Stakeholder legitimacy in Internet governance processes

Why it's important to discuss stakeholder legitimacy

The legitimacy of the outcomes of multistakeholder consensus decision-making relies not only on the fact that all interested stakeholders can participate in the process, but also that the participating stakeholders are, in fact, legitimate representatives of stakeholder needs and perspectives. As more organizations begin to use multistakeholder processes – particularly organizations that have previously relied on multilateral processes – there is an increasing need to address concerns that not all stakeholders have equal legitimacy in processes. Multistakeholder decision-making is about creating outcomes that, although they may not benefit all stakeholders equally, all stakeholders can support, as there is a common belief that all stakeholders have participated in good faith.

However, within some processes, there have been some expressions of doubt that all participants are equally legitimate. For example, for many governments – even those who are supportive of the multistakeholder model – have some reservations about the fact that individuals, who, without the need to consult with anyone else before participating or changing opinions, can participate as equals with representatives of governments, who are tasked with representing the needs and views of their entire citizenship and have little to no leeway in modifying their positions "on the fly". Elsewhere, other stakeholders express frustration that some participants use the mantra of "complete openness of participation" have disproportionate and undue influence on processes.

The risk is that these doubts and concerns – most of which are currently expressed in private – will, if not addressed, become public criticisms that can be used to undermine confidence in the legitimacy of the outcomes of multistakeholder processes.

In addition, in the context of the need to achieve the SDGs, the ability of well-resourced, but less representative, stakeholders to have disproportionate influence on multistakeholder processes hampers the ability to ensure that less-resourced stakeholders to have their own needs and positions considered in decision-making processes.

Background: How differences in stakeholder permutations can affect perceived legitimacy of stakeholders

Internet governance involves a range of different stakeholder groups that vary depending on the process and stakeholders participate in a variety of roles – from personal capacity, employees of organizations and governments, and as representatives of industry or interest groups.

In many processes, the level of representation is taken into account at an unspoken level – the positions and views of those representing groups of people

are considered to be more weighty, more legitimate, than the views of those speaking as individuals. In those same processes, however, and in other processes, the inputs of some individuals are given far more weight than other individuals. Often this is due to the respect they command due to their previous contributions or, in some cases, due to the fact they are louder, more assertive, or are able to dedicate more of their time (they may be retired, but still active in a personal capacity) and resources to travelling to events or being active on mailing lists. In addition, the WSIS language about "roles and responsibilities" means that some stakeholders believe they should have a larger role in specific processes than perhaps other stakeholders believe would be legitimate. For many stakeholders, there is also confusion about which stakeholder group they should identify as. Academia, for example, participates in the ICANN model as part of civil society, but in the CSTD environment, academia is grouped with the technical community.

Important note: much of the discussion about legitimacy overlaps considerably with discussions about accountability.

Four breakout groups for IGF 2016 workshop:

1. Is there a need to prove the legitimacy of stakeholder groups and their members, and if so, what are ways that legitimacy can be established?
2. Stakeholder groups and their configurations
3. Levels of stakeholder representation
4. How do stakeholders manage the participation of entities or individuals that are not deemed to have a high level of legitimacy in a process?

For details of the breakout group questions, see below.

Breakout group 1: Is there a need to prove the legitimacy of stakeholder groups and their members, and if so, what are ways that legitimacy can be established?
Internet governance-related organizations and event organizers often justify the legitimacy of their activities by pointing to the openness of their process and the number of participants involved in the decision making.

For some Internet governance-related events and processes, there are no legitimacy determinations made, with participation and membership completely open and self-asserted by members:

- ICANN meetings
- ISOC Chapters
- Membership of Civil Society Internet Governance Caucus

However, as the ICANN CCWG-Accountability Work Stream 2 is discussing, it may not enough for the parent entity to be seen as accountable (and legitimate), if its constituent parts cannot also be demonstrated to be accountable (and legitimate) to each other.

However, in most Internet governance settings outside ICANN, there are no formal methods by which stakeholder groups that interact with each other can justify and recognize each other's legitimacy in processes.

Questions:
- Is it useful to have a set of ways that stakeholders can justify their legitimacy to other stakeholder groups involved in the same multistakeholder processes as they are?
- How can the legitimacy of a stakeholder or stakeholder group be assessed (and should it be)? Possible ideas to consider:
  - Transparency of membership
    - Conflict of interest statements
    - Statements of interest
    - Endorsement by other members
    - History of participation in activities
  - Transparency of deliberations
  - Inclusiveness of deliberations
  - Source of resources (funding, travel support, income)

Online discussion document
Feel free to share your responses on the above questions at:
https://docs.google.com/document/d/1yHVnHoG-8eVoekwt-YL4fGeLC8FbWdjK0AABQ443Kb4/edit?usp=sharing

Breakout group 2: Stakeholder groups and their configurations

Part 1: Are the stakeholder groups we currently recognize in global Internet governance adequate?

Macdonald (2008) suggests that a "fundamental pre-requisite for the existence of a democratic stakeholder community [is] the existence of certain basic shared political values across the population in question". However, it is difficult to find basic shared political values even within each of the traditional stakeholder groupings of government, civil society and business, because each includes such wide variation within it (for example, see difficulties in ICANN's GAC and the Internet Governance.

Questions:
- Are the current main Internet governance stakeholder groupings, as defined in the WSIS Tunis Agenda, of government, private sector and civil society still relevant given that they now comprise such diverse memberships and have few shared values within each of them?

