WSIS Civil Society Internet Governance Caucus: Statement 1A
<u>Initial Reactions</u> to the WGIG Report – verbal statement (July 19, 2005)

I. Introduction and overview

About the WSIS Civil Society Internet Governance Caucus

The caucus was formed during WSIS PrepCom2, February 2003 to provide civil society in WSIS with expert opinion on issues around Internet governance, and to represent civil society's views on Internet governance in WSIS. We work mainly online, using a mailing list with over 230 members, many from CS organizations accredited to WSIS. Over the past few days we have begun to develop a response to the WGIG report, today we will present our initial reaction.

The WSIS Civil Society Internet Governance Caucus expresses its support and appreciation for the process and outcome of WGIG.

We believe that the high quality of the report is the result of both the multi-stakeholder collaboration and the open and inclusive consultation with the wider WSIS community. We thank Ambassador Desai and Mr. Kummer for their commitment and dedication to this approach, pioneering new ways of collaboration across sectors and communities - demonstrating the shift from principle to practice.

There are several aspects of the WGIG report we welcome and support, including:

- the broad working definition of internet governance;
- the comprehensive nature of issues outlined and prioritised for action in the background and the final report;
- the emphasis on values fundamental to civil society including freedom of expression, data protection and privacy rights, consumer rights, multilingualism, capacity building and meaningful participation in internet governance processes;
- the overarching goal of enhancing the legitimacy of internet governance arrangements underlying many of the public policy recommendations;
- we agree with WGIG that no single government should have a pre-eminent role in global governance of the logical infrastructure of the Internet.
- we also commend acknowledging that capacity building in developing areas and the effective and meaningful participation of all stakeholders around the world are the most essential steps in reaching these goals.

On this last point, we share the observation that there are significant barriers to the participation of all stakeholders in governance mechanisms. Further, that international and intergovernmental organizations – including private sector or self-regulatory bodies that establish governance mechanisms impacting stakeholders outside the business community – should take measures to enable effective participation from developing countries and from civil society.

END verbal statement

II. Specific proposals

Global forum
The caucus supports the establishment of a new forum to address the broad agenda of Internet governance issues, provided it is truly global, inclusive, and multi-stakeholder in composition allowing all stakeholders from all sectors to participate as equal peers.
The forum should not be anchored in any existing specialized international organization but organized as a legally free-standing entity. If this is impossible the forum should be organized directly under the auspices of the United Nations Secretary General.

The forum should not by default have a mandate to negotiate hard instruments like treaties or contracts. However, in very exceptional circumstances when the parties all agree that such instruments are needed, there could be a mechanism that allows for their establishment. Normally, the forum should focus on the development of soft law instruments such as recommendations, guidelines, declarations, etc.

Oversight function
The caucus does not support any one model, nor does it regard any of the models as final or mutually exclusive; rather, aspects of each model may enrich other approaches.

However, while there may not be agreement yet on any particular model, we believe it is clear that oversight is a significant issue that needs further discussion. To this end, we would support the establishment of a new mechanism or team to explore approaches mutually acceptable to all stakeholders in the lead up to the WSIS summit. We also indicate our willingness to work with all stakeholders, and as a caucus, towards evolution and acceptance of a single model.

Root Zone file
We would like to underscore that unilateral control of the root zone file is a public policy issue. We agree with WGIG that no single government should have a pre-eminent role in global governance of the logical infrastructure of the Internet.

We will make more detailed contributions on all three issues during the appropriate roundtable discussion.

III: Issues in need of further development or absent from the report

Some issues, which we consider to be priority public policy issues requiring immediate attention, are not included or are not addressed substantially in the WGIG report. Our complete statement contains a more detailed assessment and response, including inter alia the following :

- Adapting and implementing WSIS principles within existing intergovernmental and international organizations is an area that needs urgent attention.
- Addressing human rights as a cross-cutting principle in relation to evolution and use of the Internet. Nothing in Internet governance negotiations must impair, restrict, or contradict universally agreed human rights.
- New instruments to govern Intellectual Property on the Internet (such as WIPO's Internet Treaties, and the UDRP) have been developed without effective consideration of the

rights and interests of end-users. Organisations responsible for developing such instruments must look to such interests as they have been articulated in other IP legislation such as copyright and fair use, and provide an ongoing voice for these interests. In addition, key technologies and standards underpinning the Internet should be free, based on interoperable and open international standards, and not subject to capture or control by any single government or entity.
- Issues of open content, cultural diversity and inclusion, and free and open source software, are referenced briefly in the background paper, but not prioritised in the WGIG report. We consider these issues are priority public policy issues and will make more substantial comments during the roundtable discussions.

