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USCIB comments on WGIG report

The United States Council for International Business (USCIB), representing over 300 global corporations, professional firms, and business associations from all industry sectors, commends the efforts of the UN Working Group on Internet Governance (WGIG) to develop a concise report that fulfils its mandate.

(Paragraph 6) Since the business community has the lead role in the technical, economic and operational aspects of the Internet, USCIB agrees with WGIG that the need to maintain a stable and secure Internet is the guiding WSIS principle that is of paramount importance in this context. The private sector has succeeded in ensuring such stability and security and therefore the status quo appears to be compliant with this guiding principle. Private sector-led groups offer an opportunity for all interested parties, including government representatives to contribute to planning and cooperative activities that promote innovation, interoperability, quality, and security. Governments should encourage participation in such activities by their representatives and those of others to stimulate new capabilities, inclusive growth and development, and technical planning and coordination.

(Paragraph 10) USCIB commends and supports the working definition on Internet governance developed by the WGIG. USCIB believes that the working definition reflects the broad range of issues surrounding the Internet and its uses for which governments seek additional understanding and consultation. The working definition also responds to the interests of many governments by clarifying the various industry processes, non-governmental bodies and governmental institutions that currently shape outcomes on these issues. In doing so, it recognizes the full range of different organizations that are making the various policy, technical, and business decisions that affect investment in, and the development and use of the Internet. In supporting the working definition, USCIB does not in any way support the notion that a more centralized process for making those decisions is needed.

(Paragraph 11) At the same time, USCIB believes that the diverse nature of the issues themselves demonstrates why the question of appropriate “participation” in shaping those outcomes does not have a single answer that can be resolved through the creation of one overarching organization. For example, in some matters, governments may well need to take a leading role, particularly in cooperatively enforcing widely-accepted legal standards. But in the majority, experience with the Internet to date and the pace of innovation it has spawned, clearly show that the leadership and initiative of the private sector should be protected and promoted as much as possible.

Even when governments are the decision makers in deliberations, governments should ensure participation by non-governmental organizations and commercial entities in the deliberations leading up to those decisions. In other deliberations, they should defer to the private sector, recognizing that the private sector by definition considers the views of its consumers given that they make the ultimate decision as to whether a product or service is appropriate for consumption. This includes but is not limited to standard setting, developing self governance and establishing accepted practices in technical or other solutions to challenges. Distinguishing these circumstances, and exploring the options available where decisions are called for could be a subject of continuing and thorough consultations among all the stakeholders on a given issue. Yet these consultations can, and for the most part, do occur within existing governmental or private sector and non-governmental processes. USCIB notes that a new organization would only dilute or undercut the effectiveness of these existing approaches.

Priority issues and problems

(Paragraph 14) It is unfortunate that Section III does not make it clear that the discussion of the issues in the section does not reflect the consensus of the entire Working Group, but rather are drawn from the Background Report, which is not a consensus document. Much of the language in this section is overly broad or imprecise. In addition, several examples are included where the description of the issues seems to be at odds with the recommendations on specific policy issues in Section V of the report.

(Paragraph 14) Although the WGIG report is not a ‘negotiated document’ or ‘working draft’ for further development at WSIS, it provides valuable input to PrepCom-3 process. With this in mind, we have provided comments on the “priority issues” bulleted below in the order in which they were presented in the report. We do not believe, however that this ordering reflects the respective urgency of each issue as a WGIG recommendation.

- (Paragraph 15) *Administration of the root zone files and system*: USCIB does not fully agree with the formulation of the ‘problem’ regarding the administration of the root zone files and system. The bullet "unilateral control by the U.S. Government" is not an accurate characterization. ICANN controls and encourages the participation of a wide range of parties. The U.S. Government has contractual oversight, but neither actualize this oversight in the form of “unilateral control” nor would the exercise of such contractual oversight amount to this power. Further, the characterization that the 13 root servers are the only relevant root servers is inaccurate. There are over 80 root servers currently in operation, with more being added in the future; the majority of these are located outside of the U.S.
- (Paragraph 16) *Interconnection cost*: it is important to recognize that the problem is often one of national regulations that either do not promote competitive pricing or do not help to create transparency in telecoms costing and due to the lack of competitive ISPs in many countries, who can build and support a base of users and host content locally and regionally. The problem is often exacerbated by lack of competition in basic telecommunications infrastructure which includes regulations that are needed to promote competition in infrastructure which is consistent with the WTO reference paper. The problem definition and recommendations do not fully address the scope of what must change in affordability of user devices, creation/hosting/mirroring of content and also fails to recognize the role of emerging wireless approaches to local connectivity. There

is an underlying theme still that the Internet is like the telephony networks. Given the suggestions throughout the WGIG report and discussions related to Internet Governance that various issues should be given to governmental or intergovernmental entities, it should be pointed out that an intergovernmental entity has been working on international interconnection costs for more than 7 years. International infrastructure has grown significantly and costs have decreased where pro-competitive national policies or regulations exist. Investment and/or international infrastructure assistance are more likely in such enabling environments.

