

# Pursuing 21<sup>st</sup> Century Trade Rules for the Digital Economy

A Discussion Paper for Fully Harnessing the Power of Internet Trade

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WTO Public Forum

“Expanding Trade through Innovation and the Digital Economy”

Geneva October 1, 2013

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## i INTRODUCTION

Intellectual Property (IP) protection and promotion has been a professional passion and pursuit of mine for a very long time.

I believe in it profoundly, and I have done my best to advocate its redeeming qualities first, in my Arab region, and then through my offices across the globe.

Fundamentally, ideas, inventions, and innovations must be respected, and the work of the creators must be accorded the appropriate protection and compensation. Those countries that have long upheld these principles, have gained extraordinary economic benefits.

Thus, in a similar way, when I consider the explosive advent of the internet and the digital economy, I automatically react with my IP discipline --- namely, to harness the full economic potential that the internet offers all countries and all peoples, and to protect it from those forces which would wish to constrain or undermine it.

The significance of the internet to global trade cannot be understated.

If one considers that information flows constitute trade in knowledge, then the volume of information relayed by online platforms such as Google, Yahoo, Facebook, Tuenti, Baidu, Yandex, Microsoft, and Bing, the Internet is home to some of the largest traders in the global economy. This is only reinforced when you consider the opportunities that Internet services create for more traditional businesses that would otherwise not exist. Online marketplaces like eBay, Rakuten and Mercado Libre, for example, underpin SME trade internationally every year, and that trade continues to grow with impressive leaps.

In addition to these platforms, the Internet enables numerous knowledge-enhancing devices that we now largely take for granted, such as email and GPS positioning, whose consumer application largely post-date the Uruguay Round.

The creators of digital knowledge products have created something as special as the more traditional goods or services. If we promote and protect the latter through the World Trade

Organization (WTO), as we do, then logic would dictate that we should also extend the same respect and diligence to the former.

And if the WTO, including through its Doha Development Agenda (DDA) negotiations, is forever trying to further liberalize the trade of traditional goods and services, then it also stands to reason that we should be greatly enhancing the trade in digital knowledge products.

But in my humble opinion, this has not happened. Despite the internet boom that radically altered the market place, and how we do business, this reality is not reflected in the WTO's day to day agenda. Nor is it part of the DDA priorities. Trade Ministers and Ambassadors have barely discussed the internet as a trade policy issue.

Why this is so is still a mystery for me. But this needs to change --- and change quickly.

In this regard, I have drafted this Discussion Paper in an effort to provoke and foster a dialogue. A dialogue that, one day soon, would ideally lead WTO Members to negotiate and establish new rules and disciplines for Internet trade.

Drawing from my own modest experiences as the CEO of a company that trades in knowledge, I have tried to make sense of the events around me and translate late them into public policy considerations. I certainly do not pretend to have all the answers. Far from it. Nor for that matter, have I raised all the necessary questions that need asking. This is precisely why we need an informed and engaged dialogue. As well, the vested interests of internet trade need a sustained level of advocacy.

I have divided my paper into several parts, and it concludes with a number of proposals. I genuinely hope that you find these thoughts stimulating.

I also hope that you will join the dialogue, regardless of what your positions may be. Your views and advice would be greatly welcomed.

*Sincerely,  
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## ii PERSONAL AND PROFESSIONAL EXPERIENCES

### My IP Epiphany in San Francisco

As I did in my introduction, let me first start with my IP story, which will serve to shed greater light on why I believe the WTO should be championing new rules for trade over the internet.

For me, it all started in San Francisco.

That's where I was first exposed to the world of IP and since that day, it has become a life-long professional 'friend'.

I have always believed in the importance of being first. That is, in part, why I welcome new ideas, new inventions, and new innovations. You can change the world if you are first to implement a new idea.

Formally, we refer to it as first mover advantage.

When I was in my first accounting job, back in 1969, I went to San Francisco. The city, at the time, was the center of the cultural and political ferment in the United States. Vietnam protestors stalked the streets. It was a time of wild, bohemian change. Those weren't my reasons for being there, however.

Instead, I showed up in a suit and tie to attend a conference. But what I learned there was no less revolutionary for me and my business.

The conference was about knowledge.

One afternoon, I sat through an eye-opening presentation. As I walked out of the seminar room, I was struck by a single idea at the heart of the session --- namely, the proposition of protecting IP rights. This was the first time I had heard these very words used together --- protecting IP rights.

I had known about the US Patent Office. But it was at that conference in San Fran that, for the first time, I profoundly thought about just what this all meant. In other words, the importance of respecting someone's idea; the concept of protecting this respect; the need to establish a legal framework in order to enforce this protection; and the economic benefits and advantages that would flow from such disciplines.

The more I thought about it, the more fascinated I became.

The US was the undisputed leader in this field. At the time, in my own immediate backyard, countries in the Arab World that had some intellectual property laws in place, barely enforced them. Sadly, many problems still remain today, even though we have made significant headway.

The key is to get people to understand and accept that enforcing these laws is not a foreign imposition, as is so often the perception. Instead, it is essential to moving the Arab world --- and any other community for that matter --- from its current position as a creative and technological backwater, and transforming it to a forefront position of innovation. This is where my Arab community can and must go.

Like all other peoples, the Arab community has a rich pool of human talent. That's not the problem. The difficulty is that we lack a framework that protects and promotes innovation and invention. In this regard, I am pleased to have taken a leadership role, at the very beginning of the 'revolution', when a

group of us pushed the Arab World to be as enlightened about IP as any country in the world. But my interest was piqued at that conference in San Francisco.

**“I have been arguing for some time that the WTO should make internet trade one of its priorities. It should be its champion and protector! But sadly, it is neither.”**

## **IP as an Engine of Ingenuity**

I just didn't understand their reluctance.

It was Franklin Roosevelt that said a system for the protection of industrial property is “the fuel that lights the fire of creativity in a society”. How right he was.

It's only in an environment of reliable intellectual protection that people are willing to invest capital into new ideas. A legal system to protect industrial and intellectual property is an absolute requirement for development. Good intentions, bilateral agreements and promises are all fine. But they don't add up to much, if they are not accompanied by laws and a strong enforcement arm.

One also needs to nurture a culture of respect for IP, at the heart of one's community, which is as strong as our respect for physical property.

With good IP laws, those who invest in creativity can be confident that if the idea is compelling enough, they will get their investment back and then some.

Statistics do not lie --- nine in ten of the world's innovations originate from countries where a strict IP protective system is in place! How do you argue against that kind of success?

For some industries, innovation just would not occur without effective IP rules. For example, for every five thousand cosmetic or beauty products that are developed, only one succeeds commercially. In the pharmaceutical sector, the average R&D cost for a single medication is over a billion dollars. Pharma companies, on average, spend 20% of their income on R&D.

I'm familiar with those who claim that an IP system fulfills foreign interests, and supports foreign monopolization of technologies at the expense of national industries, particularly in the developing world. And it's true that some powerful governments, outside the region, have made enforcement of IP laws a priority in order to ensure that their national companies exporting to the region remain profitable and on the vanguard of their competition.

But, at the same time, I would ask people to go beyond such notions, some of which are promoted by individuals who benefit from the absence of any systemic protection.

Arabs, for example, have proven themselves to be creative since olden times, so I am absolutely convinced that protection is something that will work to our advantage. Like other human beings, Arabs are able, in a level playing field, to excel in all fields of innovation.

The central question is this: how do we allow and promote this kind of talent to sustainably flourish at home and around the world?

I firmly believe that IP is a central part of the answer. Another part, of course, is the internet, but I will come to this soon.

When my company, the Talal Abu-Ghazaleh Organization (TAGO) began developing its IP expertise, one of the first things we focused on was helping Arab governments build their legal and enforcement infrastructure. In fact, in September 2012, TAGO held the first Arab brand. Yes, the first. Before that, there was not a single one! Imagine. Everything—from Coca-Cola, to Camel cigarettes, to Kleenex—everything, had come from the West.

Today, we have a whole range of Arab brand names, whether it is Omnia, Zain, and Aramex in telecoms; or Al Jazeera in media; or The Emirates Group in travel. Arabs have created global brand names with real value, and I am proud that TAGO fought to create the environment that made this possible.

People should not forget, nor easily dismiss, the rationale for why these global successes are what they are today.

### **“Owning the Mind”**

In the early 1980s, I was introduced to the president of Bahrain’s Chamber of Commerce. His name was Ali Fakhro. The friend who made the introduction told Fakhro that I was young and brilliant (talk about creating unrealistic expectations!), and that he should hear me out about the issue of IP. So I sat down with him and launched into my pitch.

I had been working on this for several years, and was still trying to spread the message as far and wide as I could. He listened to me but didn’t say much during the meeting. As I left, I could tell my presentation had not gone over well. But by then, I’d become used to the skepticism.

A few years ago, after serving for twenty-five years as president of Bahrain’s Chamber of Commerce, Fakhro retired. I attended a lavish dinner to commemorate his impressive track record, where he made a farewell speech. During his address, he said: “I was once visited by a young man. I was told that he was brilliant and that I had to meet him. So, I sat down with him and when he left, I called my colleagues into my office. I said, it’s really unfortunate but there is something wrong with this young man. You told me that he has a brilliant future ahead of him but unfortunately this man is hopeless. He talked to me about “al-mulkiyya al fikriya” — owning the mind! Can you imagine?”

