Europe and the Internet in a global context

– What future, what challenges ahead?

The Internet is the lifeblood of all our activities today, an essential part of life in Europe, touching everything we do, be it buy online, communicate with our friends, and yes – also with public administrations.

The Internet is shared across national boundaries and has become a synonym for innovation. The Internet economy is expected to grow almost 11% in the G20 markets, with a contribution to GDP rising from 4.1% in 2010 to 5.3% in 2016.[1] For the EU, this is well above the overall GDP growth rate. This is an estimate; exactly because of the no-borders nature of the Internet, we are not fully able to quantify its effect on our economies. I am convinced that the real effect is even higher - because the Internet and digital are everywhere.

I also insist that we need to keep an Open Internet. But we need to make sure that everybody is in to help keep it open. This can only happen by international cooperation. Dilma Roussef has made this her cause at the last UN General Assembly. I will make sure that Europe plays its part. But I will also make sure that Europe has its stance.

Already two years ago, at the G8 summit in Deauville, the urgent need for stronger international cooperation on Internet matters was clearly put on the table. But have we delivered? There has certainly been much talk but not as much ability to bridge the North-South or East-West gulfs. In the EU, we see it is our responsibility to cooperate with and help build capacity in the developing world. This is why I recently put forward the idea of a Global Internet Policy Observatory, to help more actors (like developing countries) participate in Internet governance more effectively, through better access to key information.

Governance of the Internet

It is widely recognised that the early historic success of the Internet was to large extent a consequence of the unregulated nature of the nascent technology. Over the past decades, however, this hands-off approach was progressively replaced by a variety of approaches to Internet governance, carried by several national and international institutions with various – sometimes overlapping – claims to responsibility for Internet governance. A number of meetings have issued declarations on principles of Internet governance, for example the 2003-2005 World Summit on the Information Society[2], the 2008 OECD principles on "Internet policy-making"[3] and the 2011 G8 Deauville Communiqué[4].

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[1]   See BCG,
https://www.bcgperspectives.com/content/articles/media_entertainment_strategic_planning_4_2_trillion_opportunity_internet_economy_g20/

[2]   See http://www.itu.int/wsis/index.html.

[3]   See http://www.oecd.org/internet/innovation/48289796.pdf.

Principles-based frameworks are useful sign-posts in an on-going and evolving global debate on a rules-based approach to Internet-related policies. At the same time, there is a clear risk that fragmented, ad-hoc and sometimes purely reactive approaches to Internet-related policies and governance create barriers to future economic competitiveness.

> • Is there a need to move toward one global principle-based framework?

Since the 2nd phase of WSIS in Tunis 2005, the discussion has moved on. The IGF is a living example of a successful implementation of the Tunis Agenda. Yet, we are not sure about its future. Intensive international work is on-going on different governance strands; to name but a few: UN CSTD Working Group on Enhanced Cooperation[5]; the Internet Society ISOC's consultation[6], ITU Council Working Group on Internet public policy matters; ITU on WSIS Action Plan in preparation of the WSIS+10 Summit; ICANN strategy panels.

> • Are we on the right track towards a system of governance on an equal footing?

ICANN is an important pillar of the Internet governance ecosystem that should have global accountability. Recently we have seen a move towards increased internationalisation.

> • Does the process of internationalisation of ICANN go far enough?
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> • How can a move from unilateral to multilateral accountability be realised?
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> • How do you see the role of governments within the GAC?

Architecture matters

The Internet should remain one single network of networks, where every node can communicate with every other. But there is nothing wrong with local or regional Internet traffic being routed close to home. This makes sense, both technically and economically. Events this summer have made everybody, even the not-so-digital, painfully aware of the omnipresence and the power of what can be done with the Internet. Some have reacted by calling to withdraw inside national Internet borders or diversification of physical infrastructure.

> • Do such calls pose a risk to the 'One Internet' principle?
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> • To what extent are the current debates on Internet governance sufficiently focusing on who controls key physical and logical resources (e.g. where does the majority of the traffic go to, who controls major Internet exchange points, how do key standardisation efforts influence the balance of power among stakeholders?

