entrusted to ICANN<sup>3</sup> in a more permanent manner, it is not an example of good governance that ICANN itself seems to have been implicitly charged with managing the “open process with the participation of all stakeholders extending beyond the ICANN community” for “discussion about mechanisms for guaranteeing the transparency and accountability of those functions after the US Government role ends.”

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<sup>3</sup> ICANN, the Internet Corporation for Assigned Names and Numbers, is currently operating the IANA function on the basis of a contract with the US government.