

Open, Multistakeholder, and Free: the OECD Principles' Vision of Internet Policy

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Internet governance is an increasingly hot topic – just this week, FCC Commissioner Robert McDowell [warned](#) [2] against a potential grab by the International Telecommunications Union for formal regulatory authority over the Internet. To date, the Internet has been exempted from ITU regulations, which historically have focused on telephone and radio. Commissioner McDowell is right: Shifting Internet governance to this top-down, prescriptive model would be a massive upheaval of the decentralized, multistakeholder policy foundation that has, for decades, fostered the development of the open Internet.

The ITU is far from the only entity considering questions of Internet governance. The past year saw various international [bodies](#) [3] and intergovernmental [summits](#) [4] taking up the broad issue of global Internet policymaking. [Multiple](#) [5] [proposals](#) [6] of guiding principles for the development of Internet policy were proffered in 2011; among these, the [Principles for Internet Policy Making](#) [7] formally adopted as a Council Recommendation by the Organization for Economic Cooperation and Development in December 2011, are some of the best guidelines – for governments, private actors, and others engaged in Internet governance activity – in the priority they place on maintaining an open and free Internet.

These principles, which were debated and initially [agreed to](#) [8] last June, have been adopted by the OECD's 34 member nations and represent an important contribution to the developing thinking on Internet governance. The Internet has grown up under a lightweight regulatory system that emphasizes user empowerment and self-regulation to enable policy to keep pace with technological change. The OECD principles seek to preserve this approach and take a strong stand against any effort to establish a formal international regulatory or treaty regime – including the efforts at the ITU – to govern the Internet.

Recognizing that inflexible international regulatory regimes risk undermining the growth of the Internet, the OECD Principles do not prescribe specific policy solutions. Rather, they outline overarching guidelines for Internet policy and indicate that proposed solutions to any specific online challenge – be it privacy, online child safety, intellectual property, cybersecurity, or any other matter – must fall within these parameters. CDT has identified three overarching themes within the Principles that provide an important framework for ongoing Internet policymaking:

Commitment to Openness

The Principles are infused with a strong commitment to maintaining the openness of the Internet, beginning in the preamble: "The policy-making principles in this communiqué are designed to help preserve the fundamental openness of the Internet while concomitantly meeting certain public policy objectives. . . ." This emphasis on openness is echoed throughout the document, which sketches a broad concept of openness and credits that openness in large part for the success and growth of the Internet as a medium for communication, innovation, creativity, and economic growth.

Respect for Human Rights and the Rule of Law

The document also foregrounds the intention that the Principles will promote human and fundamental rights and the rule of law: "Any policymaking associated with [the Internet] must . . . be grounded in respect for human rights and rule of law." While the Principles do not cite to specific human rights instruments, OECD members are bound by international human rights standards, including the [International Covenant on Civil and Political Rights \(ICCPR\)](#) [9] and, for European members, the [European Convention on Human Rights \(ECHR\)](#) [10]. Private actors, too, bear human rights obligations when they engage in self-regulatory or multistakeholder initiatives where the

government is not a party. Under the international human rights framework, businesses have a [responsibility](#) [11] to respect [human rights](#) [12], which requires businesses to actively mitigate human rights harm that may flow from their operations.

"Respect for rule of law" in this context means respect for procedural rule-of-law norms. As a term of art, "rule of law" refers to systems of governance that incorporate due process protections, enact and administer laws in a public, transparent, and non-arbitrary fashion, and provide clear notice of the law to all actors. (World Justice Project publishes a yearly [Rule of Law Index](#) [13].) Thus, the OECD Principles clearly acknowledge that Internet governance activity does not occur in a vacuum, and that stakeholders must honor their preexisting commitments to fundamental rights and rule of law norms in any policy they develop.

Support for Multistakeholder Processes

The Principles also clearly favor using decentralized multistakeholder (MSH) governance mechanisms to develop Internet policy, offering a variety of strategies: In addition to voluntary codes, user empowerment, and light regulation, the principles recommend improvements in law enforcement cooperation, continuance of non-governmental, voluntary, and consensus-driven technical standards bodies, and appropriate deference to market-driven efforts to address shared Internet security challenges. This mix of strategies for Internet governance has historically supported openness, innovation, and growth on the Internet in a flexible and scalable way.

The Principles do leave many questions about the MSH model unanswered. For example, the Principles do not offer guidance as to when it would be appropriate for private multistakeholder bodies to engage in policymaking, when government and private stakeholders should act in concert, or when policy decisions must be reserved for government alone. Given the potential impact of governance decisions on the fundamental rights of Internet users, there is an urgent need to better define these contours. There are also important questions about how best to ensure the meaningful participation of civil society groups in multistakeholder processes, given resource restraints, limits in technical expertise, and often imbalances in power. We raise many of these questions in more detail in a companion [post](#) [14] and [paper](#) [15].

The OECD Principles are not an end to themselves; rather, they serve as a useful reference point, a common vocabulary and set of commitments, for governments, civil society, industry, and others to use in the coming years of policy development. As discussions of how to interpret and implement the Principles develop over the next few years, it is crucial that the three overarching themes woven throughout the Principles – commitment to openness, respect for human rights and rule of law, and support for multistakeholder processes – continue to guide all those involved in the complex but critical process of Internet governance.

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[6] <http://einclusion.hu/2010-04-17/internet-principles-in-brazil/>

[7] <http://www.oecd.org/dataoecd/11/58/49258588.pdf>

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[9] http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en

[10] <http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/>

[11] <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

[12] <http://www.oecd.org/dataoecd/43/29/48004323.pdf>

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