Introduction

About the Brainbox Institute

The Brainbox Institute is a consultancy and think tank with an international outlook, based in New Zealand. Brainbox was founded in 2018 and specialises in the intersection of law, public policy, and technology, drawing on public interest legal research projects, and advisory work for public and private clients.

Key areas of interest and expertise

The Brainbox Institute has conducted research and advisory work in the following areas, which are directly relevant to the terms of the Global Digital Compact as currently drafted:

- Technology and human rights, including the use of human rights frameworks to shape the design and deployment of technology.
- Platform regulation and transparency, including as project lead for the multistakeholder Action Coalition on Meaningful Transparency, and work with the Global Partnership on AI.
- Digital public infrastructure, including the translation of law and rules into machine-executable and machine-readable formats, and publishing digital legal materials.
- Artificial Intelligence, including domestic and international regulatory responses to AI.
- Disinformation, including human rights consistent approaches to domestic legislation, and multistakeholder governance for monitoring mechanisms.

This submission has been produced collaboratively with Dr Ellen Strickland, an Internet Governance consultant and researcher. Ellen is currently a Fellow specialising in geopolitics with the Critical Infrastructure Lab at the University of Amsterdam. Ellen has worked on Internet policy and governance since the first World Summit on the Information Society in the early 2000s, including as a director and advisor to civil society, the private sector, academia, government and the technical community, including over a decade as part of senior leadership at InternetNZ.

Purpose of this document

In addition to its direct impacts (see Appendix), the Global Digital Compact will have significant influence on technology regulation globally, providing important principles for the respective roles of states, international institutions, companies, civil society, the technical community, and independent regulators.

Global technology governance processes are interdependent and closely linked, even when they appear diffuse and dispersed. We believe New Zealand has an established platform for diplomatic influence in relation to global technology policy. It also has an opportunity to engage in the discussion, revision, and embedding of core principles for technology governance in forums like the ITU plenipotentiary and the Freedom Online Coalition. For our own sake, it is important for us to take advantage of this opportunity.

There has been little domestic discussion of the GDC and New Zealand's role in global tech policy. We wish to provoke further domestic discussion, as well as making our expertise available to interested parties. We have prepared this document to inform negotiations and support non-governmental scrutiny of the Global Digital Compact Zero Draft as it currently stands.

High level comments and recommendations

1 Distinguish AI from emerging technologies, and govern the design, development and deployment of AI, not AI itself.

(a) Throughout the GDC, there is an appropriate focus on governing the design, development and deployment of technologies by people and institutions (examples here). This approach shifts when it comes to artificial intelligence (see here). There is little reason why AI should be treated differently than other semi-automated technologies. Objective 5 should be oriented toward governing the design, development and deployment of AI, not AI itself.

(b) The GDC repeatedly refers to "digital technologies" and "emerging technologies" as separate concepts, with AI being the only "emerging technology" named explicitly. Objective 5 should be reframed around AI specifically, without open-ended references to emerging technologies, which should be examined in light of their specific circumstances.

2 Multistakeholder governance processes should be championed and resourced adequately.

(a) The Global Digital Compact is an opportunity to support the evolution of digital governance while retaining multistakeholder processes at its core, including by leveraging, strengthening, and clarifying mandates in the existing Internet Governance system. Any departure from the established principles and practices of multistakeholder governance should be clearly signalled, rather than left implied. This week's NetMundial+10 Outcome Document is a notable point of reference for perspectives on multistakeholder principles and practices.

(b) The Global Digital Compact highlights the role of funding and resourcing at multiple points (examples here). However, it fails to state any expectations as to the necessity of meaningfully resourcing the activities required for civil society and other groups such as academia to participate. We recommend that commitments to resourcing for multistakeholder processes explicitly include specific funding for stakeholder engagement in them.

3 Vague and ambiguous concepts like safety, risk, disinformation, or "governing for humanity" create risks and require processes of clarification and review.

(a) Some level of generality and ambiguity is inevitable in discussions around technology. However, there are well-established and long-held concerns about reliance at a governance level on ambiguous concepts or objectives without some framework for clarifying them. These concerns equally apply to a "risk assessment" based approach, where the nature of the risks involved, the mitigation measures required, and the adequacy of risk management responses can be highly discretionary. This prevents effective regulatory alignment and creates a risk that some regulatory bodies will impose impossible thresholds for compliance.