He continued, “It seemed crazy back then. But it has taken us twenty five years to realize that there was nothing wrong with him. There was something wrong with us, because it took us all these years to catch up with what Talal Abu-Ghazaleh was talking about.”

By this time we had become close friends. Yet, his tale, before an audience of prominent business people, was an honor for me. It was also a vindication of the risk that I had taken so many years before.

Notwithstanding this, I am still trying to stay ahead of the IP curve, which is becoming quite the occupation.

## **An Arab Perspective**

I moved into IP for two reasons. I knew it would become a critical industry, and I wanted to push the Arab World to the forefront of advanced nations. The latter is not a choice for me. It's a duty. And erecting the best industrial property protection system, despite all the challenges, is one of the best ways to accomplish this.

I remain convinced that strong IP systems will encourage Arab minds to stay and do their work in their country of origin. No longer do we need to accept a brain-drain because we lack protection for their ideas. The Arab world is stronger with IP protection, and it will grow stronger still as IP standards improve.

But there is still an incredible amount of work to be done.

I continue to urge Arab governments to work quickly on developing and refining their IP and industrial property protective systems so that they meet international standards. It pains me deeply that many lag behind, or have shoddy enforcement. If we want to unleash the full force of Arab creativity, then IP advancement is a prerequisite.

There is no single magic pill. It will take a great deal of effort and commitment. Part of my contribution to this effort was in overseeing the first Arab Dictionary for Intellectual Property, which we published in 2000. It was the result of a decade of painstaking work to define a common language for IP work in the region that culminated in 2012 with the Dictionary of Patent Terms. This shows, that as a community, we are serious about IP protection and that we now have a common resource to develop it.

In addition to this, TAGO has prepared translations for IP laws and compiled rulings of Arab courts as a resource for the common public good.

We shall see where the Arab world goes from here. I naturally speak fondly and proudly about my own 'tribe', but this is of course applicable to all peoples.

## **The Magic of the Internet**

I have gone on at some length about IP because I see a great support for, and overlap with, the advent of the internet. The issues of adapting our mindsets; of understanding the interconnected and complex set of challenges; of respecting and enforcing new disciplines; of promoting and protecting rules of the game; and of reaping huge economic benefits, are all the same.

In other words, in reviewing the road travelled by IP, one gets a better appreciation of both the difficulties and opportunities that are part of the internet super highway.

The internet has been a world altering force.

In a very short period of time, it has had a profound impact on the way we live;

- It offers the capacity to spread and share information on a scale never before thought achievable.
- It empowers people.
- It has enhanced people's ability of self-expression and freedom of speech.
- It challenges public and private institutions that pride themselves on secrecy and non-transparency.
- On the economic front, it challenges old business models and thereby creates significant new opportunities.



- And on the social tangent, it has the potential of bridging the gap between peoples and cultures.
- For centuries, the general rule was that access to, and the creation of, information, was controlled by the few. Today, the Internet has turned this old reality on its head.

**“The networked economy is the beating heart of our economy”.**

All facets of our lives --- at home, at work, and at play --- depend on information and communication technologies. There are billions of mobile phone subscribers; close to five billion people with access to television, and tens of millions of new Internet users every year.

Hundreds of millions of people around the world use satellite services. Millions more use video compression every day in mobile phones, music players and cameras.

According to the International Telecommunications Union (ITU), there are some 2.7 billion internet users on line – almost 40% of the world’s population. By way of breakdown, 31% are in the developing world, while the remainders are in developed countries. Presto, a North-South divide which needs to be addressed.

Europe is the region with the highest Internet penetration rate in the world (75%), followed by the Americas (61%). In Africa, only 16% of people are using the Internet – only half the penetration rate of Asia and the Pacific. Arab countries are at 32%.

Yet another divide is the internet gender gap. This is more pronounced in the developing world, where 16% fewer women than men use the Internet, compared with only 2% fewer women than men in the developed world.

The good news is that between 2009 and 2013, Internet penetration in households has grown the fastest in Africa, with an annual growth of 27%, followed by 15% annual growth in Asia and the Pacific, the Arab States and the CIS countries. Enormous progress is being made.

In 2006, 82% of the world’s population was not using the Internet. By 2011, that number had dropped to 65%. But what was most interesting was that usage in the developing world overtook the developed countries for the first time, climbing from 44% to 62% of all users in that period.

## **A Rapidly Growing Internet Economy**

The internet provides a giant platform for innovation. New communication technologies are constantly being developed and an unparalleled wealth of information is being constantly expanded. And internet trade has blossomed.

But this also raises concerns, notably in the area of reliability, scalability, security and openness of access. If global supply-chain management depends on the Internet, for example, then a breakdown or security breach could cause major economic damage. If people’s personal data are compromised online, it will breach their privacy, negatively impact aspects of their lives, and undermine their trust in such technologies.

Looking forward, the Internet is poised to connect an ever-greater number of users, objects and information infrastructures. This means that the policy framework governing its use and development



needs to be adaptable, carefully crafted and coordinated across policy domains, borders and multiple stakeholder communities.

The Internet is making economic activity more efficient, faster, and cheaper, and extending social interaction and economic transactions in unparalleled ways. Increasingly, the largest productivity gains for businesses come from using online networks in some form.

The multinational food giant Nestlé, for example, now receives all of its orders directly from supermarkets over the Internet. The shipping company UPS, uses online networks to optimize its delivery routes, resulting in a saving of 12 million liters of fuel from their nearly 100,000 trucks.

The Internet has also brought unprecedented user and consumer empowerment. Individuals now have greater access to information, which facilitates cost comparisons and creates downward pressure on prices. Internet users are extremely active, creating new content themselves and interacting in new ways.

The Internet is quickly permeating all economic, social, and government domains. For instance, e-government has become the prime tool for supporting government functions, and their interaction with citizens and businesses.

Healthcare systems are increasingly making use of the Internet and online networks to increase affordability, quality and efficiency, through electronic patient record systems, remote patient monitoring and healthcare delivery, along with improved diagnostics and imaging technologies.

Educational performance is found to be correlated with home access to, and use of, computers – all other things being equal. On line education is the way of the future, and holds immense potential for finally democratizing education (This is another great ‘story’ for me, as I have developed the Talal Abu-Ghazaleh University (TAGIUNI). If you’re interested, I would invite you to check my website on this fascinating development.)

Moreover, environmentally-friendly technologies based on the Internet in buildings, transport systems, and alternative power generating systems, can help address climate change and improve energy efficiency.

The Internet is also profoundly changing how research and creative activity are undertaken, as seen by enabling distributed research, grid and cloud computing, simulation, or virtual worlds. It is altering the organization of science, by linking the creativity of individuals and allowing organizations to collaborate, pool distributed computing power, and exploit new ways of disseminating information. This of course is fostering competition, which in turn stimulates the restructuring of industries and institutions, with potentially major positive impacts on innovation and growth.

Digital technology and the Internet are also transforming platforms for delivering news, entertainment and other information. Participative networks enable users to contribute to developing, rating, collaborating and distributing Internet content and customizing Internet applications, driving a range of new social and economic opportunities alongside new models of production. In South Korea, for example, more than 40% of Internet users have their own blog.

Many new business models are emerging around the provision of content, and this area is evolving rapidly. The music and video industries, for example, are still grappling with these issues as they seek to develop new, more effective and popular ways of commercializing their products on line.

Public organizations play a significant role in creating large amounts of publicly funded Internet content, research and information. Facilitating access and commercial re-use of public sector content and information can bring significant economic and social benefits when re-used. An example is in developing innovative value-added services that utilize map and weather information.

Before the rapid development of the Internet, separate systems – telephone, television, video, and individual computer systems – stored and transmitted voice, video and data. Today, these systems are all converging onto the Internet.

What is also clear is that technology is being taken up in different ways.

The cell phone is now ubiquitous, cheap and accessible worldwide. A new digital divide is between those who can use their mobile phones to access the Internet, and those who are limited to voice and text. Whereas computerization in the West was characterized by the desktop computer and home connections, many parts of the world have leapfrogged this stage and have gone straight to mobile devices.

Mobile broadband has proven to be a way for many countries in Africa, for example, to overcome infrastructure limitations, and provide Internet access to previously unconnected areas. The fact that vast areas are still uncovered is perhaps less important than the fact that the situation is changing constantly.

Besides the economic impact, we also are well aware that internet technology is altering the social dynamic. This is particularly the case in my own region.

A 2012 Pew survey, for example, found that among users of social media – such as Facebook and Twitter – worldwide, users in Arab countries were about twice as likely (60-68%) to use them to discuss politics, religion and community issues, than users in the US, UK, France and other developed countries.

We all recall, of course, how the Arab Spring started and maintained its vigor through Facebook!

As an aside, such revelations challenge general stereotypes of Arab publics being averse to vigorous engagement in civic discourse. They display that the Arab world can be a leader in adapting technology to meet its social needs.

One can write books on the many different economic, social and political dimensions of the internet explosion. For the purposes of this discussion paper, I have focused on the first only. More specifically, on internet trade, and what we need to do in order to grow it, in an effort to maximize its economic benefits.

Despite the huge number of economic transactions via the internet, it is an issue which, as I have already mentioned, is not on the radar screens of the WTO, nor in regional and bilateral trade negotiations in any significant way. Why is that?