IV. In conclusion

We would like to emphasize the following points:

- A new forum is needed to address the broad agenda of Internet governance issues provided it is truly global, inclusive, and multi-stakeholder in composition.
- While there is not yet consensus on how to organize oversight with regard to the core resources, there is a consensus that oversight is an issue that needs further discussion.
- The prioritised public policy issues form part of an "agenda for action" but should not exclude other issues considered to require urgent attention. Rather, all outcomes of the WGIG process should feed into a comprehensive research and action programme with an immediate need to develop more detail and substance to the issues.
- It has been helpful to acknowledge the roles and responsibilities of stakeholders. What is needed now is greater detail in terms of how, in what ways and at what levels, stakeholders can interact, build and represent constituencies and collaborate in existing and emerging internet governance mechanisms.

The WGIG process and outcome is a practical realization of the Multi-stakeholder approach. It has demonstrated that Government, the Private Sector and Civil Society can work together to seek solutions to challenges affecting us all and produce constructive results.

We hope that the approach as explored by WGIG will become a reference model for other organizations and that future processes, including the ongoing WSIS preparatory process, will embrace and build upon it. We are fully committed to such an approach, and the implementation of it's outcomes.

A more comprehensive version of this statement and three separate statements on the global forum, oversight function and root zone file have been submitted to the secretariat

I. Introduction and overview

Process

1. The WSIS Civil Society Internet Governance Caucus expresses its support and appreciation for the process and outcome of WGIG.

2. We believe that the high quality of the report is the result of both the multi-stakeholder collaboration and the open and inclusive consultation with the wider WSIS community. We want to thank Ambassador Desai and Mr. Kummer for their commitment and dedication to this approach, pioneering new ways of collaboration across sectors and communities demonstrating a shift from the principle of the multi-stakeholder approach to putting it in practice.

3. We also would like to commend all members of WGIG for their openness and hard work. The successful outcome of WGIG wouldn't have been possible without your dedication. We hope that the multi-stakeholder approach as explored by WGIG will become a reference model for other organizations to adopt and that future processes will build upon.

Definition of Internet Governance

4. We welcome the adoption of a broad working definition of Internet Governance. This definition allows all stakeholders to bring to the table any existing or future internet governance related issue and facilitates the development of a holistic and inclusive global dialogue on ways to continually improve governance arrangements.

Roles and responsibilities of stakeholders

5. We appreciate the clear recognition of the roles and responsibilities of all stakeholders, government, civil society, private sector in internet governance processes. We are concerned, however, that the specific roles of the civil society and the private sector in relation to that of government are not fully defined, allowing for ambiguous and/or different interpretations.

6. The caucus acknowledges that sovereign rights of governments should not be compromised. However, we strongly advocate an increased role for civil society in public policy formulation and decision-making on Information Society issues, given the expanded diversity of stakeholders in this context.

7. As demonstrated through WGIG, civil society participation provides an efficient way of gaining important perspectives that fall outside the scope of private sector organisations or may not yet have become substantial policy issues in individual countries.

Public policy issues - general

8. With regard to public policy issues, the caucus expresses its appreciation for the comprehensive nature of the issues outlined in the background document, and the prioritisation of issues requiring immediate attention, as outlined in the WGIG report.

9. In particular, we support the emphasis of fundamental values that civil society advocates - such as freedom of expression, data protection and privacy rights, consumer rights, multilingualism, capacity building and meaningful participation in internet governance processes. These values are cornerstones that contribute to enabling people-centered information and communication societies that are open to all.

10. This enumeration of values helps all stakeholder groups to develop a better understanding of the variety and the interdependence of problems that need attention at a range of levels. It highlights that finding solutions to these problems will require the cooperation of all stakeholders.

Public policy issues - recommendations

11. With regard to the recommendations of the report, we express our full agreement with the overarching goal of enhancing the legitimacy of Internet Governance arrangements. We also agree that capacity building in developing areas and the effective and meaningful participation of all stakeholders around the world are the most essential steps in reaching this goal.