(b) The principle of legality is mentioned only once (para 26(d)) in relation to internet shutdowns. The requirement to set clear rules that can be reviewed by an independent judiciary in an open justice system, with classification and enforcement decisions subject to judicial review, is fundamental to preventing abuse of technology governance frameworks. Equally, the "risks" of technology must be understood in relation to fundamental human rights, and the imposition of any mitigation measures and audit frameworks should be subject to judicial oversight.

Specific Text Suggestions

We suggest that New Zealand consider recommending the following amendments. These can be viewed alongside the text of the GDC zero draft here.

Para	Subject	Recommendation	Rationale
6(3)	Safety, human rights, ambiguity	Where the GDC makes references to "safety" as an objective, there should be an accompanying reference to human rights principles and foundations.	Human rights can be undermined in the name of safety as an objective, if safety is not interpreted through a human rights-consistent lens.
6(5)	AI, ambiguity, human rights	Revise the concept of "governing for humanity" to emulate the drafting in principle 7(g).	The concept of "governing for humanity" is vague and unnecessary. No other digital technologies referred to in the GDC are conceptualised in this way. Principle 7(g) is a better articulation of objective 6(5).
7(c)	Human rights, ambiguity	Promote this principle in the hierarchy of para 7.	Other concepts deployed in the GDC are relatively vague, and will require definition by reference to established rights, principles and frameworks to build international alignment on what those vague concepts require.
7(d)	Gender equality	Incorporate the language of gender equality in this paragraph.	Para 7(d) could be used to commit to the rights of non-binary and transgender people and the omission is notable. Applying a 'gender equality' framing where possible is more inclusive, and the language of 'gender diversity' is also desirable.
7(f)	Disability, accessibility	Consider clarifying whether accessibility relates to the rights of people with disabilities.	Cluster 2, para 12(b) refers to accessibility for people with disabilities. On the face of para 7(f), it isn't clear whether "accessibility" is intended to be read in a UNCRPD-consistent way, or not.
7(i)	multistakeholderism, risks of ambiguity	Promote this principle in the hierarchy of para 7.	Multistakeholder governance is an important method of narrowing the scope of otherwise vague terms and concepts like safety, identifying human rights risks created by technology and its governance, and determining how human rights should apply in particular contexts.

Para	Subject	Recommendation	Rationale
15(a)	Multistakeholderism, open source, interoperability	Protect and promote this paragraph.	Para 15(a) includes a desirable mixture of component parts that should be prioritised and replicated where possible in the wider draft.
17, 32(a)-(c), 46, 47	AI, transparency, explainability	Consider whether transparency in the design and features of digital technologies should be a core theme of the GDC as a whole to enable informed decision-making.	There is little reference to explainability and transparency of technologies including AI in the GDC, although these are recognised components of good technology governance under a range of existing frameworks. Further, transparency and explainability of technology design, development and deployment is a critical component of empowering people to choose how they engage with technology systems, and govern them effectively. Exporting technologies without adequate transparency and explainability can undermine the autonomy and agency of the states, communities, and others receiving the transfer.
17, 7(h), objective 1 cluster 3, 19(e)-(f), 33, 41, 53	Antitrust, competition, private power, innovation	Consider adding an explicit reference to competition or antitrust regulation as a component of digital governance.	There is a notable omission of any reference to the concept of antitrust, competition law, or decentralisation of private power in industry throughout the GDC, although this is recognised as a core component of innovation, entrepreneurship, open digital public infrastructure, interoperability, preventing companies being co-opted by states, and protecting digital rights.
18, 19(g), 28(d), 35(b)	Encryption, security	Clarify whether the concept of “secure” or “security” is intended to promote and protect encryption.	Para 28(d) appears to be the only explicit reference to encryption in the GDC, however it is a critical component of the right to privacy, and the security of digital systems and digital public infrastructure.
25	Multistakeholderism	Replace “multistakeholder cooperation” with “multistakeholder Internet Governance”	The current drafting weakens the commitment to multistakeholder Internet Governance.
26(d)	Principle of legality	The principle of legality could be referred to elsewhere.	
27	Disinformation, freedom of expression	Extract disinformation and information from this list into a separate paragraph.	Disinformation and information manipulation are highly contextual and fundamentally politically contestable. They should not be grouped with these other kinds of harmful content, which are generally more black-and-white and easily classifiable in nature.