As a new phenomenon, it would require new trade rules, in an attempt to galvanize its potential and dissuade those who would wish to practice protectionism for either economic or political reasons. But where are these new rules?

Trade Ministers and Ambassadors should have already embraced internet trade as a so-called ‘new’ issue, fostered discussions and commissioned studies and analysis. But they have not. Why is that?

The dedication and commitment that has been invested into IP protection and promotion by the global community has been sorely lacking on the internet front. We have yet really to even start. Again, why is that?

I find these questions quite troubling.

I hope you share my concern, because this would be the first step towards remedying the situation. Indifference is our worst enemy.

I have been arguing for some time that the WTO should make internet trade one of its priorities. It should be its champion and protector! But sadly, it is neither.

This must change.

This would imply that the mindset of the global trading community must also change.

First, the WTO must enter the 21st Century. It is still caught in a time warp, and still stuck in the old world of the more traditional trade of goods and services. It must embrace the digital economy --- our future --- without further delay.

Secondly, once they have shifted gears, WTO members need to commit to, and construct, an effective digital trade plan, with a clear road map.

### iii INTERNET TRADE ROUNDTABLE

Last month, in collaboration with the US Computer and Communications Industry Association (CCIA), and the Honourable Sergio Marchi, a former Canadian Minister of International Trade and Ambassador to the WTO, I hosted a roundtable of internet experts in Washington. I wanted to ‘pick the brains’ of these impressive specialists on how we can promote digital trade.

I was not disappointed.

We gathered over thirty individuals from a variety of constituencies --- government, industry, diplomacy, civil society, and academia --- and we spent a day addressing a number of relevant issues.

The meeting, conducted under Chatham House Rules, was divided under three different themes; i) Assembling a New trade Policy Toolbox; ii) Free Flow of Data: From Principles to Policy Prescription; and iii) The Networked Economy & Consumer Trust.

People gave their views freely and articulately and for me, it was a valuable learning exercise. That is why outreach and consultation is so indispensable to effective public policy making.

Like TAGO, the CCIA has been in operation for some 40 years. They have a golden track record and built up a tremendous wealth of experience from serving leading companies involved with the digital economy. Our two organizations, if I may say, pack quite the synergies.

***In fact, as a follow up from this Roundtable, I am pleased to note that TAGO and the CCIA have agreed to join forces in creating the International Digital Economy Alliance ---- IDEA, for short.***

We had a separate meeting on how to launch and develop an ambitious agenda for IDEA moving forward. I am excited about its potential, and I am convinced that it will fill a crucial vacuum, and provide a necessary and effective platform for how we can advocate, promote and sustain digital trade.

This will be a space where both companies and NGOs for whom the Internet is at the core of their operations, could collaborate to make the case for the economic value of the networked economy.

Please stay tuned for IDEA initiatives.

#### **New Toolbox Needed**

In terms of the roundtable discussion, while there is lots of talk about ‘21st century trade agreements by policymakers, participants expressed the view that what that means is much less clear. That’s a big part of what made this meeting timely - we need fresh ideas and spaces where we can collaborate across communities to imagine how trade policy can sustain and accelerate the networked economy. All agreed that this is a key moment.

It was widely underscored that the Internet is central to global trade. A few facts from the meeting emerged that illustrated this in a rather powerful way.

- In 2010, the Internet economy amounted to \$2.3 trillion or 4.1 percent of GDP across the G20 countries. This number is expected to grow to \$4.2 trillion or 5.3 percent of GDP by 2016, when the Internet economy will employ 32 million additional people in those countries.

- In the developing world, growth rates of the Internet economy will be over 18% in the next 5 years - more than twice as fast than those in the developed countries.
- 75% of the Internet's economic benefit goes to traditional industries through efficiency gains and expanded markets, and SME's who heavily utilize the Internet export twice as much as those that don't.
- Over 500,000 people get connected to the Internet for the first time every day !
- 3 billion people will use the Internet by 2016, from 2 billion in 2011. That means any business with a product or service that can leverage the Internet can reach an additional billion customers in just the next three years.
- Half of global Services trade is enabled by the networked economy, according to the UN Conference on Trade and Development, which means the networked economy is increasingly the beating heart of the economy.
- The networked economy is inherently borderless - and so the promotion of economic activity that relies upon it will become more effective as more countries subscribe to common rules.

There is no other area of international trade where liberalisation can meaningfully enhance economic opportunity for one half of the global population. That alone, justifies ensuring that one priority in any trade negotiation should be the networked economy.

We need to establish common rules, and a new policy tool box to back it up. In contemplating a potential framework, we identified 7 critical elements;

**“The WTO was born before the internet took off. So, the organization is a non-knowledge organization”.**

### **First, the free flow of information.**

Today, all businesses need to rely upon the principle that data should be global, and not related to national or other boundaries. Yet, trade law has not kept up with this transition; it is far easier for countries to block ‘bits’ at the border than ‘Buicks’.

### **Second, forced localization.**

As a reaction to various public policy issues at the national level, governments are implementing “domestic hosting” requirements for both data storage and for networking hardware and infrastructure.

These “forced localization” mandates require companies to process and store data domestically and/or to create networking hardware infrastructure installations that would not otherwise be necessary. This creates barriers especially for small businesses, and causes large enterprises to scatter IT infrastructure across the globe un-necessarily, negating the savings and efficiency of cloud-based innovation and frustrating the amazing ability of the Internet to automatically optimise serving data in the most efficient way possible to the largest number of users at the lowest cost.

### **Third, the protection of networks as a platform.**

This should be for use by all stakeholders as an information highway.

There is a set of key services that together create the network that is in common use by everyone. These services do not carry data that you and I can perceive or use directly - they are what makes it possible for any of us to connect from our computer or smart device's from "point A" to any other "point B" at any point anywhere on the publicly accessible Internet. Examples of what services we are talking about are:

- ISPs (providing physical network access as well as routers and related software services responsible for forwarding traffic between any 'point A' to any 'point B');
- The processes that allow any 'node' of the network to be identified and reached from any other node are allocated and managed by a few key institutions (such as Internet Protocol ("IP") addressing and the domain name system ("DNS"));
- Key trust authentication services that ensure key technologies are resistant to misuse - for example, the infrastructure that supports DNSSEC (which provides security for the DNS), or which provide authentication of resources like websites through certificate verification (such as the 'secure sockets layer' (SSL protocol)).

[It is not widely understood that Internet Protocol ("IP")-based networks are designed to operate with maximum efficiency, and a continuous process of evolution of standards responds to the need to deliver greater performance, interoperability, resiliency, and trust and security as networks develop. If left to themselves and the web of stakeholders who operate and maintain them, they will:

- Automatically find the optimal (which is not necessarily the most direct) route between any two points at any given time;
- Deliver data between any two points in a way that optimizes bandwidth used;
- Ensure that anyone may extend the public Internet simply by connecting a device called a router[1] to the 'edge' of the network and applying for a unique address for that router, which are ultimately provided by 'regional internet registries' ("RIRs")[2]
- Ensure that users of globally popular services access the copy of the information sought that is closest to the user on the network (which may or may not be closest in geographic terms), which both minimises the cost to the service and maximises the performance the user experiences.]

As you can see, this is not about data - it is what allows data to move. Thus, there should be a horizontal commitment in all trade deals, since all sectors of the economy rely upon these services taken together.

#### **Fourth, full market access for digital products.**

This should include strong provisions that ensure digital products, regardless of their classification, are not discriminated against merely because they are provided and consumed digitally. Existing commitments already agreed to by the US and Australia in that FTA preventing discrimination against digital products regardless of their source country are a good model.

#### **Fifth, intermediary liability protection.**

TTIP should establish minimum protections for online intermediaries. Intermediaries facilitate a mind-boggling quantity of transactions daily, and are essential to digital trade. Frequently, however, nations seek to "blame the messenger" for undesirable communications and transactions. This is particularly tempting when the intermediary is a foreign company with deeper pockets than the domestic end-user whose conduct is at issue. Such liability poses a major barrier to Internet commerce. By the way, this



is much broader than just intellectual property, which is where intermediary safe harbours are most frequently discussed.

### **Sixth, intellectual property limitations and exceptions.**

IP is always a controversial subject, but there's no question that limitations and exceptions are as integral to IP as the rights in the system. That's particularly true online where studies have started to show, ironically, that the business activities which rely upon reasonable limitations and exceptions generate more economic activity than the rights themselves.

### **Finally, customs harmonization and non-tariff barriers to trade.**

It is now common for individual entrepreneurs and small businesses to use Internet platforms like eBay and Etsy to reach customers around the world. Unfortunately for non-bulk shippers, customs inspections and duties are disproportionately expensive and the complexities of interfacing between online activities, shipping, and then customs and other border measures greatly complicate transactions, especially for SMEs which are over 90% of the economy in virtually every country.

During the first part of the roundtable discussion, someone said that the “networked economy is the beating heart of our economy”. This sentiment certainly captured the spirit of our participants.

Yet, at the same time, as another participant outlined, “the WTO was born before the internet took off. So, the organization is a non-knowledge organization”.

Those two statements highlighted the current challenge is to reconcile this dysfunction.

And to do so, in a more “open” way. Several participants emphasized the need for greater disclosure of information by the WTO negotiators. Today, the public expects to know what agenda is before the negotiators, and how they are approaching the different issues. Of course, such an openness would be in keeping with the access to the mountains of information which the Internet offers one and all.