- (Paragraph 17)*Internet Stability, security, cybercrime*: USCIB does not agree with the problem as identified. There are multilateral mechanisms and tools that are beginning to address these issues. For example, the Cybercrime Convention of the Council of Europe (COE) is open to countries to join and provides a very good standard for countries to implement. The OECD and the UN General Assembly also offer guidelines on security, which countries can turn to for guidance on updating laws and policy in their country. Furthermore, many countries have existing memorandums of understanding (MOUs) for law enforcement cooperation, International Consumer Protection and Enforcement Network (ICPEN), etc. The issue is best addressed by more outreach and information sharing, which USCIB supports as needed, but not necessarily by new mechanisms. In fact, adding new mechanisms may deter the productive work of the existing mechanisms. A better approach would be to seek to increase awareness and involvement in existing mechanisms.
- (Paragraph 18) *Spam*- The statement that "there is no unified approach" implies that it is possible practical, or effective to create such an approach. USCIB does not agree. Work by the ITU, APEC and the OECD have indicated that anti-spam efforts require multiple approaches and that no "silver bullet" exists to address spam. Through the work of the WGIG on the issues papers that delved into the issue of spam, there was recognition that a unified definition is not possible given cultural differences and other elements. USCIB encourages the distribution and use of toolkits such as was called for by the OECD. Such toolkits recognize that there is no one single solution to spam and offer a range of complementary approaches with a role for all stakeholders. ICC and other organizations have developed resources and toolkits that are important contributions to resolving the issue of spam. In addition, USCIB notes that many countries have ISP associations and other private sector initiatives cooperating to address spam, and that technical solutions are being developed that hold promise for dealing with spam at the origin. Such initiatives should be supported.
- (Paragraph 19)*Meaningful participation*: The issue of meaningful participation should be considered in light of the appropriate participation given the mandates and structures of organizations. It is critical to address this issue in terms of cooperation/ exchange of information between the various bodies addressing issues related to the Internet. The phrase "there is often a lack of transparency, openness and participatory processes" only applies to some organizations and then only to varying degrees. It should not be interpreted that this is equally characteristic of all organizations. In addition, it is important to recognize that promoting cooperation between organizations can best be achieved via "neutral" mechanisms in which organizations can participate in a fair and equal environment.
- (Paragraph 20)*Capacity building*- USCIB commends the report's emphasis on capacity-building; if the different stakeholders have a greater understanding of both Internet policy and technologies they will be better able to address key Internet issues.

Unfortunately, the report does not contain many concrete recommendations on how best to build capacity. For example, as has been pointed out many times by many interested parties from all stakeholder communities, translation of existing materials and technical resource documents into multiple languages is often the first, and critical step to making information accessible. There was limited attention to examining what has worked to increase meaningful participation already in the developing countries. While funds to participate in remote meetings are one approach, existing approaches of bringing information and resources to developing countries to develop sustainable activities within the country itself deserve continued support. Many very worthwhile activities that are showing growing success could otherwise be disrupted particularly in developing countries. We recommend that the WSIS process focus more attention on this critically important area.