Para	Subject	Recommendation	Rationale
27	Disinformation, freedom of expression	Remove reference to the concept of "elimination" and "prevention" in relation to disinformation and manipulation.	The notion of eliminating disinformation and information manipulation is impossible without major encroachment on human rights to freedom of expression and opinion. The wording of elimination should be rejected in this context. Prevention also implies authority to prevent people from expressing themselves, and creates substantial human rights risk. The language of elimination does not sit easily alongside a framework of risk mitigation and management, which implicitly acknowledges that such content may exist, but requires proportionate management.
28(a), 26(a)	Child safety, human rights	Insert a reference to human rights law as in 28(b).	Concepts like "safe" and "trustworthy", are ambiguous, and could be used to undermine human rights. Para 28(b) paragraph pairs the concept of safety with international human rights law to balance the ambiguity and potentially discretionary enforcement of safety as a concept or objective.
28(b)	Child safety, human rights	Recommend explicit reference to the United Nations General Comment No. 25 on the rights of children in relation to the digital environment.	Children's safety is mentioned several times in the GDC, but it would be better to reframe that commitment to being support for children's rights in the digital age more broadly (of which safety is only one part).
28(e)	Multistakeholderism, safety	Replace 'consultations' with 'processes'.	Multistakeholderism requires processes which engage relevant stakeholders appropriately, including in decision making and implementation, not just consultation.
28(f), 23(b)	Digital platforms, ambiguity	Clarify the concept of "digital platforms". Note that para 23(b) refers to digital technology companies as distinct from social media platforms.	Does this include a broad array of software providers, such as cloud providers, or is it narrowly scoped to social media companies or similar as understood under the European Union Digital Services Act?
29, 32	Companies' obligations to provide funding	Clarify the financial obligations of companies to support civil society engagement in governance processes.	States and companies profess a commitment to multistakeholder technology governance, and create governance processes that rely on civil society participation in order to be effective. In order for these commitments to be realistic, some funding will be required. Paras 29 and 32 refer to the obligations on technology companies, and present an opportunity to clarify states' positions on their responsibility to finance meaningful participation by civil society.

Para	Subject	Recommendation	Rationale
31(a)	Digital literacy, media literacy	Recommend specific reference to media literacy, not just digital literacy.	Media literacy focuses on skills in navigating a complex informational environment. Digital literacy is more narrowly understood to refer to technical skills to operate equipment and perform tasks.
31(b)	Disinformation, freedom of expression	Protect this reference to diverse and resilient information ecosystems and public service media.	This paragraph is an important safeguard against state overreach in response to disinformation and information manipulation, for example in para 27.
31(c)	Crisis response, legality	Include reference to principles of legality, necessity, proportionality as in para 26(d).	There is a risk that restrictions on free expression and derogation from human rights in crisis scenarios could be maintained, rather than being de-escalated at the earliest opportunity. This is important given NZ experience with the Christchurch Call.
32	Platform regulation, principle of legality	Refer to the principle of legality.	The urgency in para 32 should be moderated by reference to the principle of legality to empower platform companies to resist unlawful or human-rights infringing requests or instructions from governments.
32, 28(c)	Transparency, freedom of information, government oversight	Insert a reference to government transparency and freedom of information laws.	Transparency by companies must also be counterbalanced with corresponding obligations of transparency on governments, including through freedom of information laws, to prevent secret influence by states on technology providers in ways that could undermine human rights like the rights to free expression or privacy.
32(b)	Disinformation, researcher access, platform governance, transparency	Remove the reference to mis and disinformation in this paragraph.	The reference to mis and disinformation in para 32(b) is unnecessary and could be removed in favour of a general objective to build evidence about the information environment or the distribution and impacts of online content.
32(c)	AI, synthetic media	Delete ", including by identifying AI-generated material, authenticity certification for content and origins, watermarking and other techniques".	The paragraph is adequate without reference to these specific technologies and approaches, which may be ineffective, rendered redundant, or superseded.