12. We share the WGIG's observation that there are significant barriers to the participation of all stakeholders in governance mechanisms and that international and intergovernmental organizations, including private sector or self-regulatory bodies that establish governance mechanisms impacting stakeholders outside the business community, should take measures to enable effective participation from developing countries and from civil society.

Global forum (please see additional detailed statement Annex I)

13. The caucus supports the establishment of a new forum to address the broad agenda of Internet governance issues, provided it is truly global, inclusive, and multi-stakeholder in composition. Stakeholders from all sectors must be able to participate in such a forum as equal peers.

14. The forum should not be anchored in any existing specialized international organization, but rather should be organized as a legally free-standing entity. If this is impossible, then the forum should be organized directly under the auspices of the United Nations Secretary General.

15. The forum should not by default have a mandate to negotiate hard instruments like treaties or contracts. However, in very exceptional circumstances when the parties all agree that such instruments are needed, there could be a mechanism that allows for their establishment. Normally, the forum should focus on the development of soft law instruments such as recommendations, guidelines, declarations, etc.

Oversight function (please see additional detailed statement Annex II)

16. The caucus does not support any one model. Nor does it regard any of the models as final or mutually exclusive; rather, aspects of each model may enrich other approaches.

17. However, while there may not be agreement yet on any particular model, Civil Society believes that it is clear that oversight is a significant issue which needs further discussion. To this end, we would support the establishment of a new mechanism or team to explore approaches mutually acceptable to all stakeholders in the lead up to the WSIS summit. We also indicate our willingness to work with all stakeholders, and as a caucus, towards evolution and acceptance of a single model.

Root Zone file and NTIA statement (please see additional detailed statement Annex III)

18. We would like to underscore that unilateral control of the root zone file is a public policy issue. We agree with WGIG that no single government should have a pre-eminent role in global governance of the logical infrastructure of the Internet and have prepared a separate statement on this issue that we will share during the panel discussions.

II. Issues in need of further development or absent from the report

19. We are concerned that some issues, which we consider to be priority public policy issues requiring immediate attention, are not included, or are not addressed significantly/substantially in the WGIG report.

a. Adapting and implementing WSIS principles within existing intergovernmental and international organizations is an area that needs urgent attention.

b. Human rights and Freedom of Expression (Article 19) and Privacy (Article 29)

We are pleased to see the recognition of the imperative of upholding universally agreed human rights and data protection in relation to measures to address security and the investigation of crimes committed online.

However, we feel that the report could have been strengthened by addressing human rights as a cross-cutting principle, with particular reference to Articles 19 and 29, in relation to the development and application of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet. Nothing in Internet governance negotiations must impair, restrict, or contradict these rights.

c. Internet Stability, Security and 'Cybercrime'

Governments should address privacy and security jointly and transparently, in cooperation with all stakeholders. Invasions of privacy must be prevented, and where privacy is outweighed by other societal claims there must be clear rules, subject to independent judicial oversight, setting forth the conditions under which it can be violated.

d. Intellectual property rights

Whilst we welcome that the vastly divergent views on the fairness of the current intellectual property rights regime have been acknowledged, we would like to raise three public policy issues of concern:

The application of traditional IPR rules to cyberspace creates unique challenges that necessitate the need for assessment and reform.

New instruments to govern Intellectual Property on the Internet (such as WIPO's Internet Treaties, and the UDRP) have been developed without effective consideration of the rights of users. We believe that organisations responsible for developing such instruments must look to the interests of end-users and society as they have been articulated in other IP legislation such as copyright and fair use, and provide an ongoing voice for these interests.

We further believe that key technologies and standards underpinning the Internet should be made available for use free of charge and not subject to capture or control by any single government or entity.

We hope that the WSIS negotiations are able to take these issues into account and develop more balanced policies.

e. Universal Access

Building an inclusive and global framework to address internet governance issues will be largely meaningless if more than half of the world's population have no access to its potential benefits.

Affordable and universal access is one of the most obvious issue that needs to be addressed in this context as a matter of public policy, requiring attention in its own right within the relationship between ICTs and development.

