



## **Policy Paper on the Outcome of WCIT-12**

The outcome of WCIT-12 (World Conference on International Telecommunications) held in Dubai in December 2012 was, to say the least, controversial. The lack of consensus was demonstrated by 55 member states opting to abstain, defer or vote against the final draft of the ITRs.

The Asia Internet Coalition (AIC) has an interest in the debate because our members are Internet companies- Access to the Internet and its availability in different economies and the laws and regulations governing content over the Internet are among our top priorities.

AIC has always welcomed the understanding that the ITU does not and should not involve itself in policies and regulations that involve content over the Internet and very much hopes that this message can be reiterated very clearly by the ITU and the member states.

### ***The Resolution and Ambiguity***

The WCIT-12 resolution has been interpreted in different ways by different parties. Some have noted that in cases of ambiguity of language in the resolution, they would be overridden by the words and meaning of the ITU Constitution.<sup>1</sup> Nevertheless, AIC remains concerned about the fact that a resolution could pave the way for unnecessary misinterpretation— an ambiguously worded resolution encourages and allows different interpretations to gain credibility at the member state level. That an appeal to an overriding Constitution should be necessary at all, in itself says something about the confused language in the resolution.

### ***The Resolution, the Internet and a Multi-stakeholder Approach***

One issue of considerable dissent at Dubai was over the apparent extension of ITU involvement into Internet governance issues. Specifically, the Resolution states that “all governments should have an equal role and responsibility for international Internet governance” and calls for the ITU and member states “to elaborate on their respective position on international Internet-related technical, development and public policy issues within the mandate of the ITU at various ITU fora.” This is clearly at odds with earlier assurances that the ITRs would not be about the Internet.

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<sup>1</sup> Joint APT-ITU Seminar on the Outcomes of WTSA-12 and WCIT-12, Thursday 7 March 2013, Bangkok, Thailand: Opening Address, Mr Malcolm Johnson, Director, Telecoms Standardization Bureau, ITU.

We are concerned that differences of opinion within the ITU could result in the politicization and polarization of attitudes towards the Internet at member state level. At the root the issue at stake is what is meant by a “multi-stakeholder” model of Internet governance. To our understanding, several – *maybe most* – member states signed the resolution on the understanding that “multi-stakeholder” did *not* imply a widening of state regulation over the Internet .

### ***The Resolution and a Consensual Approach***

The resolution raised red flags for this more consensual approach. One red flag was the choice of terminology. In resolving which “operating agencies” should be subject to the treaty’s rules the term “recognized operating agencies” which implies by past practice telecom companies, was replaced by “authorized operating agencies” which can all too easily be interpreted to include Internet companies. AIC understands that this is *not* the intention of several member states who signed up to the resolution, but it again creates ambiguity and could be used to snare many private operating companies

### ***The Resolution and More Red Flags***

Another example of the resolution that could be interpreted as extending the scope the ITU into Internet affairs is the reference to tariffing. The AIC strongly believes that the ITR should not be used to re-open past debates when the world has largely moved on.

A final issue that Mr. Johnson addressed at APT-ITU in Bangkok in March was a widespread concern within the Internet community that references to spam as “unsolicited bulk electronic communications” left much open to interpretation, including the implications for what may or may not be considered “consent”, for example, unsolicited information about network changes or new services may be most welcome and yet unsolicited, and to what extent this opened the door to content inspection. In answering these concerns Mr. Johnson made the following points:

Article 5A encourages collaboration on addressing network security so as to protect the international telecommunication network from technical harm. This article is subject to the human rights obligations expressed in the Preamble as well as Article 1 of the ITRs, which states that: “These Regulations do not address the content-related aspects of telecommunications.” As such, Article 5A promotes security measures that do not relate to content and calls for international cooperation in implementing already prevalent best practices. Article 5B encourages Member States to cooperate together to take the necessary measures to prevent spam and minimize its impact on international telecommunication services. Again, this article is subject to human rights obligations as well as Article 1 of the ITRs. Therefore, as is the case of Article 5A, the implementation of Article 5B cannot include measures based on content filtering but rather the many other technical measures which do

not use content filtering such as ITU-T X.1230/X.1240 series of Recommendations, and corresponding informative Supplements.

The AIC welcomes this reassurance, but again notes that the ambiguity of the language of the resolution and that not every policy maker or regulator in the world will read Mr. Johnson's clarifications.

In summary, the AIC strongly supports a middle-ground approach to these issues that avoids unnecessary politicization and polarization. We believe that many member states agreed to the resolution precisely in order to support a multi-stakeholder approach based on the middle-ground that involves all stakeholders in the conversation but leaves the Internet beyond the rules and recommendations of the ITU and its working groups.

### **Next Steps**

The ambiguity that presides over the interpretation of the revised ITR texts is potentially confusing and the AIC would like to encourage member states who supported the ITRs to in issue a statement of principle that clarifies their support for the multi-stakeholder approach, an approach that

1. Reiterates support for open access to the Internet free from restrictions on its lawful use
2. ITU should maintain its historical position on non-involvement with Internet issues
3. Support for a multi-stakeholder approach that seeks the middle ground of common interests in recognition of the economic and social benefits of an unrestricted Internet