- How hard would it be to find new and more effective ways of helping stakeholders group themselves and represent their common interests?

- Could Internet governance benefit from looking at the other ways stakeholders are grouped in non-Internet governance settings? Examples:

  o UN Major Groups (Women, Youth, Persons with Disabilities, Indigenous Communities, etc.)
  o ICANN Advisory Committees and Supporting Organizations

Part 2: Is there a better way of enabling stakeholders to participate in multiple stakeholder groups and still be considered legitimate members of multiple groups?

While in our everyday lives, many stakeholders in Internet governance have multiple sets of interests that can mean they can be seen as members of more than one stakeholder group. However, in many circumstances, multistakeholder processes require stakeholders to identify as only one stakeholder group. For example, when:

- Registering for meetings that request stakeholder group affiliation
- Stakeholder groups are asked to nominate representatives for limited membership processes such as working groups

The risk, however, is that when a participant is identified by only one stakeholder group but they have multiple allegiances, other stakeholders may view the participant as not being a legitimate voice of the single stakeholder group they have had to identify as.

In addition, where a participant may feel comfortable in being identified as part of a particular stakeholder group in one process (for example, as academia within a CSTD process), they may feel that their voice is lost if they need to identify as broader civil society in another process that does not recognize academia as a distinct group.

Questions:
- Should there be looser restrictions on how people participate in processes that require stakeholders to identify with particular stakeholder groups? Should people be able to "tick multiple boxes"?
- If people or entities can "tick multiple boxes", how can such "multiple stake holders" participate in multistakeholder processes in ways that aren't viewed as undermining the purity of particular stakeholder perspectives? Can the presence of such "multiple stake holders" instead be seen as a strength, providing cross-over perspectives that can further legitimate the multistakeholder process?

Questions:
- Who identifies who is a member of a stakeholder group? The person/group wishing to be identified as a member of a defined stakeholder group, or the members already in the stakeholder group?
- Should there be a negotiation process between both parties (participant and larger stakeholder group they wish or need to be identified with)? If so, would this allow a stronger sense of legitimacy to be conferred on the members of the stakeholder group?

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Breakout group 3: Levels of stakeholder representation

Part 1: Should the input of a representative of many be considered more legitimate than an individual expressing personal views?

Internet governance and other Internet processes differ from many other non-Internet related processes in that individuals have always played a key role in Internet decision-making. This results from the earliest days of the Internet, when it was individuals who developed the protocols and standards that underpin today's Internet. The Internet professionalized, but never lost that early culture of encouraging individuals with good ideas and perspectives to be given equal air time as industry groups, interest groups, governments and other collective representations of views. In reality, however, there are

Question:
- If there should be "weighted" participation of stakeholders, how can it be achieved in ways that don't prevent small, but important outlying perspectives being excluded?

Part 2: Is it possible to identify varying levels of legitimacy of participants who are individuals?

The perceived legitimacy of individuals participating in Internet governance often boils down to their level of power and influence. Those who are well-known or contribute a lot can be perceived as more legitimate than quieter individuals who are only able to participate in sporadic events. This, however, can result in highly important stakeholders being excluded because they lack the basis of soft power that others possess. Forms of soft power that are utilized by individuals to gain greater perceptions of legitimacy by the community include:

1. Respect for experience and past achievements

Question:
- What happens when a past high achiever who has represented many is now speaking as an individual? Does this, or should this, affect how their input is accepted into a decision-making process?

2. Respect for position

In many technical Internet processes, such as IETF, there is the commonly held view that the only thing that matters in the development of technical standards and policy is the ideas being proposed - not the company the idea proposer works for, or where that person is in the organizational hierarchy. In other processes, position does matter and a position expressed by a CEO or a government minister will be taken more seriously than a position expressed by someone in a far more junior role.

Questions:
- Should it matter what job/role a participant has when it comes to listening to stakeholder positions? Is it possible to able to ignore the organizational position held by a stakeholder, given the majority of people participating in processes are doing so with the financial support of their organization or company, and that organization or company has specific interests that may be obscured if their employee's position is seen as irrelevant to their input?
- Does prioritizing individuals already in positions of authority marginalize new voices, especially from under-represented stakeholder groups (youth, persons with disabilities, stakeholders from developing regions, etc.)?

3. *Ubiquity of presence (well-resourced stakeholders can participate in many processes)*

Questions:
- How do you provide effective ways of enabling less well-resourced stakeholders to gain similar levels of influence as their more well-funded colleagues?
- Are there ways, other than providing financial resources, to raise the influence of less-resourced stakeholders?
- Are there ways to recognize omnipresent stakeholders and take their high levels of participation into account when evaluating all stakeholder input?

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Workshop group 4: How do stakeholders manage the participation of entities or individuals that are not deemed to have a high level of legitimacy in a process? Internet governance, and the Internet culture in general, see value in openness. However, this openness has sometimes resulted in disruptive behavior going unpunished, and bullying behavior resulting in disproportionate influence in the outcomes of decision-making processes.

Two current methods of dealing with stakeholder group members not considered legitimate are:

- Mailing list bans (often an action of last resort in civil society and technical community)
- Removal from official recognition (e.g. ECOSOC accreditation)

Questions:
- What other ways are used by the diverse range of Internet governance related groups to respond to participants who are not seen to be aligned with the stakeholder group's interests?
- Internet governance groups have been very reluctant to completely exclude disruptive participants. Are there other methods that could be used to help dampen the negative impact of participants with lesser legitimacy in processes?

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