In this regard, and also as an effort to stimulate business involvement, many expressed support for the WTO DG to create a Business Advisory Council (BAC). It was thought that the BAC would have two essential functions. One, would be for BAC members to offer advice to the DG in terms of the central trade issues and challenges facing the global business community, and how to address these.

Secondly, the BAC would be utilized to find ways of bringing the private sector back to the WTO table. In recent years, the business community has not been as active nor as supportive of the WTO --- certainly relative to years gone by. In the ‘goof old days’, CEO’s were catalysts for trade negotiations, and they played a constructive role in lobbying various governments towards this end. We need to recapture that spirit of adventure.

Roundtable participants felt that a BAC would make an appreciable difference, and at the same time, send a reassuring message to the business community at large.

**“If the UN can get involved with ICT, surely the WTO can get engaged with internet trade”. “If not, something is very wrong”.**



Moreover, it was also felt that the establishment of a multi-stakeholder Digital Economy Task Force would be a most welcomed and helpful initiative by the WTO. The taskforce would assist the WTO identify the core issues, principals, and challenges associated with promoting and enhancing internet trade. It would also prescribe the kind of new rules and disciplines that would be required, in an effort for all countries to take full advantage of the digital economy.

Having government, business, and civil society representatives as members would also ensure that the task force would take an inclusive and comprehensive approach.

In this context, one participant felt that such an initiative would be similar to the UN mandate some years ago, when it created an ICT Taskforce, which led to a forward looking report and which spawned a number of valuable initiatives, including the establishment of the Internet Governance Forum. “If the UN can get involved with ICT, surely the WTO can get engaged with internet trade”, said one participant. “If not, something is very wrong”.

Participants felt that it was imperative for the WTO to blaze such new trails; that it cannot afford to exclusively discuss DDA issues which, as legitimate as they are, are already 20 years old. A new paradigm is required.

People also expressed the need to change the template of how countries conduct trade negotiations, so that the WTO can be more successful. For example, rather than dealing with the four different Modes of Services Trade, WTO Members should talk about “clusters’ or “suites” of services.

In another example, a participant described how the Japanese government now brings together all their Ministries which touch the internet, in order to discuss pertinent issues related to internet policy, and to review what their trading partners are either saying or doing in response to the internet reality. This was viewed as a proactive and helpful approach; one that should be emulated by more countries.

Some at our roundtable expressed the view that it will not be easy to usher in this new template. It was felt that governments and trade negotiators are wedded to their “vertical silos”, and that these silos only relate to the trade of traditional goods and services.

It was also noted that the work of trade negotiators is an incremental one. In other words, new negotiations try to build on past accomplishments and agreements.

Thus, if this is an accurate depiction, as one participant asked, “how do we break this negotiating culture and mould, if we are to enter the internet world?”

Another intervenor suggested, “WTO members must be open and empathetic to considering new models”.

At the same time, some others suggested that it is incumbent upon the internet community to quickly react to current trade challenges and opportunities, and to get ahead of the “game”. In this sense, one observed that “we have a window of opportunity here, since there are no Internet Ministries!”

When it comes to incorporating the digital economy, some agreed that the Transatlantic Trade Partnership (TTP) offered a potentially huge opportunity. That the US and EU, and their respective business communities, could actually construct a “21 First Century” Trade Deal that would help lead the way for others.

Yet, some observers suggested that to date, not many briefs or position papers have come from digital economic actors. The overwhelming input is still coming from the more traditional sectors. It was thus hoped that the slack could be picked up by internet players.

In respect to how to best position the digital economy within the trade agenda, there was no consensus. In other words, should it fall into a more vertical silo-like umbrella of ICT & New Technologies, for lack of a better title? Or, should it take a more horizontal approach? Some representatives of companies noted that they are still “crunching” this issue.

Another issue that was raised was the need to carefully examine proposals on topics such as “Internet Security.” These are often thinly veiled attempts by international actors to paper over their real motivations (often protectionist and short sighted) to seek harmful policies that could harm the Internet as a worldwide trade platform. For example, a coalition of governments in the WCIT process cited internet security as one of the reasons why individual nations should be given more power over the architecture and technical engineering underlying the worldwide communications platform. Such a scenario would invariably lead to the balkanization of the Internet.

## **Free Flow of Data**

The theme of “free flow of data” generated considerable engagement. In an effort to identify commitments and obligations that would facilitate progress on this principle, four main points were stressed;

### **The first, was why this issue matters.**

It was unanimously agreed that unimpeded data flow is critical. That is to say, billions of people already have cell phones and billions more (at a rate of 500,000 per day) will be getting on line. Therefore, such a large volume of users and consumers will come to rely on the need for data flow to be respected.

Like in other areas of the internet, in discussing data, someone insisted that governments must ‘do no harm’. In response, another participant offered the metaphor of the oceans. “You can fish and use the oceans, but do not damage it, do not hurt its sustainable future. So, perhaps we can think of the internet in terms of the ‘digital ocean’”.

### **Secondly, the substance of the global trade agenda must be modernized and made “future proof”.**

As mentioned earlier, the approach could be either vertical or horizontal, but it is an imperative that the digital economy finds itself at the center of the negotiations and future work agendas. And that the default position for the internet be a “light” approach.

### **Third, we must have multiple public policy objectives.**

The growing of the economy for all must be the end objective. However, when it comes to the Internet, we must also be sensitive to the issues of privacy, security, and IP. In terms of societal values, we must find a happy and workable balance.

## **And fourthly, we must find creative paths to accomplish our goals.**

This needs to also be coupled with greater understanding and education of the internet potential. We need to “explain, explain and explain”. We should have high ambitions, but they also must be realistic.

Above all, it is critical to create trust and confidence in terms of the free flow of data, as well as managing the exceptions. For example, issues of privacy, national security, and public order are important pillars for governments. But as someone suggested, “we must be careful, otherwise the exceptions can eat the rules.”

Individuals thought that we were at an “inflection” point.

Some participants were quite optimistic about how some countries are addressing internet trade. They felt some are displaying a new openness to learning more about this dynamic and evolving phenomenon. Because their own citizens and industry are using it in increasing numbers, governments want their economies to naturally gain from this movement. If this trend finds some traction, then it may be a pleasant surprise in terms of negotiators being prepared to “think outside the box”.

There is definitely a logic to this kind of thinking. After all, countries who feel they are ‘far away’ from the center of commercial gravity; or who feel they are too small, the potential of the internet’s reach suddenly becomes a friendly and significant economic enabler. These nations will hopefully be able to ‘leapfrog’ stages of classic economic development.

## **The Networked Economy & Consumer Trust**

Since the internet can directly engage the consumer, it was felt that this would be empowering. It makes them larger actors in the day to day economic transactions. As well, these actors are all “invisible and equal”. Towards this end, the internet is also a democratizing force.

Talking about invisibility, one participant was reminded of a session many years ago, which featured the US official, Era Magazner. In explaining the future of a computer-driven world, he projected a large picture of a PC, connecting a person and a dog. Then he said, “the beauty of the computer is that the person has no idea he is communicating with a dog!”

Several participants suggested updating the Internet Society’s Issues/Players matrix to include stakeholders that are currently not active in Internet policy shaping, but should be. Given the reach and importance of the Internet to commerce, explaining the technical and commercial architecture of the Internet to non-activated stakeholders, such as members of the international trade policy community, would be an effective exercise.

Towards this end, I have included in Appendix 3, a copy of such a matrix from the Internet Society which I believe is comprehensively well done.

Consumer trust is understood to be a vital driver of the network economy. In the context of trade, this often takes the form of privacy or data protection regulations covering how data about individuals is permitted to move across national borders. Negotiating these questions will be one of the great tasks of the modern trade regime.

Between the US and EU, we have the Safe Harbor Agreement. EU Data Protection Officers are a first line of complaint to the FTC for violations of the Safe Harbor. The Safe Harbor is under attack in the EU however, particularly in light of disclosures about NSA spying activities.

It seems clear that the EU will have substantially more strict regulations on the movement of data than the US will or can realistically achieve given the current political climate. It also seems clear that both regions will continue to want to exchange data for commercial purposes in the future. The challenge for any trade document therefore becomes how to bridge this gap to protect information while permitting digital trade.

One suggestion could be to create a framework agreement laying out generalizations with a recurring meeting to evaluate if and how the framework needs to be modified in the light of new technological developments.

When discussing privacy frameworks, examining the values that drive the regulation is useful. In the US, the First Amendment is a values driver that greatly impacts the privacy discussion in the US. Privacy in the EU is similarly looked at as a basic human right and is therefore a great values driver there.

Instead of striving for perfect equality between national systems of privacy and data protection, we must look for interoperability. Systems should work together to provide for the movement of data even when the national legislations are not precisely equal. This idea of interoperability should be combined with an emphasis on increasing cross-border enforcement of privacy violations, by encouraging such relationships between various privacy enforcers such as the Federal Trade Commission in the US.

## iv CONSIDERATIONS

The Internet is truly a powerful, globally transformative force. Building on this, one of our participants offered that “knowledge products and creation will be the future wealth of economies all over the world”

Therefore, a central concern must be, how to ensure that the economic reach, innovation, competitiveness, and use of the Internet continues to grow and flourish? And accordingly, how to further expand the trade in knowledge, via digital products?