In the absence of coordinated global governance that addresses access to critical ICT and internet infrastructure as a global, regional and national public good, the important goal of achieving universal access to the internet will not be achieved.

f. interconnection costs

With regard to international interconnection charges, the Caucus believes that there must be international rules encouraging fair, cost-oriented charging, considering that developing countries pay the full cost of the circuits involved.

This is a matter of considerable urgency that should be investigated in relevant international fora like the ITU, WTO and the proposed forum.

g. Open content:

The WSIS Declaration of Principles states that the "ability for all to access and contribute information, ideas and knowledge is essential in an inclusive Information Society". We believe this implies the free access to knowledge that is developed using public resources for public good purposes. Both governments and intergovernmental agencies should be

encouraged to make relevant information available via the internet, and adopt open [and alternative] content licensing schemes that support the diffusion of that knowledge.

h. Cultural diversity and inclusion

Bodies responsible for international Internet governance functions should reflect the priorities of all affected cultures in their operations. They should ensure an effective voice for all cultures in the deliberations and decision-making processes of these bodies. Such representation will facilitate the development of local content in local languages, help implement IDNs, and ensure that other trans-border issues are confronted in an effective and culturally appropriate manner.

i. Free and open source software

We welcome the reference to FOSS in the background paper but would continue to advocate that the use of FOSS should be a priority over other alternatives whenever and wherever possible. In particular, government bidding should take into account that opting for usually more expensive proprietary solutions when there are equivalent FOSS alternatives could make them subject to popular legal action on the grounds of mismanagement of public funds.

III. Going forward

In conclusion we would like to emphasize the following points:

A new forum is needed to address the broad agenda of Internet governance issues provided it is truly global, inclusive, and multi-stakeholder in composition.

While there is not yet consensus on how to organize oversight with regard to the core resources, there is a consensus that oversight is an issue that needs further discussion.

The prioritised public policy issues form part of an "agenda for action" but should not exclude other issues considered to require urgent attention. Rather, all outcomes of the WGIG process should feed into a comprehensive research and action programme with an immediate need of more detail and substance to the issues.

It has been helpful to acknowledge the roles and responsibilities of stakeholders. What is needed now is greater detail in terms of how, in what ways and at what levels, stakeholders can interact, build and represent constituencies and collaborate in existing and emerging internet governance mechanisms.

We would like to restate that there are significant barriers to the participation of all stakeholders in governance mechanisms. Capacity building in developing areas to enable and ensure the effective and meaningful participation of all stakeholders around the world are essential elements underlying all our discussion on Internet governance. Capacity building and ensuring the meaningful participation of all stakeholders must be a priority going forward.

The WGIG process and outcome is a <u>practical realization of the Multi-stakeholder approach.</u> It has demonstrated that Government, the Private Sector and Civil Society can work together to seek solutions to challenges affecting us all and produce constructive results.

We hope that the approach as explored by WGIG will become a reference model for other organizations and that future processes, including the ongoing WSIS preparatory process, will embrace and build upon it. We are fully committed to such an approach, and the implementation of it's outcomes.

WSIS Civil Society Internet Governance Caucus: Annex I
<u>Initial Reactions</u> to Global Forum

1. Civil society supports the establishment of a new forum to address the broad agenda of Internet governance issues, as long as it is truly global, inclusive, and multi-stakeholder in composition. Stakeholders from all sectors must be able to participate in such a forum as equal peers.

2. The forum should not be anchored in any existing specialized international organization, but rather should be organized as a legally free-standing entity. If this is impossible, then the forum should be organized directly under the auspices of the United Nations Secretary General.

3. The forum should not by default have a mandate to negotiate hard instruments like treaties or contracts. However, in very exceptional circumstances when the parties all agree that such instruments are needed, there could be a mechanism that allows for their development. Normally, the forum should focus on the development of soft law instruments like recommendations, guidelines, declarations, etc.

4. In substantive terms, the forum should provide, inter alia, the following functions:

   a. Inclusive dialogue, with a differentiated architecture allowing for peer-level interaction where appropriate, i.e. in working groups (here the ITU model is instructive, i.e. in the different ways study groups and plenaries work);

   b. systematic monitoring of trends;

   c. comparative, cross-sectoral analysis of governance mechanisms, with an eye toward "lessons learned" and best practices that could inform individual and collective institutional improvements;

   d. assessment of horizontal issues applicable to all arrangements, e.g. the promotion of transparency, accountability, inclusion, and other principles of "good governance";

   e. identification of weaknesses and gaps in the governance architecture, i.e. "orphaned" or multidimensional issues that do not fall neatly within the ambit of any existing body;

   f. identification of potential tensions between separately developed mechanisms, and possibly efforts to promote enhanced coordination among them;

   g. promotion of decentralized convergence among positions and initiatives, where possible;

   h. pre-decision agenda setting that could, inter alia, feed into the work of other bodies.

