

NETmundial Initiative Transitional Committee:

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Dear Members of NETmundial Initiative Transitional Committee,

ICC BASIS writes in response to the NETmundial Initiative (NMI) announcement on 6 November 2014. ICC BASIS members agree with the conveners of the NETMundial Initiative (NMI) that there is a need to work together in a collaborative fashion toward developing solutions for pressing Internet Governance issues. However, ICC BASIS has concerns as to how this relatively new initiative will feed into already existing efforts.

To begin, we feel strongly that the Internet Governance Forum (IGF) is the appropriate forum for the exchange ideas and information, which in turn raises awareness and drives toward consensus and progress on Internet Governance issues. The bottom-up process for planning, executing, and participating in the IGF reflects the core tenets of the multistakeholder model. There has also been significant commentary online, including by some of the Internet governance (IG) community's most respected organizations such as the Internet Society (ISOC), regarding the inconsistencies between NMI's processes and those that are generally regarded as important for a multistakeholder, bottom-up, decentralized, open, transparent, and accountable selection and discussion format. ICC BASIS agrees with many of the views expressed.

Based on the information available to date ICC BASIS members oppose the NMI as established, conceived, and structured. The process that has led to the establishment and structure of the NMI was not multistakeholder in that the creation and scope of the NMI appears to be largely conceived through closed conversations with only a few stakeholders present. Our members also have serious concerns with the lack of clarity regarding the rules of procedure for the actual work of the NMI. With this in mind, ICC BASIS shares the views of ISOC and other stakeholders and cannot endorse the NMI resulting from this process of formation or current form and structure.

Having said that, ICC BASIS members understand that there is a pressing need to address real concerns related to global Internet governance and as such we continue to discuss how best to advance the continued effectiveness of the IGF and other Internet governance organizations more broadly.

In order to ascertain whether NMI could be a forum that addresses such concerns, we have read through the FAQs, which NMI recently posted online. After doing so, we continue to have questions and requests for clarification. Therefore, we seek answers to the questions below and call for more time to be allowed for such questions to be explored and any subsequent follow up that the responses may require.

Formation and Governance

1. How long is the NMI expected to last?
2. NMI decided to pre-allocate five seats on the Coordination Council (CC), one each to the Brazilian Internet Steering committee (CGI.br), World Economic Forum (WEF), Internet Cooperation for Assigned Names and Numbers (ICANN), IGF Multistakeholder Advisory Group (MAG), and I* Organizations.
 - (i) What was the process that led to this decision and was there any discussion or consultation more broadly in this regard?
 - (ii) Are these seats expected to be permanent, or subject to rotation, and what is the process / duration thereof?
 - (iii) Will their roles or obligations be different from the rest of the 20 members on the proposed CC?
3. The pre-conditions for being nominated to the NMI CC include, “embrace the NETmundial Principles” and, “sign your name as a public advocate of NETmundial Principles.” However, the NETmundial Principles are a set of “non-binding statements” that, in spite of being well regarded, may or may not be acceptable to individuals, organizations, or governments in their entirety, or in part. Furthermore, both government and industry stakeholders may be limited in their ability to sign on to such documents because of the legal approval processes in their organizations.
 - (i) Does the pre-condition mean that those who either do not agree with the Principles, or agree with them only partially, will not be allowed to participate in the NETmundial Initiative?
 - (ii) What if such organizations or governments have a significant role to play in meeting NMI’s stated objectives? Will they be prohibited from participating?
4. Each member of the business community represents an entire business organization - in some cases publicly held companies. In such cases, if the CC selection criteria, which state, “if representing an organization, the nominee must confirm that their organization will officially embrace the NETmundial Principles”, is to be met, it could have serious, legal and wide-ranging implications on the nominee and their organization. Further, this is at odds with the “non-binding” character of NETmundial Principles. Practically speaking, such a pre-condition could render business membership out of reckoning as a CC nominee. This could also be true for governments as well as other stakeholders.
 - (i) Has such a consequence been anticipated? What is NMI’s response to this issue, which has severe implications on nominees from the private sector, and by consequence, the constitution of a multistakeholder CC?

5. The nomination process is unclear. If the intent is to have broad representation of stakeholder interests, then one would assume a similar process of self-organization that happened in the lead-up to NETmundial would be utilized.
 - (i) How is this self-nomination process going to provide any assurance of breadth of representation in terms of the broad communities' interest beyond the viewpoints of five individuals?