In other words;

- What rules and disciplines do we need to establish to guarantee the Internet’s unimpeded growth, and the trade in knowledge?
- From a development perspective, how can we best encourage developing countries in taking advantage of the Internet technologies, and trade in digital products, so that the quality of their citizen’s lives can be enhanced?
- How to ensure that small firms can utilize the internet as easily as the big corporations?
- How can we protect ourselves against attempts, whether public or private, to undermine or curtail this huge potential?

Towards this end, in Appendix 2, you will find a possible Framework for an Internet Economy Agreement, which I drafted some time ago. It offers some food for thought on the matter, and was included as an annex in a previous WTO Reform report (WTO At The Crossroads), which I wrote and presented to WTO DG Lamy, in January of this year, when I was a Member of his Experts Panel.

Trying to create support and momentum for negotiating new internet trade rules is a complex, time consuming, and imminently political task. We must thus methodically prepare the ground. In doing so, let me identify a non-exhaustive list of important issues that I believe need to be carefully considered.

### a. Governance Issues

As the Internet continues to transform every aspect of life, in every part of the world, managing the creation and sharing of knowledge, will become ever more important.

Think about it.

Most of the world’s population still does not have access to the Internet. One can easily envision just how much more significant --- and complicated, if we wait too long --- it will become as billions more people come online.

To date, IP laws deal well with the world of paper, video disks and tangible assets. I would contend, however, that they do not deal well with the Internet.

The only protection on the web that is worth anything—meaning it’s enforceable and reliable—is the protection you can get for domain names—the things we all type into our browsers ending most commonly in .com, .net or .org. That’s it.

When the authorities talk about ICANN, the Internet Corporation for Assigned Names and Numbers, they think that they are managing the Internet. But with respect, they are not. At least not fully.

As well, some WTO Members hesitate in having an open discussion about how to protect IP in the virtual world. But they must openly examine what level of safeguards is realistically possible, and

**“The beauty of the computer is that the person has no idea he is communicating with a dog!”**

what kind of an agreement can be drafted?

That there is a vacuum is not surprising, when one considers the speed of technological change. But I do worry about not making a genuine and committed effort to addressing this gap.

I have said in WTO and UN circles that there would come a day when Members would regret their resistance to establishing disciplines for cyberspace. Some of them claim that cyberspace does not belong to anyone and thus, we do not require jurisdictions or boundaries. Again, with respect, I disagree.

In the real world, as it relates to IP, you can protect someone’s rights within a national boundary. So, for example, I register a trademark in Jordan so that I am protected in Jordan. But, in cyberspace, who will define and enforce an infringement?

I freely recognize that this is a complicated issue. But that should not intimidate us into non-action. Let us address the challenges head on.

Time is marching and as it does, the virtual world grows every day. We just cannot afford to fall dangerously behind.

Some country representatives contend that we already have protection. They claim that if you need to sue someone for infringement in the virtual world, one can resort to our courts and legal systems in the real world. Well, that may sound good in theory but in practice, the obstacles to doing so are next to impossible.

Let me give you a real experience that happened to me.

One morning about 15 years ago, I came upon a website that said, “ Come to Talal Abu-Ghazaleh for a free haircut for your dog”. Somebody had squatted my name, Talal Abu-Ghazaleh.com. It was a dog shop in Samoa. They did it because they knew my name was well known and wanted to make some quick money.

Imagine if I had had to go to Samoa to file an action there to get my name back?

It was only because there was specific protection for domain names that I was able to sue for this infringement. It was through a system called the Uniform Dispute Resolution Program (UDRP), which is managed by WIPO, the World Intellectual Property Organization. At the conclusion of the dispute, the UDRP ruled in my favor, and they closed the domain name for the dog groomer.

However, I would not have stood a chance, if they had not put my name in the domain. If the dog groomers had instead used my name on the website, then I would have been ‘up the creek without a paddle’. I would have been pressed to figure out a different, far more costly paddle, with which to take them to court, in an effort to have my rights enforced. If such a paddle existed, that is.

Now, also imagine the situation – not uncommon – where you can’t determine which country a website is hosted? Or, multiple copies of that website being hosted on servers in different countries, where the problem becomes even more vexing.



The moral of this story?

Well, simply put, the virtual world must be governed by rules for the virtual world.

However, there remains uncertainty and disagreement over whether digital knowledge products, that have traditionally been traded on a physical carrier medium (e.g. books, software on disks, music on tapes, etc.), are governed by the GATT or GATS? Or, whether they deserve their own, unique classification?

I argue for the latter.

While existing WTO agreements do not exclude the Internet, they preceded it in time and thus are not fully optimized to accommodate the needs of trade in the digital environment.

### **b. Stakeholders**

When we speak of governance issues, we need to visualize how the different stakeholders (see Appendix 3) will engage and how, in the end, they will endorse the required rules and disciplines that will underpin and promote internet trade.

First of all, who are the stakeholders? I would identify four groups:

- **Governments**  
Their primary role is public policymaking at the national and international levels. Under this rather broad umbrella, they need to establish a policy framework, and foster a creative and secure environment, whereby the sharing and evaluation of information, key issues, and challenges are done effectively and with full transparency.
- **The Private Sector**  
As the creators of products and the practitioners of trade, the business community is responsible for industry self-regulation; the development and promotion of best practices; the establishment of policy proposals for policymakers, and investing in research and innovation. They should also be engaged with public advocacy.
- **Civil society**  
They are chiefly engaged in public advocacy and awareness campaigns; capacity building; and contributing to the policy process
- **Intergovernmental Organizations**  
One of the leading obligations of existing international, intergovernmental organizations is to enhance their engagement, coordination and policy coherence with one another, so as to improve policy making at the global level.

This is particularly important, given that there is no global multi-stakeholder forum to specifically address Internet-related issues. Perhaps the time has come to create such a space?

### **c. Policy Issues**

When considering embarking on the drafting and negotiating of new internet trade rules, many public policy issues arise. This was certainly the case with our Roundtable. These include: critical internet resources; the security and safety of the Internet; spam concerns; developmental aspects; consumer rights and confidence; issues pertaining to the use of the Internet; free data flow; and the role of governments on issues of freedom of expression, content, security and public order.



These and other concerns will require careful consideration and an open and candid discussion.

The question of security, for example, was not at the top of the agenda when the Internet was originally designed for a small and trusted community. Today, as a global platform for commerce and social interaction, confidence in the Internet is vital, whether in buying and selling goods online, interacting with public administrations such as filing tax returns, or in managing sensitive personal information such as health records.

Absolute trust may never be achievable but users need to be confident that their online activities are as secure as their offline equivalents.

Increasing trust online requires policies and measures to strengthen the security of information systems and networks; the respect for privacy and personal data; the creation of trustworthy digital identities; and the adequate protection for consumers, minors and other vulnerable groups.

The Internet is widely viewed as both a critical infrastructure in itself and a key enabler of other important infrastructures. The monitoring and control of power grids and water plants, for example, often depend on the functioning of underlying IP-based networks. In addition, most industrial control systems that monitor and control critical processes are increasingly connected, directly or indirectly (through corporate networks), to the Internet and therefore face new threats. Protecting the Internet is a public policy priority.

Protecting privacy is also becoming much more difficult in the Internet age. The Internet makes it possible to store or transfer huge amounts of data at little cost. At the same time, vast amounts of personal information are searchable, linkable and traceable. As a result, privacy-related risks are increasing.

Another pressing need for policy makers is to better understand the role and contribution of the Internet in driving productivity and economic growth, and as a platform for innovation. In addition, more should be done to promote more open and competitive markets for goods and services, and to meet the challenges of transforming government and the public sector so that they are more efficient, transparent and accountable.

To craft appropriate policies, a broad range of information is required. Being able to better measure and assess the growth and performance of the Internet is one such vital piece of information. The Internet still represents a “black box” of unknowns for many stakeholders, despite its status as an increasingly critical infrastructure.

Internet-related policies should be crafted with the input of business, government, civil society, international organizations, and technical experts. For the process to yield worthy and agreeable outcomes, the process must be inclusive. Without this, the starting point developing good Internet/IP governance will have been breached from the word go.

Each of the issues is critical in their own right. Together, they pack quite the punch. In trying to build a coherent governance framework, there must be a set of balanced principles that will guide this work.

#### **d. Principles**

What basic principles are required for supporting new rules for internet trade?

**“Knowledge products and creation will be the future wealth of economies all over the world”**

In this regard, and as part of the WTO Work Programme on E-Commerce, the US, EU, and Australian delegations have already produced a list entitled, ‘Implementation of Principles’. These principles were designed to support the expansion of ICT networks and services, and enhance the development of e-commerce. I have listed these in Annex 1 for your further consideration.

As well, last December 2012, at an ITU World Conference on International Telecommunications, held in Dubai, there was a discussion around the theme of governance of the global Internet. Although this controversial topic was formally off the agenda, governments took the opportunity to exchange different positions on how ITU rules should be extended to regulate the global Internet on matters such as pricing, technical aspects, security and privacy.

On one side of the debate was the ‘China/Russia’ group, which included many developing countries, and which argued for greater government regulation of the Internet. The other side was the ‘US/EU’ group, incorporating most developed economies, which proposed a more ‘hands off the internet’ philosophy.

These two poles demonstrate the political differences that exist over internet governance --- and by extension, to any principle or rule --- and more specifically, the roles of governments.

