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**Dispatch from the Front Lines
of the ITU Convention
Fundamental Internet Precepts Debated**

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Even for those who possess a strong working knowledge of telecommunications law, experiencing an international conference such as the International Telecommunications Union's (ITU) Plenipotentiary Conference in Antalya, Turkey can best be described as "an entirely different world." The conference is held every four years in order to transact the overall business of the ITU and to add, delete and update the organization's governing documents and implementing regulations. Though I have worked on international press freedom and related telecommunications issues for several years, attending an official conference requires knowledge of more than just the underlying law and policy. One must also navigate sensitive international political and diplomatic issues which constantly obstruct seemingly straightforward solutions. I often contemplated this fact as the most obvious answers were dragged through days (and nights) of negotiation until compromises were reached that would accommodate everybody.

This year's ITU Plenipotentiary Conference was a somewhat new experience even for grizzled veterans of the international telecommunications arena due to an intense focus on matters related to the Internet. In addition to the usual ITU committees dealing with structure, budget and other organizational tasks, the Plenipotentiary Conference featured a special "working group" related to implementation of policies agreed to during the two-phase World Summit on Information Society (WSIS). In particular, I became involved in negotiations over two resolutions which would affect online content, extending the potential reach of the ITU beyond telecommunications and into areas affecting television, radio and even newspapers. These related to network security and to internet domain names and addresses.

Network Security

Conference Resolution 130 proposed changes to the ITU's role in promoting and preserving security on the telecommunications network. The ITU has traditionally focused on matters related to the physical telecommunications networks. On its face, "network security" relating to the Internet was well within the purview of this organization. However, an active ITU could also negatively impact freedom of the press and freedom of speech on the Internet by allowing ITU Member States (nations of the world) to increase security in the form of "firewalls" which are often used to reduce access to the Internet within domestic borders. While undertaken in the name of protecting critical infrastructures from unsolicited commercial attacks which can cripple

the telecommunications network, these security measures can often be put to malicious use by countries seeking to reduce access to the Internet and the exchange of ideas. Adoption of the wrong language relating to network security could also have the adverse result of explicitly condoning some form of content restriction. These fears, while unrealized, were not unfounded.

The initial language of Resolution 130 called for the ITU to support “building confidence and security in the use of ICT’s, including *information and communication network security*” (emphasis added). China – one of the leading innovators/offenders in the use of firewalling to censor speech – tried to identify the ITU’s role as consisting of both (1) the technical measures protecting the network itself and (2) the protection of “information security.”

Several members of the United States delegation – myself included – recognized this as language that was capable of abuse when put into the wrong hands. Intense discussion and redrafting efforts dragged on for five days as the United States delegation opposed inclusion of the term “information security” and any references to “preventing illicit content” as part of this Resolution.

The debate broke down along rather traditional lines, with the United States facing off against the Russian, Chinese and Cuban delegations over this language. What was lacking was any measure of support for the US point of view from European nations. Most of the Western European democracies should have, on principle, supported the United States; yet, despite my entreaties and those from other members of the United States delegation, many were simply unwilling to undertake any political risk toward that end, instead allowing the United States to shoulder the burden of negotiating this provision. The representative of the United Kingdom eventually spoke out, not in favor of one alternative or another, but simply to state that the effect of the term “information security” could be mitigated “within its mandate” as a qualifier. We had discussed this as an acceptable alternative, but hoped that it would not be the final result.

Just when it looked as though no agreement would be reached, there was a last minute consensus which proved very favorable to keeping the ITU and Member States out of information control. While not the best language, “Strengthening the Role of the ITU in Building Confidence and Security in the Use of Information Communication Technologies” is a positive description of the ITU’s future involvement in security issues, as it suggests the ITU will not undertake a formal legislative role but will focus on encouraging technological innovation by Member States.

Internet Domain Names and Addresses

Another important Internet-related issue was the “Management of Internet Domain Names and Addresses,” embodied in Conference Resolution 102. In this document, the ITU noted the growth of the Internet as a prime means of communication to fuel knowledge, information exchange and understanding. The ITU’s role in this area was widely acknowledged during WSIS. However, Resolution 102 also noted that the growth

of the Internet has generally been market-driven by the private sector, and has been left largely to the various countries as well. Thus, the matter of internet domain names and addresses could be boiled down to two issues:

Will the ITU try to take an active role for itself or will it simply try to reserve sovereignty for Member States?

How far will the ITU's reach extend: simply to domain names and addresses or to resources and other management issues as well?

With regard to the first, the ITU limited itself to offering a platform for encouraging discussions and disseminating information with regard to Internet domain name and address distribution. The ITU would continue to assert itself forcefully and supportively in the activities of the Internet Governance Forum and encourage Member States to do the same. Because each nation must have sovereignty over its own Internet domain naming system, countries should be prohibited from interfering with the decisions of other nations.

The latter issue was also resolved favorably. While the ITU could possibly have opened the door to a greater role for itself and individual Member States in all aspects of Internet management, it did not. There was some discussion of concern to the ITU which related to whether this resolution would apply simply to "Internet Domain Names and Addresses" or the broader "Internet Resources." It was a relief when the compromise language "Internet domain names and addresses and other Internet resources within the mandate of ITU" was reached, with the emphasis being that the ITU should stick to telecommunications issues. This was defined by some as "one of the defining issues of the conference." This was accomplished with a remarkable lack of stress and only one late-night meeting of an ad hoc committee on the issue.

Suggested Responses Begin at the Grass Roots Level

There is no doubt that the ITU will remain involved in Internet governance. It has already scheduled agenda items related to this topic for upcoming conferences that will be held before the next Plenipotentiary in 2010. Thankfully, the ITU recognizes that its role is necessarily limited to that of a facilitator and organizer, not legislator.

It is important that anyone with an interest in continued freedom of speech on the Internet carefully monitor actions by the ITU and other international organizations on international Internet governance. As I learned at the Plenipotentiary Conference, even observers play an important role. The structure of an ITU-related event is such that much of the key drafting and discussion is done on an informal basis, often outside of the organized committee or general sessions at which only the Member States or Sector Members can speak. Thus, anyone with even an indirect role in international telecommunications matters can benefit from having a representative at these events to informally participate in the drafting process. The presence of corporate or non-governmental entities is enough to ensure that those with an official role curtail wide-

ranging statements. But the value of experience cannot be overstated – the procedures and protocols in play necessarily relegate those with no firsthand experience at an international conference of this sort to the sidelines.

Similarly, it is important to be aware of legislative actions at the domestic level, as many nations see no problem with protecting “information” on the Internet. As telephone service and the Internet continue to converge across the world’s communications networks, so too will the ability to promote and restrict messages. Those faced with indeterminate language related to security, national sovereignty over the Internet or the role of nongovernmental organizations in promoting a free telecommunications network should feel free to contact me for more advice on how to increase their exposure and impact at the international level.