Para	Subject	Recommendation	Rationale
Objective 5	Multistakeholderism, AI	This objective relates primarily to AI, and there is little need to refer to emerging technologies as well, which is an open-ended category. Propose removing reference to emerging technologies from this title, or replacing with words offering support for AI governance processes.	This section deals with AI in detail, and the heading should reflect that. We suggest that arrangements for governing future emerging technologies should depend on the context and characteristics of such technologies. Such arrangements could be investigated through multistakeholder Internet Governance processes, with fora such as the IGF and WSIS as spaces for discussing governance of emerging technologies.
43	AI, multistakeholderism	Replace "emerging technologies" with Artificial Intelligence (AI)". Add 'academic and civil society' to the list of sectors making efforts.	The rest of this section refers to AI and this should be consistent. Efforts of academia and civil society around AI should be acknowledged, as significant and valuable efforts underway within these sectors.
46, 47, 50(b), 51, 54, 55	Standard setting, multistakeholder governance	Include call for funding for investment in AI governance and multistakeholder governance processes, and resourcing for civil society to meaningfully engage with those processes.	There is a risk that the governance frameworks referred to in this paragraph become a kind of privatised regulation backed by government, with government being the only actor adequately resourced to engage with it, thereby undermining other SDGs and the goals of the compact. There should be provision for support for non-government and non-technical organisations to participate in standard setting and other governance processes, including funding, and clear expectations on who is responsible for providing that funding (whether companies, governments, or philanthropists, as anticipated by para 55).
49(e), 50(b), 51	AI, multistakeholder governance, resourcing	Include call for funding for investment in AI governance and multistakeholder governance processes, and resourcing for civil society to meaningfully engage with those processes.	These paragraphs anticipate investment in AI, but don't explicitly anticipate investment in AI governance, or multistakeholder governance processes and engagement.
55	Multistakeholder governance, resourcing	Para 55 should be strengthened to acknowledge the inequitable resourcing available for non-government non-technical non-industry participants in governance processes (ie, civil society, academia).	
61-65	Multistakeholderism, resourcing	These recommended outcomes of the GDC could better leverage and work through multistakeholder processes, including the IGF and WSIS.	The proposed multilateral processes and functions in paragraphs 61-65 can be viewed as a move away from multistakeholderism in Internet Governance.

Appendix: Near-term impacts of the GDC

Aside from other longer term, indirect impacts, the Global Digital Compact also establishes a number of processes or calls to action that can be expected to have a more near-term impact. These are summarised below with paragraph references to the exact text provided. A pre-filtered version of the GDC showing only these paragraphs can be viewed here.

1. Empowering the Secretary-General on leading UN system-wide collaboration on digital technologies, and requesting a proposal for the establishment of a digital and emerging technology office in the Secretariat (para 61).

2. Establish a Global Fund for AI and Emerging Technologies for Sustainable Development to catalyse the use of AI to achieve sustainable development objectives, aiming at voluntary contributions of USD$100m, and drawing on public, private and philanthropic sources (para 51).

3. Calling for various other organisations and sectors to support the GDC and to organise their efforts around it (para 54), having potentially direct impacts on the actions of a number of other important stakeholders, including funders and philanthropic bodies, private companies, governments, and multilateral organisations.

4. Declaring a commitment to support a number of existing processes, offices, and forums touching on technology, human rights, and Internet Governance, including the Internet Governance Forum (para 26(b), para 57), the Commission on Science and Technology for Development and the review of WSIS and WSIS+20 (para 58), and the Office of the High Commission for Human Rights (OHCHR) (para 59).

5. Mandating the UN to develop multilateral financing mechanisms to enable affordable access to the internet globally, and mandating states to support network access in hard-to-reach areas (paras 10(b) and (c)).

6. Calling for industry accountability frameworks in collaboration with other stakeholders, and the expectation that public transparency reports are auditable (para 29(b)).

7. Establishing a UN Digital Human Rights Advisory Service to provide practical guidance on human rights and technology issues to governments, private sector, and other stakeholders (para 22).

8. Establish a UN International Scientific Panel on AI to conduct risk and opportunity assessments on AI (para 49(a)) that will issue 6-monthly "early warning" and horizon scanning reports; and host an annual multistakeholder global dialogue on AI governance.

9. An implementation plan to be established within 12 months that notes existing mechanisms and stakeholders and sets time-bound actions for implementation (para 62) and establishing a two-yearly high level review process in the General Assembly (para 65).