This is not an easy gap to bridge. Matters of internet blocking, content restrictions, and censorship create considerable sparks, which emanate from very different political experiences and cultures.

Yet, if the internet is to be used as a global force for public and private good, then eventually these governments must speak with one voice; from one internet hymn sheet, if you will.

Thus, I believe that governments need to subscribe to some basic, overarching principles, including;

- The principle that no single Government should have a pre-eminent role in relation to international Internet governance.
- The principle of any Internet trade should be to increase economic opportunities for all peoples and through this, enhance the quality of their lives.
- The principle whereby by large, small and medium sized firms can all benefit from Internet trade and any new rules.
- Underwriting any governance structure should be the principles of multilateralism, transparency and democracy, with the full participation of Governments, the private sector, civil society and international organizations.
- The principle of building sufficient capacity in developing countries should be a central priority.
- And the principle that the freedom of internet expression must be protected, as would data protection and privacy issues.

In this context, I also believe that we need to review earlier assessments that were made about digital trade.

Back in the ‘old days’, for example, we started with the following notions;

- The notion that the trade of digital products did not yet face pervasive trade barriers.
- The notion that WTO Members did not apply tariffs, quotas, and

- other regulatory barriers to digital products.
- The Notion that the Internet is a largely unregulated (pristine)
- ‘borderless’ distribution platform with few laws & regulations.
- The Notion that it would be easy for everybody to sell digital
- content across borders.

Are these notions really still accurate? If not, how have these changed?

Another prevailing notion was that the internet would be a real boon for small and medium sized enterprises (SME’s).

The SME community has naturally taken advantage of the internet. But, the reality seems to indicate that the knowledge of IP in general, by SME’s, is relatively low.

There are a number of reasons that contribute to this, including; lack of adequate human resources; perceived lack of relevance of the IP system; and the perceived high cost and complexity of the IP system.

Accordingly, the SME agenda has to feature prominently in any Internet trade discussion.

## V PROPOSALS

I would strongly urge that the WTO establish an internet trade work plan, with a clear road map. In regards to establishing such a strategy, I would make the following recommendations;

- 1. First, Trade Ministers and Ambassadors should create the appropriate ‘space’ at the WTO for engaging in an informal, ongoing discussion about the role that the digital economy plays in terms of international trade flows, how this can be enhanced, and what new rules are required for facilitating this.**
  - At this stage, the discussion should be a ‘non-negotiating’ one, and inclusive of all Members and Observers. It must also be transparent.
  - In terms of finding or creating the right space, different options do exist: i) it can be done under an existing WTO Committee or Council; ii) it can be an extension of the Trade Policy Review mechanism; iii) a new body with a specific and focused mandate can be created; or iv) the task could be assigned to a newly created Business Advisory Board (see Recommendation 6)
  - Over the course of their deliberations, WTO Members would identify the central issues, principles, and policy challenges inherent with liberalizing Internet Trade, as well as defining the scope of possible solutions and approaches
  - This would be supported by rigorous research and analysis by the WTO Secretariat
  - At the same time, Members would be free to also conduct public meetings and hearings in their own countries, as another way of providing valuable input and critical thinking.
- 2. Second, the deliberations should be published in a comprehensive report, or a series of evolving reports, and it should be widely circulated in the trading community at large.**
- 3. Third, to assist with the discussions, the WTO should appoint a Multi-Stakeholder Digital Economy Task Force.**
  - The task force would report to the WTO General Council
  - Having government, business, and civil society representatives as members would ensure that an inclusive, transparent, and comprehensive approach is made in terms of addressing the issues and consulting the relevant players
  - It would also serve to energize the various trade constituencies, which is an important requirement in revitalizing the multilateral trading system.
- 4. Fourth, the WTO must regularly consult the relevant stakeholders in the digital economy, starting first and foremost with the business community.**
  - Utilizing the task force and its reports, and other processes, WTO Members must ensure that the global trade constituency is engaged, so as to improve the policy making process.
  - Consultation is an indispensable step in rebuilding trust and confidence between trade policy makers and the trade practitioners.
- 5. Fifth, the WTO should consolidate all of its findings and those of the task force, under a Final Digital Economy Report, and it should be published and widely distributed.**
- 6. Sixth, based on the final report, WTO Members should develop a Framework for Negotiating New Rules and Disciplines for the Digital Economy.**
  - Once Members approve a Negotiating Framework, then they would enter into negotiations with the objective of adopting new rules and disciplines for the trade in digital products.

**7. Finally, the WTO DG should establish a Business Advisory Council (BAC), beyond the purview of the digital trade agenda.**

- The BAC would have at least two primary responsibilities.
- The first would be to offer advice and support to the DG and through him, to Members, on the central trade issues and challenges facing the global business community.
- And the second, would be for the BAC to create and promote opportunities that would bring the private sector back to the WTO table, and restore its traditional role and leadership in growing trade.

**“The firece urgency of now”! That this is no time to engage in the luxury of cooling off, or to take the tranquilizing drug of gradualism!”**

*Rev. Martin Luther King*

## vi MOVING FORWARD

In closing, as I have said before, I am not a trade expert. I am a businessman.

There are a multitude of qualified trade gurus and negotiators that are capable of meeting the internet aspirations of our times through the adoption of new rules and agreements.

As an entrepreneur, I have tried to offer a perspective and a prescription from what I have experienced; from both my successes and my mistakes. They are derived from pragmatic outcomes, and not from theory. They try to draw from lessons learned.

I am also indebted to the cooperation and work of the CCIA, and to all the participants who joined our Internet Roundtable in Washington. They provided invaluable insights and inspiration.

Among the outcomes of the roundtable, is the creation of IDEA --- the International Digital Economic Alliance. It will be co-chaired by myself, and the CEO of the CCIA, Ed Black. As I said earlier, I am truly excited about the prospects for this new entity. I am confident that it will be a platform that will assist the digital community in promoting and defending its trade interests. As well, it will be another organization that will offer its support and assistance to the global trading regime.

I have been called a dreamer. But I am not fazed by this. We need to dream.

But not just the pie-in-the-sky variety we talk about the morning after with our family over breakfast. But measurable, realistic dreams.

Dreams that come from visions; visions that serve to move societies forward.

Visions, that champion the cause of improving the quality of life for mankind.

Visions, that have the force of altering destinies.

For me, harnessing the full trade potential of the internet is such a vision. And while it is not easy, it is perfectly doable.

It is my hope that this paper can engage people's interest and curiosity. Come forward with your views. Feel free to counter my proposals. Tear the paper apart, if you must! That's all ok.

But please don't remain indifferent to it.

Not because the essence of this paper represent my ideas alone. They clearly do not. Countless of people in the digital economy, are counting the minutes for when the WTO moves on this front.

I happen to believe that moment is now.

And let us take the version of now, that the Rev. Martin Luther King so beautifully coined, some fifty years ago, which we recently celebrated.

He talked about;

***"...the fierce urgency of now"! That this is no time to engage in the luxury of cooling off, or to take the tranquilizing drug of gradualism!"***

That's how I see our trade work for the internet era.

I hope you share the same vision.

**Talal Abu-Ghazaleh**

PS: I would welcome your views. Please email me at: [tag@tagi.com](mailto:tag@tagi.com)

Other Trade Reports by Talal Abu-Ghazaleh:

***WTO at the Crossroads; A Report on the Imperative of a WTO Reform Agenda, January 2013***

[http://tagorg.com/news.aspx?id=10084&group\\_key=news&keywords=wto+at+the+crossroads&lang=en](http://tagorg.com/news.aspx?id=10084&group_key=news&keywords=wto+at+the+crossroads&lang=en)

***WTO Blueskying; Ideas for the New DG, June 28, 2013***

[http://tagorg.com/news.aspx?id=12449&group\\_key=news&keywords=WTO+Blueskying%3a+%22+Ideas+for+the+new+DG%22&lang=en](http://tagorg.com/news.aspx?id=12449&group_key=news&keywords=WTO+Blueskying%3a+%22+Ideas+for+the+new+DG%22&lang=en)

**“IP Protection is the fuel that lights the fire of creativity in a society”**

*Franklin D. Roosevelt*



## APPENDIX 1

As part of the Work Programme on E-Commerce at the WTO, a Communication from the US & EU, dated July 11, 2011, and Australia, dated September 12, 2012, re the Implementation of Principles, designed to support the expansion of ICT networks and services, and enhance the development of e-commerce:

i. US & EU:

Governments seeking to enhance their national regulatory capacity and support the development of Information and Communications Technology (ICT) networks and services should embrace the following principles and, as appropriate, work to integrate them, in a technologically neutral manner, into bilateral and multilateral trade disciplines:

1. **Transparency:** Governments should ensure that all laws, regulations, procedures, and administrative rulings of general application affecting ICT and trade in ICT services are published or otherwise made available, and, to the extent practicable, are subject to public notice and comment procedures.
2. **Open Networks, Network Access and Use:** Governments, preferably through their regulators, should promote the ability of consumers legitimately to access and distribute information and run applications and services of their choice. Governments should not restrict the ability of suppliers to supply services over the Internet on a cross-border and technologically neutral basis, and should promote the interoperability of services and technologies, where appropriate.
3. **Cross-Border Information Flows:** Governments should not prevent service suppliers of other countries, or customers of those suppliers, from electronically transferring information internally or across borders, accessing publicly available information, or accessing their own information stored in other countries.
4. **Local Infrastructure:** Governments should not require ICT service suppliers to use local infrastructure, or establish a local presence, as a condition of supplying services. In addition, governments should not give priority or preferential treatment to national suppliers of ICT services in the use of local infrastructure, national spectrum, or orbital resources.
5. **Foreign Ownership:** Governments should allow full foreign participation in their ICT services sectors, through establishment or other means.
6. **Use of Spectrum:** Governments should maximize the availability and use of spectrum by working to ensure that it is managed effectively and efficiently, and, where appropriate, in accordance with applicable International Telecommunication Union Radio communication Sector (ITU-R) recommendations. The allocation of spectrum for commercial purposes should be carried out in an objective, timely, transparent, and non-discriminatory manner, with the aim of fostering competition and innovation. Governments are encouraged to empower regulators with impartial, market-oriented means, including auctions, to assign terrestrial spectrum to commercial users.
7. **Regulatory Authorities:** Governments should ensure that the regulatory authorities that oversee ICT services sectors are legally distinct and functionally independent from all service providers, and have sufficient legal authority and adequate resources to perform their functions effectively. Regulatory decisions and procedures should be impartial with respect to all market participants. Regulatory decisions regarding ICT services, and the results of appellate proceedings regarding such decisions, should be publicly available.