- (Paragraph 22) *IP addressing* – Internet resources should be available to meet the needs of stakeholders globally. Plans to allocate and distribute Internet resources should be based on engineering to meet those growing needs while keeping the risks to the stability and security of the Internet low. Private sector leadership in this area provides the opportunity for governmental and civil society participation and should be supported.
- (Paragraph 23) *Intellectual Property Rights*: The World Intellectual Property Organization (WIPO), the UN's expert body on intellectual property, has promoted and continues to examine appropriate intellectual property norms and procedures in a manner that takes into account the balance between the rights of rightsholders and the interests of other stakeholders, and furthers the shared interests of all. WIPO concluded the WIPO Copyright Treaty and the WIPO Performances and Phonogram Treaties in 1996, which were a direct response to the need for harmonization of international copyright laws in response to the growth of the Internet, recognizing the need for protections in the digital environment as the foundation for encouraging the availability of legitimate services and content. Moreover, since at least 1999 WIPO has dedicated resources to evaluating the role of IP in relation to e-commerce. Finally, WIPO's work has shown great attention to the role that IP plays in development, and WIPO is currently engaged in a lively debate on the relationship between IP and development, in addition to its ongoing activities to provide outreach and technical assistance to developing countries. With this in mind, USCIB believes that any discussions related to IP should take place within WIPO's current and future work programmes.
- (Paragraph 24) *Freedom of Expression*: USCIB strongly supports Human Rights and freedom of expression as contained in the Universal Declaration of Human Rights and the WSIS Declaration of Principles.
- (Paragraph 25) *Privacy*: Neither APEC nor OECD, which have developed and promoted international guidelines, mandate legislation to address privacy concerns. Adequate protection of data should be ensured; however, there are different ways of doing so, including self regulation, which address privacy in the context of issues and preferences that are frequently national or regional in nature. The phrase “there is a lack of national legislation” could suggest that all countries must have legislation. Some countries may not have omnibus legislation in light of the needs and collective desires of their citizens. However, some countries do have such legislation.
- (Paragraph 25) Furthermore, USCIB believes it is incorrect to characterize the WHOIS database as failing to protect personal data. In the generic Top Level Domains, all public access to personally identifiable data in WHOIS is based upon the acknowledgement and agreement of the registrant. There has yet to be any definitive

finding of conflict between this long-standing policy and the privacy legislation of any country. It is important to note that contractual provisions between ICANN and domain name registrars also allow and encourage registrars to adopt measures for enhanced protection of privacy to take into account special circumstances.

- (Paragraph 26) *Consumer rights*: Differences in culture and “conflict of laws” makes achievement of a global standard for consumer rights difficult. However, international cooperation may be possible among some countries and regions and indeed the OECD and APEC have developed guidelines for consumer protection in the context of e-commerce.
- (Paragraph 27) *Multilingualism*: USCIB agrees with the WGIG report that there is great value in expediting progress toward multilingualism in both content on the World Wide Web, and in the use of non ASCII character domain names. However, it cautions that it’s important to acknowledge that true progress must take into account the technical and other complexities of implementing internationalized domain names, including agreement on official language tables. Success in this area rests in substantial part on working with all organizations currently engaged in developing solutions including the browser /software development community.

Roles and Responsibilities

(Paragraph 29) The governance of the Internet is a cooperative and collaborative effort amongst all stakeholders. The section on roles and responsibilities does not adequately highlight the shared nature of the roles and responsibilities of all stakeholders.

(Paragraph 30) *Governments*

- The list of topics discussed in relation to Internet governance was extensive. Most of them would not require the government roles of overseer, treaty maker and/or developer of best practices. The list in paragraph 30 might imply that these functions were required in all areas.
- “And applications” should be added to the end of “Governments can promote access to ICT services and applications.” Governments can promote access to ICT services and applications through public-private partnerships in the short and medium term and through the development of an appropriate policy framework in the long-term.
- In addition to combating cybercrime, governments can promote a culture of security through increased awareness and other programs

(Paragraph 31) *Private sector*

- Business has many other critically important roles and responsibilities that were not included in the WGIG report:
 - Innovate, invest, build, operate and maintain infrastructure, applications and services
 - Foster human capacity building in and through ICTs (education and training)

Proposals for Action

- (Paragraph 35) WSIS should focus on the conclusion of the group identified in paragraph 35, encouraging each group to consider possible enhancements or adjustments to existing arrangements to make them more in line with the Geneva criteria.

- (Paragraph 35) As stated earlier, the overarching principle must be to maintain a stable, secure Internet that functions consistently. No changes can be made that create a disruption in that stability and security, or that have the potential of such disruption.