Objectives

6. If NMI is to be a true multistakeholder initiative, it seems counterintuitive that many topics related to the range of possible outcomes and issues to be discussed have been decided without any credible multistakeholder consultation.
 - (i) Should what has been suggested so far merely be considered a draft proposal?
 - (ii) Can NMI clarify the source and nature of the inputs?
7. One of the objectives defined under NMI relates to “crowdsourcing of enablers and solutions from the global community.” While this certainly seems like an innovative idea, there are serious constraints on stakeholders such as the private sector, and to a large extent, governments, who are only allowed to submit “approved positions”, which in turn require substantive time and internal approval processes. This would leave the private sector as well as other stakeholders at a serious disadvantage to engage meaningfully in NMI.
 - (i) How does NMI plan to address the different pace and processes followed amongst multistakeholder groups, when requiring formal submissions?
8. The second NMI objective requires “crowd-funding to finance/support the development and implementation of such enablers and solutions.” Again, some of the stakeholders, especially the private sector and likely some governments, are not allowed to engage in “fundraising” or “crowd-funding” activities as a part of their corporate discipline, ethics, or terms of employment.
 - (i) How would all stakeholders participate meaningfully in this objective?
9. Even though the NETmundial Principles were framed as a “non-binding outcome”, the NETmundial list of potential “solutions” includes, “regulations, directives, contracts and/or other agreements”.
 - (i) How does NMI plan to reconcile the contradiction that arises between the basic “non-binding” characteristic of the NETmundial Principles and the range of solutions articulated by the NMI?
10. The NMI has pre-identified “issues ranging from cyber security to user privacy” as those which need to be addressed “urgently”. Other issues, including providing access to the remaining four billion citizens – have also been identified as issues that need to be addressed under the NETmundial Principles and in other forums where Internet governance is discussed.
 - (i) What consultation has occurred to reach a conclusion on priorities?
11. Assuming that a set of issues were identified that require further attention, it is entirely possible that the organizers decide which issues CC members will bring different views on the mechanisms to address respective issues.
 - (i) How would these issues be reconciled within the NMI procedure?
 - (ii) Will the decision of the 25 Council members be final, or will observers be allowed to intervene in the discussions?
 - (iii) How will decisions be reached – by vote, by consensus?

12. Amongst the “solutions” listed on the NMI website, some, such as “regulations”, etc., will require buy-in by governments and international forums for implementation.
- (i) How will the 25 CC members ensure such implementation?
 - (ii) What will be the source for funding such an effort, and how will such an effort become self-sustaining?

Relationship to other organizations and initiatives

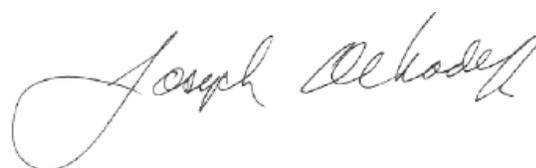
13. The United Nations Commission on Science and Technology for Development (CSTD) Working Group on Enhanced Cooperation, 43 Working Group members consisting of governments, international organizations, civil society, private sector, and technical community, under the Chairmanship of Mr. Peter Major, has been working to map Internet governance issues and matching mechanisms. It seems the NMI expects to do much of the same.
14. How would the NMI work differ from the CSTD effort and avoid duplication? The existing Internet Governance ecosystem includes specific organizations and forums including ISOC, IETF, the IAB, ICANN, IGF, the WSIS process and more.
- (i) How will the NMI work with other organizations that are actively considering the Internet governance issues?
 - (ii) Will formal relationships be established to coordinate and leverage the different work initiatives, or is it assumed that those with seats on the CC will also be responsible for this coordination?
15. The NETmundial Outcome Statement recognized the need for strengthening the IGF and noted the recommendations of the CSTD working group on IGF Improvements.
- (i) How will NMI contribute to accelerating implementation of the recommended IGF improvements?
 - (ii) Does CGI.br’s role as one of the five pre-identified CC members result from the fact that Brazil hosted the NETmundial conference or is it because they are hosting the next IGF in November 2015?
 - (iii) Would the host for IGF 2016 be replacing CGI.br next year as has been stated by Mr Virgilio Almeida in his video message on the NMI website?
 - (iv) Is singling out one of UN’s 195 member states acceptable to other stakeholders?

Answers to the above questions are required in order for ICC BASIS and other stakeholders to have a fulsome debate on NMI. As such, we think it is essential to extend the debate into 2015 so as to give the business community as well as other stakeholders the time necessary to determine possible next steps.

ICC BASIS believes that at its very core, the Internet must remain a decentralized and distributed system that allows multistakeholder groups to participate meaningfully in the identification and resolution of issues by leveraging their respective expertise. This multistakeholder engagement ensures an ecosystem that invites and facilitates stakeholders’ participation, through publicly defined, transparent, and collaborative initiatives, to advance the capability of the Internet to empower people, including those who currently remain unconnected to the Internet. Business remains firmly committed to supporting the role of the IGF and improving current mechanisms within its mandate and current organizing principles – namely as a body that fosters exchanges that lead to solutions and helps to reach consensus, as opposed to a negotiating body where participants’ energy is diverted from capacity and consensus-building to drafting negotiated outcomes.

ICC BASIS is concerned about the business community's ability to participate meaningfully in any initiative which has pre-defined criteria for nomination and objectives as outputs. We are also concerned about the NMI's ability to pursue its objectives in the face of such pre-conditions and objections from essential stakeholders. There is an absolute need for greater clarity and meaningful transparency in decision-making processes and criteria; proposed objectives and means of accomplishing them; and anticipated relationships with existing bodies like the IGF. We seek your prompt response to the issues above and will come back for any further clarifications that might arise, as we continue the discussion within our community.

Regards,



Joe Alhadeff

Chair, International Chamber of Commerce
(ICC) Commission on the Digital Economy
and Representative of ICC BASIS