8. **Authorizations and Licenses:** Governments should authorize the provision of competitive telecommunications services, wherever possible, on simple notification by a service provider, and should not require legal establishment as a condition of supplying a service. Licenses should be restricted in number only for the purpose of addressing a limited set of specified regulatory issues, such as the assignment of frequencies.
  9. **Interconnection:** Consistent with the GATS Telecommunications Annex’s access and use provisions, governments should ensure that public telecommunications service suppliers have the right and the obligation to negotiate and to provide interconnection on commercial terms with other providers for access to publicly available telecommunications networks and services. In addition, in accordance with the GATS Reference Paper on Basic Telecommunications, countries should ensure that public telecommunications service suppliers are able to negotiate and obtain interconnection with major suppliers at cost-oriented, non-discriminatory, and transparent rates.
  10. **International Cooperation:** Governments should cooperate with each other to increase the level of digital literacy globally and reduce the “digital divide”.
- ii. **Australia:**
11. **Online consumer protection:** Members should recognise the importance of maintaining and adopting measures to protect consumers using electronic commerce in order to enhance consumer welfare and confidence in electronic commerce. Members should also encourage cooperation between their respective national agencies responsible for consumer protection on activities related to cross-border electronic commerce.
  12. **Online Personal Data Protection:** Members should adopt or maintain a domestic legal framework which ensures the protection of the personal data of the users of electronic commerce. Governments should share information on their experiences in protecting the personal data of the users of electronic commerce.
  13. **Unsolicited Commercial Electronic Messages (Spam):** Members should seek to promote measures to regulate unsolicited commercial electronic messages. Members should, subject to their respective national laws and regulations, cooperate bilaterally and in international fora regarding the regulation of unsolicited commercial electronic messages. Areas of cooperation may include, but should not be limited to, the exchange of information on technical, educational and policy approaches to unsolicited commercial electronic messages.

## APPENDIX 2

Draft Framework for an Internet Economy Agreement, provided to the WTO, by Talal Abu-Ghazaleh, in January 2013.

### Overview

This document explores in draft form the provisions that could be a part of an agreement to achieve Internet services trade liberalization, with the goal of creating a Free Trade Zone of the Internet.

The significance of the Internet to global trade cannot be understated. The Internet accounted for 21 percent of the GDP growth in mature economies over the past 5 years, with 75 percent of the benefits captured by companies in more traditional industries. In a survey of 30 countries with a collective 2010 GDP of \$19 trillion, Internet penetration was found to be growing at 25% per year over the past five years, and contributing an average of 1.9% to GDP.

If one considers that information flows constitute trade in knowledge services, then the volume of information relayed by online platforms such as Google, Yahoo, Facebook, Tuenti, Baidu, Yandex, Microsoft Bing, the Internet is home to some of the largest traders in the global economy. This is reinforced when you consider the opportunities that Internet services create for more traditional businesses that would otherwise not exist.

Online marketplaces like eBay, Rakuten and Mercado Libre, for example, underpin SME trade internationally every year, and that trade is growing. In addition to these platforms, the Internet enables numerous knowledge-enhancing services that we now largely take for granted, such as email and GPS positioning, whose consumer application largely post-date the Uruguay Round.

### A Developing Countries Perspective

Full and effective participation in the emerging global information network is crucial for a country to benefit from globalization and to avoid being marginalized. At present, most developing countries are lagging far behind in this respect.

With the current explosive pace of information technology development, this gap is rapidly becoming more and more difficult to bridge. While several developing countries do have high potential in relevant human capital, in particular in software development, and/or in existing manufacturing facilities, the absolute majority of the South indigenous efforts have no chance of reversing this trend. We need a comprehensive international cooperation effort that would transcend traditional frameworks of technical assistance in a number of ways.

### WTO's Remit

It has long been acknowledged that e-commerce and Internet services are within the remit of WTO's liberalizing mandate. The WTO's Work Programme on Ecommerce began in 1998 but has been eclipsed by the focus on Doha round issues. Nevertheless, there appears to be renewed interest in e-commerce as part of a GATS+ initiative. Most WTO members appear to agree that the majority of electronically delivered services are services governed by GATS. However, there remains disagreement over whether digital products that have traditionally been traded on a physical carrier medium (e.g. books, software on disks, music on tapes, etc.) are governed by the GATT and GATS, or are unique and deserve their own classification. Whether services provided over the Internet should be classified as mode 1 (cross border provision) or mode 2 (consumption abroad) remains an open question to be considered.

## Proposed Scope

The proposed Internet agreement would cover goods and services for which the Internet is essential to access or to use the given products and/or services, for or by customers, whether the product is tangible or intangible (it being understood that tangible products' delivery, and tariffs, are governed by other agreements). Such an agreement could be a part of a larger services agreement, such as the International Services Agreement ("ISA"), which is under discussion in Geneva now.

## A Trade Framework for the Knowledge Economy

While existing WTO agreements do not exclude the Internet, they preceded it in time and thus are not fully optimized to accommodate the needs of trade in the digital environment. One example is the disagreement over the status of digital goods that also have physical forms, such as books. The international trade framework must be adapted to better respond to the needs of this component of the international economy, so as to better facilitate global trade and growth. This modernization would not compete with other efforts, such as ITA expansion. Both activities are important to the continued sound operation of the global trade system.

All WTO Members are interested in incentivizing the growth of the domestic Internet economy due to its high development and export-enhancing potential, and in adopting measures that increase the attractiveness of their countries to foreign direct investment in the local Internet economy, and in supporting the potential of local entrepreneurs to compete globally. Updating the international trade framework to better accommodate trade in Internet services can foster all these objectives.

The following obligations may be considered towards this objective:

- An Internet economy agreement should oblige contracting parties to eliminate direct or indirect tariffs, fees, or duties on any of the covered area or on payments made by, through, or for covered transmissions or activities.
- The envisioned agreement would circumscribe the cases in which a party could limit Internet trade. Under an Internet trade agreement, information service restrictions would have to comply with WTO principles of being transparent, necessary, and as least restrictive as possible. Affected parties must be provided due process. The agreement would specify that such restrictions need to be narrowly tailored, and confined to certain special cases, and do not unreasonably prejudice the legitimate interests of parties engaged in lawful trade.
- The agreement should specify that contracting parties agree not to impose, as a condition of market access, any local content requirements nor that Internet activity be provided through locally hosted data. As platforms for extensive third-party commerce, online intermediaries provide platforms and conduits for an extraordinary amount of international trade. Providing minimum standards for the protection of online providers from liability on account of the data transmitted by third parties is an essential foundation to a healthy online trade environment. An Internet services agreement should mandate minimum protections for online services in these circumstances.

## Meeting the Internet stakeholders

Ultimately, the international trade regime should extend protections to knowledge goods and of services in a manner that fully recognizes their status as equal to that of physical goods and services. To that end, the possibility of a joint meeting with the Internet and knowledge stakeholders to explore the needs of the digital environment and Internet economy should be seriously considered.