WSIS Civil Society Internet Governance Caucus: Annex II
<u>Initial Reactions</u> to Oversight Function models

1. As regards the four models proposed:

2. Civil Society does not support any one model. Nor does it regard any of the models as final or mutually exclusive; rather, aspects of each model may enrich other approaches.

3. However, while there may not be agreement yet on any particular model, Civil Society believes that it is clear that oversight is a significant issue which needs further discussion. To this end, we would support the establishment of a new mechanism or team to explore approaches mutually acceptable to all stakeholders in the lead up to the WSIS summit. We also indicate our willingness to work with all stakeholders, and as a caucus, towards evolution and acceptance of a single model.

4. An acceptable oversight solution, from a civil society point of view, is one which:

   - Can accept inputs from the proposed global forum structure
   - Allows multi-stakeholder input into policy evolution
   - Ensures meaningful participation of all stakeholders from developing countries
   - Focuses on shared responsibility and shared sovereignty rather than the notions of oversight, control and power in relation to management of critical resources
   - Does not allow dominance or perceived dominance by any one country

5. We believe that this broad issue and in particular the issue of governance structures as regards the root zone authorisation function should be addressed with some urgency.

6. The acceptance of a single root for the DNS is an important enabler of the Internet's international reach. Governance arrangements for the root zone file should be outside the control of any individual government, and broadly acceptable to all stakeholders. Failure to address this issue will lead to an increase in the number of alternative root structures that could impact negatively on the Internet's security, stability and interoperability. Under the current addressing scheme, this could lead to the fragmentation of the Internet and the user community.

WSIS Civil Society Internet Governance Caucus: Annex III
<u>Initial Response</u> to the Gallagher NTIA Statement

1. The US statement recently made by Michael D. Gallagher, Assistant secretary at the National Telecommunications and Information Administration (NTIA), has caused much concern and raised a number of questions.

2. In the absence of any clarification, the statement is interpreted as a manifestation of a US strategy that it will never give up its control over core Internet resources including root zone file, root server operation, Domain Name and IP address management, and related resource management.

3. More specifically, it indicates that the current contractual framework regarding US unilateral control over the root zone file will be maintained for an indefinite time into the future. This directly contradicts the consensus of WGIG: "No single Government should have a pre-eminent role in relation to international Internet governance" (in para 48 of the WGIG report").

4. The US statement also appears to indicate that US will maintain its oversight of ICANN, without describing which areas or functions of ICANN are the target object of the oversight. This contradicts our understanding of the widely publicized positions of the US Government and ICANN that they will not renew the Memorandum of Understanding at its expiry date of September 2006 and thus ICANN will gain an international independence, once ICANN and its community demonstrate its ability to guarantee stability and security of a critical global resource under its own authority.

5. The statement makes it difficult for the world to believe that ICANN is, or can ever become, the trusted and fair broker it needs to be. We would like to hear from the US representative whether this apparent shift/turn around is what it seems.

6. Civil Society does not fully endorse the current state of ICANN, especially in their representational structures and policy development processes, and recognizes that there is a lot of room for improvement to enhance the participation of all stakeholders as is outlined in the WGIG report. However, we also consider that the model the ICANN community has developed to date is still far better than the direction the US statement revealed.

7. We understand that the current ICANN model puts the technical community in charge of technical resource development, management and operation, while it provides an adequate framework for coordination and cooperation among private sector (including the technical community), governments and civil society (including users and non-commercial entities) in its policy development and decision making process.

8. We call for the evolutionary yet significant improvement of this framework, one that enhances the stable, secure and innovative functioning of the Internet, and provides increased authority achieved by the consensual agreement and involvement of all stakeholders.

9. Unilateral oversight without consent of other stakeholders will not contribute to the long-term stability and security of the Internet for the benefit of all users and citizens, and may place stability and security at risk.