(Paragraphs 40-47) Forums:

- A variety of existing organizations are addressing issues related to the evolution of the Internet and are responsive to its dynamic needs and its applications. These organizations provide forums for discussion and have liaisons between each other, as appropriate. The Internet was designed to be managed/coordinated in a decentralized fashion without the need for “centralized” control. Certainly, it has worked that way for many years and today is bringing the benefits of the Information Society to people around the world, improving their quality of life. USCIB supports efforts to increase awareness of the work of existing organizations and to promote greater participation as appropriate in them. There may, in some cases, also be benefits from issue-specific, time-limited forums sponsored by, and accountable to, existing expert organizations, including private sector organizations.
- The WGIG has demonstrated the overlapping involvement of many entities and stakeholders in most issues related to the Internet. Thus, it is important that any issue-specific forum, as described above, be flexible enough to encourage greater information exchange across organizations and stakeholders on issues that may be addressed by existing organizations but that have a horizontal cross-cutting nature. This could actually promote cooperation and collaboration and thus promote greater efficiency. However, to do so, it would have to add value and be a neutral forum that could facilitate bringing all the stakeholders and existing institutions and organizations together as equal partners to promote cooperation.
- USCIB supports using existing organizations for informational and educational forums. USCIB supports increased participation and outreach especially at regional, sub-regional, and national levels amongst all stakeholders.
- USCIB does not support enabling further debates related to issues addressed by existing expert organizations, other than within those organizations. This would be a duplication of costs and resources and could damage productive and vital work already underway, or just emerging to address ICTs access, the real reason for the WSIS. Where there is a need to exchange information on a specific issue addressed by multiple organizations and stakeholders, the relevant organizations should jointly convene a meeting for discussion of that issue. Such meetings should be limited in focus and function to information exchange and enhancing awareness of ways to participate in existing forums. It is important that any forum promote cooperation, collaboration and greater efficiency without undercutting the work and initiative of the existing organizations themselves.

(Paragraphs 52-70) Global Public Policy [Models 1-4]

- USCIB does not believe that any of the models proposed are appropriate in providing the needed stability and security for the Internet. The important roles of the many organizations in a decentralized manner needs to be recognized.
- USCIB underscores that multi-stakeholder discussions should take place in neutral fora in which all stakeholders are allowed and encouraged to participate equally.

- Any multi-stakeholder discussions and issue-specific forums, as described above, should be funded in a way that does not create barriers to participation for governments, civil society or business.

(Paragraph 71) Institutional coordination: USCIB supports the recommendations in this section.

(Paragraph 72) Regional and national coordination: USCIB supports the recommendations in this section.

Recommendations to address Internet-related issues

- (Paragraph 76) *Administration of the root zone files and root server system of the DNS:* USCIB questions the need for changing the root server system. In fact, "mirror" root servers continue to be added to the original 13 root servers and approximately 80 mirror root servers, as discussed earlier. Restructuring of the core architecture must be considered carefully and be based on actual substantive needs. In fact, there is no clear technological path to such restructuring. And, any disruption of the Internet's functioning would harm individual users, businesses, and governments around the world.
- (Paragraph 78) *Interconnection* : see bullet 2 section one.
- (Paragraph 79) *Internet stability, security and cybercrime:* USCIB supports the recommendations in this section but underscores the fact that many organizations are already working on these issues and have developed substantive and important arrangements and procedures. Cooperation and information exchange should be the emphasis of future activities.
- (Paragraph 80) *Spam:* USCIB supports the recognition of the need for a "toolkit approach" and efforts of all stakeholders. USCIB notes the OECD efforts including their global outreach program to non-OECD countries, and recent industry efforts to combat spam as mentioned above. The USCIB believes that PrepCom-3 should complete drafting of the WSIS text and that any attempts to develop a separate annex on spam at WSIS would not be appropriate.
- (Paragraph 81) *Freedom of expression:* Measures to provide security and combat crime need to be implemented with due respect for human rights principles. This will require careful and continuous consideration of these issues to achieve the proper balance.
- (Paragraph 82) *Meaningful participation in global policy development:* USCIB supports the participation, as appropriate, of all stakeholders in intergovernmental and international organizations, particularly from developing countries. USCIB raises the question of how the existing international funding mechanisms identified in the Report of the Task Force on Financial Mechanisms can be utilized to increase meaningful participation, within nations; regionally, and in international activities.
- (Paragraph 83) *Data protection and privacy rights:* The WGIG Report recommendation for revising the WHOIS database to take into account local privacy legislation is already being addressed within the ICANN framework. ICANN's Generic Names Supporting Organization (GNSO) is involved in a thorough policy development process to address this particular issue. The GNSO will soon be presented with a policy recommendation to establish a process for resolving conflicts, if any arise, between a domain name registrar's (or registry's) contractual obligations to ICANN regarding WHOIS, and

national privacy legislation applicable to that registrar (or registry). Once implemented, this policy may be fully responsive to WGIG's expressed concern.