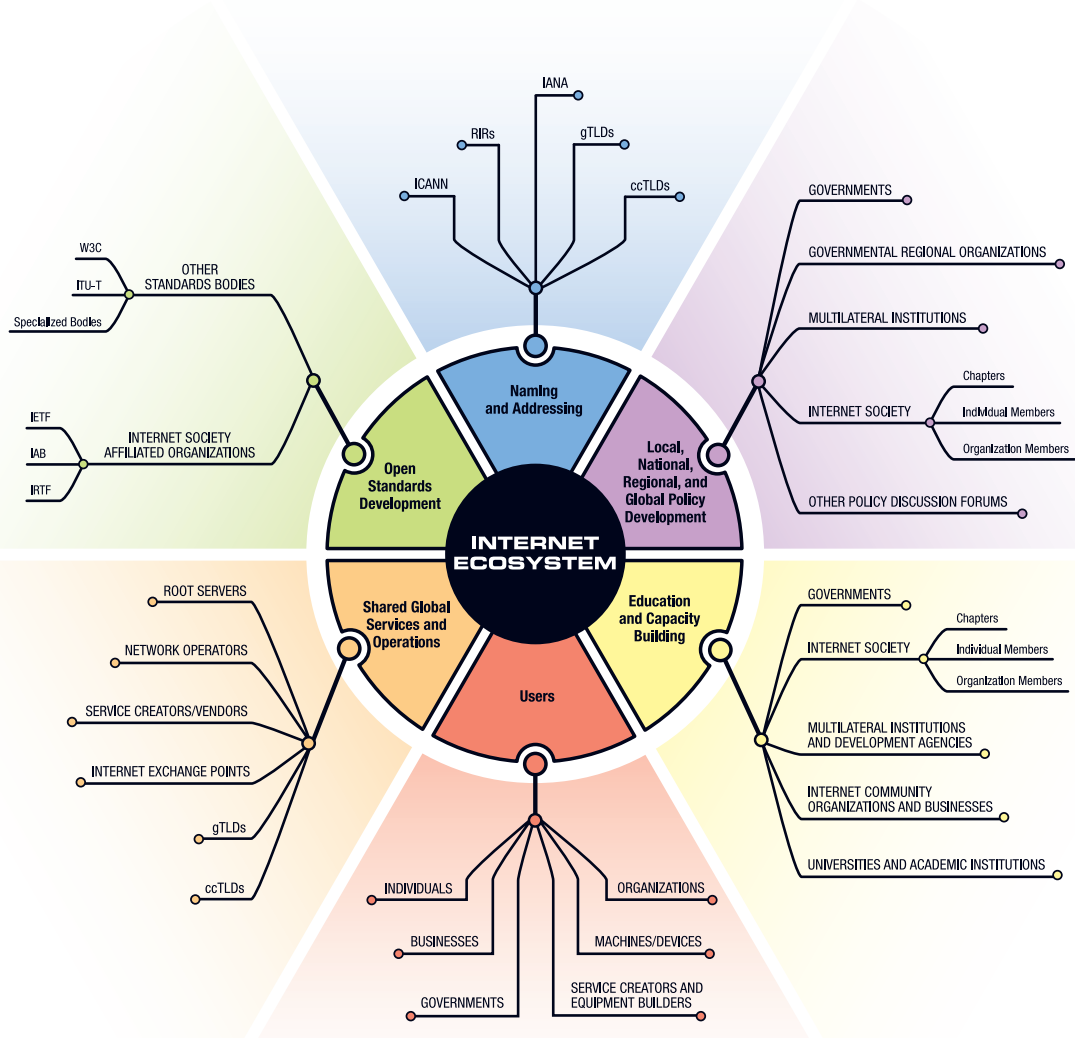
# APPENDIX 3

## Internet Stakeholder Matrix

# The Internet Ecosystem

The Internet is successful in large part due to its unique model: shared global ownership, development based on open standards, and freely accessible processes for technology and policy development.

The Internet's unprecedented success continues to thrive because the Internet model is open, transparent, and collaborative. The model relies on processes and products that are local, bottom-up, and accessible to users around the world.



<http://www.isoc.org>



**County-Code Top-Level Domains (ccTLDs)** ccTLDs are operated according to local policies that are normally adapted to the country or territory involved. <http://www.iana.org/domains/root/db/>

**Generic Top-Level Domains (gTLDs)** gTLD registries operate sponsored and unsponsored generic Top-Level Domains according to ICANN policies. <http://www.iana.org/domains/root/db/#>

**Governments** Federal, state and local governments and their regulators have roles in setting policies on issues from Internet deployment to Internet usage.

**Governmental Regional Organizations** Governmental regional organizations include, but are not limited to, the African Union, the Asia-Pacific Economic Cooperation (APEC), the Asia-Pacific Telecommunity, the Caribbean Telecommunication Union (CTU), the Commonwealth of Nations, the European Union (EU), and the Inter-American Telecommunication Commission (CITEL). Governments sometimes like to coordinate policies related to the Internet for their regions.

**Internet Architecture Board (IAB)** The IAB is chartered as a committee of the Internet Engineering Task Force (IETF) and as an advisory body of the Internet Society (ISOC). Its responsibilities include architectural oversight of IETF activities, Internet Standards Process oversight and appeal, and the appointment of the RFC Editor. The IAB is also responsible for the management of the IETF protocol parameter registries. <http://www.iab.org/>

**Internet Assigned Numbers Authority (IANA)** IANA is responsible for the global coordination of the Domain Name System (DNS) Root, Internet Protocol (IP) addressing, and other Internet protocol resources. <http://www.iana.org/>

**Internet Corporation for Assigned Names and Numbers (ICANN)** ICANN is a not-for-profit public-benefit corporation that coordinates the system of unique names and numbers needed to keep the Internet secure, stable, and interoperable. It promotes competition and develops policy on the Internet's unique identifiers through its coordination role of the Internet's naming system. <http://www.icann.org/>

**Internet Engineering Task Force (IETF)** The IETF is a large, open, international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet. It is open to any interested individual. <http://www.ietf.org/>

**Internet Community Organizations and Businesses** Many Internet organizations and businesses encourage, train, and invest in Internet education and capacity building. Organizations include,

but are not limited to, the RIRs, regional and national network operators, and the Network Startup Resource Centre (NSRC), as well as vendors such as Afiliás Limited, Alcatel-Lucent, Cisco, IBM, and Microsoft.

**Internet Research Task Force (IRTF)** The IRTF's mission is to promote research of importance to the evolution of the future Internet by creating focused, long-term, and small Research Groups working on topics related to Internet protocols, applications, architecture, and technology. <http://www.irtf.org/>

**Internet Society (ISOC)** ISOC promotes the evolution and growth of the global Internet. Through members, chapters, and partners, they are the hub of the largest international network of people and organizations that work with the Internet. <http://www.isoc.org>

**ISOC Chapters** ISOC Chapters localize ISOC's core values and promote the Internet for their local communities. <http://www.isoc.org/isoc/chapters/>

**ISOC Individual Members** ISOC Individual Members show commitment to ISOC's vision. <http://www.isoc.org/members/>

**ISOC Organization Members** ISOC Organization Members support and contribute to ISOC and understand the need to take action collectively to ensure the Internet remains open, accessible, trusted, and secure. <http://www.isoc.org/orgs/>

**International Telecommunication Union Telecommunication Standardization Sector (ITU-T)** The ITU-T regularly convenes specialists drawn from industry, the public sector, and R&D entities worldwide to develop technical specifications that ensure that each piece of communications systems can interoperate seamlessly with the myriad elements that make up today's complex ICT networks and services. <http://www.itu.int/ITU-T/>

**Internet Exchange Points (IXP)** Regional and national IXPs provide physical infrastructure that allows network operators to exchange Internet traffic between their networks by means of mutual peering agreements.

**Multilateral Institutions and Development Agencies** Multilateral institutions include organizations that have multiple countries working in concert on Internet issues for policy development, education and capacity building. Organizations include, but are not limited to, the International Telecommunication Union (ITU), the ITU's Development Sector (ITU-D), the United Nations' UNESCO, and the World Intellectual Property Organization (WIPO).

**Network Operators** Network Operators include companies that provide access to the Internet. Regional Network Operator Groups (NOGs) provide collaboration and consultative opportunities for local operators and among NOGs globally.

**Other Policy Discussion Forums** Organizations include, but are not limited to, the Internet Governance Forum (IGF) and the Organisation for Economic Co-operation and Development (OECD), as well as national consultative forums, industry associations, and civil society organizations.

**Regional Internet Registries (RIRs)** RIRs oversee the allocation and registration of Internet number resources within a particular region of the world. Each RIR is a member of the Number Resource Organization (NRO). RIRs include AfriNIC, the Asia Pacific Network Information Centre (APNIC), the American Registry for Internet Numbers (ARIN), the Latin American and Caribbean Internet Addresses Registry (LACNIC) and the RIPE Network Coordination Centre. <http://www.nro.net/>

**Root Servers** DNS root name servers reliably publish the contents of one small file called a root zone file to the Internet. This file is at the apex of a hierarchical distributed database called the Domain Name System (DNS), which is used by almost all Internet applications to translate worldwide unique names like [www.isoc.org](http://www.isoc.org) into other identifiers; the web, e-mail, and other services use the DNS. <http://www.root-servers.org/>

**Service Creators/Vendors** Service Creators and Vendors provide software applications and experiences that utilize the Internet.

**Specialized Standards Bodies** Many organizations focus on specialized standards; some play key roles in the Internet. These organizations include, but are not limited to, the European Telecommunications Standards Institute (ETSI), the Identity Commons, the IEEE Standards Association, the ISO ANSI, the Liberty Alliance Project, Open Source Communities, and the Organization for the Advancement of Structured Information Standards (OASIS).

**Universities and Academic Institutions** Historically and continuing today, academic institutions play a critical role in educating students and business people. They also prototype and demonstrate hardware and software solutions that benefit the Internet.

**Users** People and organizations that use the Internet or provide services to others via the Internet.

**World Wide Web Consortium (W3C)** W3C is an international consortium where Member organizations, a full-time staff, and the public work together to develop Web standards. <http://www.w3.org>



A nonprofit organisation, the Internet Society was founded in 1992 as a leader in promoting the evolution and growth of the Internet. Through our members, chapters, and partners, we are the hub of the largest international network of people and organisations that work with the Internet. We work on many levels to address the development, availability, and technology of the Internet.

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