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[4]   See http://ec.europa.eu/commission_2010-2014/president/news/speeches-statements/pdf/deauville-g8-declaration_en.pdf.

[5]   http://unctad.org/meetings/en/SessionalDocuments/2013_WGEC_Questionnaire.pdf and http://unctad.org/meetings/en/SessionalDocuments/WGEC_5_2013_Presentation_Chair.pdf

[6]   see http://www.internetsociety.org/news/internet-society-launches-questionnaire-multistakeholder-participation-internet-governance

> - How can the risk be limited that separate network infrastructures co-exist or can be isolated from one another, thus undermining the One Internet principle?

The multi-stakeholder approach

It is widely recognised that the multi-stakeholder model is an important factor for the success of the Internet. I fully support this model. But it is not enough to praise the model; we should help and reach out to those regions where the multi-stakeholder process is in its infancy. This is an obligation for all, not only governments, but also business and civil service as well.

To be sustainable, the multi-stakeholder model also needs to respond to some basic requirements. Already back in 2011, I have said that the multi-stakeholder process must be transparent and guarantee accountability. Have we made sufficient progress in identifying a set of minimum criteria? In my view, stakeholder processes must as a minimum be:

- Transparent. All stakeholders must have meaningful access to and information on the organisational processes and procedures under which the body operates. This should allow in particular prevent any proxy activity for any silent stakeholders.

- Balanced and Inclusive. Those responsible for an inclusive process must make a reasonable effort to reach out to all parties impacted by a given topic, and offer fair opportunities to participate and contribute to all key stages of decision making, while avoiding capture of the process by any dominant stakeholder or vested interests.

- Accountable. This implies that the decision-making process includes clear, public commitments to give regular account to its stakeholders or independent oversight bodies, and to allow any party to seek redress.

Multi-stakeholder organisations that play an essential role for the functioning of the Internet should demonstrate that they are responsive to stakeholders, including governments. Of particular importance next to naming and addressing is work on protocols and standards and the legitimacy and transparency of the relevant processes.

> - Do you think that the current multi-stakeholder model has enough legitimacy – both regarding process and stakeholders - given the fundamental impact of the Internet on our societies?
> - How can capture of the process by vested interests be prevented?
> - Where does the model need to be improved?

The Internet as a legal space

Businesses and citizens need legal certainty and a level playing field when acting in the global Internet space. The danger of fragmentation does not limit itself to the techno-geographical space on the map of the Internet. We also have to overcome legal fragmentation on the Internet. The answer cannot be that one single legal system should be dominant on the Internet. On the contrary, here again we have to cooperate globally to find workable solutions. Traditional treaty-based approaches tend to be long, thus leaving a gap

in the meantime. But why should it be always the state alone that has the answer? Other stakeholders can make valuable contributions and be partners for timely, pragmatic and flexible legal instruments.

For this approach to be truly sustainable, we need to strengthen our reflections on the extent to which we can reasonably expect rules from only one part of the world to be automatically applied to everyone else.

The Internet exists beyond any national boundaries, and this poses a series of unresolved challenges for the application of law based on national jurisdictions or indeed international law. Extraterritorial application of national law has led to a number of contradictory legal decisions emerging from around the world.

Many activities on the Internet are increasingly governed by contractual arrangements between private companies and users on the Internet. Taken together with a lack of clarity on which law applies, legal uncertainty is potentially one of the major barriers to the future development of an innovative Internet. The two main questions that must be addressed are the inherent cross-border, cross-jurisdictional nature of the Internet and the conflicts between local law and private norms and requirements.

It is time to start an in-depth reflection on the future of international law and the Internet.

> - In your view, is the current framework of international law sufficiently suited to the Internet?
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> - Which possible areas for improvement do you see as the most urgent?
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> - How do you think that discussions and solutions to these challenges should be designed?